

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

Case No 2014AP001848-CR
Circuit Court Case No. 13CF865

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11-20-2014

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN,

Plaintiff – Respondent,

v.

CHAZ BROWN,

Defendant – Appellant.

On Appeal from a Restitution Order Entered in the Outagamie
County Circuit Court, the Honorable Mitchell Metropulos
Presiding.

BRIEF AND APPENDIX OF
DEFENDANT – APPELLANT

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Oral Argument and Publication

The appellant does not take a position on the necessity of oral argument and will defer to opposing counsel's position. This case does not appear to be appropriate for publication as it concerns an issue of well-settled law.

Statement of Issue

Whether the trial court erred in ordering restitution even though the victim failed to present any evidence that the appellant caused his injuries.

Statement of the Case

This case began as a prosecution for substantial battery, battery, and disorderly conduct. These charges arose out of a fight on July 1st, 2013, during which the victim, Ronald Augustine, suffered a broken tooth and various facial injuries.

At his jury trial on May 20th 2014, the appellant, Chaz Brown, admitted to punching the victim in the face, but was acquitted of substantial battery and battery on the basis of self defense. However, Mr. Brown was convicted of disorderly conduct. At the restitution hearing on July 1st, 2014 the trial court ordered Mr. Brown to pay \$6,401.11 in restitution plus a surcharge of \$640.11, totaling \$7,041.22. (21: 15-25). The trial court did not require the victim to prove causation and would not allow Mr. Brown to introduce any evidence on that issue. (17: 5-25). Mr. Brown appeals this restitution order on the basis that the victim was not required to prove causation, which is a prerequisite for a valid restitution order. Mr. Brown asks this court to remand the case and instruct the trial court to require proof of causation.

Argument

I. Standard of Review: The Appellate Court Should Review This Issue *De Novo*

The appellate court should review this issue *de novo*. “Whether the circuit court had authority to order restitution under a particular set of facts is a question of law we review independently of the trial court, while benefiting from its analysis.” *State v. Storlie*, 256 Wis. 2d 500, 503 (Wis. Ct. App. 2002). Also, in *State v. Ortiz*, the court noted that “the legality of the trial court’s [restitution] order . . . [is a question] we review . . . *de novo* without deference to the trial court.” 247 Wis. 2d 836, 843 (Wis. Ct. App. 2001). The question of whether the trial court erred by not requiring that the victim prove causation goes to the legality of the trial court’s order: A restitution order is improper unless the victim proves that the defendant caused the injuries. *See State v. Canady*, 234 Wis. 2d 261, 262 (Wis. Ct. App. 2000). Thus, proof of causation is a requirement of a valid restitution order, and the burden is on the victim to prove causation. *See State v. Bhenke*, 203 Wis. 2d 43, 59 (Wis. Ct. App. 1996).

II. The Trial Court Erred by Ordering Restitution when the Victim Failed to Produce Evidence that the Appellant Caused his Injuries.

A court cannot lawfully order a defendant to pay restitution unless the victim proves that the defendant caused injury. According to Wis. Stat. Section 973.20, a court may order restitution “if a crime considered at sentencing *resulted in* . . . bodily injury.” (Emphasis added). Wisconsin’s appellate courts have interpreted this to mean that a court may only order restitution when the defendant’s criminal activity caused the victim’s injuries. “For restitution to be ordered, a causal nexus between the crime and the disputed damage is required.” *State v. Canady*, 234 Wis.2d at 262. “The defendant’s

actions must be the precipitating cause of the injury, and the harm must have resulted from the natural consequences of the actions.” *Id.* Furthermore, “it is the victim’s burden to prove cause.” *State v. Bhenke*, 203 Wis. 2d at 59. “The *victim must show* that the defendant’s criminal activity was a substantial factor in causing damage.” *State v. Canady*, 234 Wis. 2d at 266, (Emphasis added).

In this case, the trial court did not hold the victim to this burden of proof. Specifically, the court did not require the victim to show that Chaz Brown’s disorderly conduct caused his injuries. Rather, the court ordered restitution once the victim had simply established the *amount* of restitution owed. The victim did not produce any evidence at the hearing connecting his injuries to the crime considered at sentencing. In fact, when defense counsel objected to the lack of evidence on causation, the court responded that it “makes a finding based on [the] testimony at *trial* that [appellant’s] actions were the cause of the victim’s injuries, so I don’t need to hear further testimony on that.” (17:21-25) (Emphasis added). In other words, the court found that causation existed simply on the basis of *trial testimony* that the appellant caused the victim’s injuries. However, there was no testimony at trial that Mr. Brown’s disorderly conduct caused the victim’s injuries. It was improper for the court to thus relieve the victim of his burden of proving causation. Ultimately, the court ordered that the appellant pay \$6,401.11 in restitution, plus a surcharge of \$640.11. (21:15-25).

Therefore, the trial court permitted the victim to recover restitution without meeting his burden of proof.

Conclusion

In order for a restitution order to be proper, the victim is required to prove that the crime considered at sentencing caused his injuries. In this case, however, the trial court ordered restitution without requiring the victim to present any evidence that Chaz Brown's disorderly conduct caused his injuries. Therefore, the court's restitution order was improper and the appellate court ought to remand the case and expressly instruct the trial court to require the victim to prove causation.

Respectfully submitted,

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Findings or Opinion of Circuit Court

The circuit court ruled that the victim's medical bills arising out of his injuries amounted to \$6,401.11. (21:15-25). The court also ruled that Chaz Brown caused the victim's injuries based on "testimony at trial". (17:21-25). On the basis of these findings the court ordered restitution in the amount of \$6,401.11.

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s.809.23 (3) (a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Signed,

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I hereby certify that this brief conforms to the rules contained in section 809.19(8)(b) and (c) for a brief and appendix produced with a monospaced font. The length of this brief is ten pages and 1,919 words.

Signed,

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I certify that the text of the electronic copy of this brief is identical to the text of the printed copy.

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