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OF WISCONSIN**

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

Appellate Case No. 2014AP001848-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

Chaz L. Brown,

Defendant-Appellant.

ON APPEAL FROM A RESTITUTION ORDER ENTERED IN CIRCUIT COURT
III FOR OUTAGAMIE COUNTY

The Honorable Mitchell J. Metropulos, Presiding

BRIEF & APPENDIX OF PLAINTIFF-RESPONDENT

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STATEMENT OF THE ISSUE

Did the circuit court properly find the Defendant-Appellant caused the victim's injuries and therefore properly order restitution?

POSITION ON ORAL ARGUMENT AND PUBLICATION

Oral argument is not requested. Pursuant to Rule § 809.22(2)(b). Stats., the briefs fully develop and explain the issues. The Plaintiff-Respondent believes publication

of this case is unnecessary. Pursuant to Rule § 809.23(1)(b), Stats., this case involves the application of well-settled rules of law.

STATEMENT OF THE CASE

A criminal complaint for the Defendant-Appellant containing the following charges was filed on September 27, 2013:

COUNT 1: Substantial Battery, contrary to Wis. Stat. § 940.19(2), § 939.50(3)(i), and § 973.046(1g).

COUNT 2: Disorderly Conduct, contrary to Wis. Stat. § 947.01(1) and § 939.51(3)(b). (Criminal Complaint, September 27, 2013; App. 100).

The Defendant-Appellant was charged by an information filed on November 5, 2013, containing charges identical to those contained in the criminal complaint. (Information, November 5, 2013; App. 104). The charges stem from an incident that occurred on Monday, July 1, 2013 in the City of Appleton, Outagamie County, Wisconsin. (App. 100 and App. 104). The victim of the Substantial Battery charge was Ronald Augustine. (App. 100 and App. 104). An amended information was filed on May 13, 2014 adding the following charge as Count 3:

COUNT 3: Misdemeanor Battery, contrary to Wis. Stat. § 940.19(1) and § 939.51(3)(a). (Amended Information, May 13, 2014; App. 105 and 106).

The victim of the Misdemeanor Battery charge was Travis Augustine. (App. 106).

At a jury trial on May 20, 2014, the jury found the Defendant-Appellant not guilty of Count 1, guilty of Count 2, and not guilty of Count 3. (May 20, 2014 Jury Trial Tr. 275:15-25; App. 178).

At the May 20, 2014 sentencing hearing for Count 2, Disorderly Conduct, the State requested restitution for the injuries suffered by the victim, Ronald Augustine. (May 20, 2014 Sentencing Hearing Tr. 3:6-11; App. 185). In ordering restitution the trial court stated, "when I look at this series of facts here what we have is an individual, Mr. Brown, who for whatever reason decided to join the other subject in going to the victim's residence late at night to extort money out of an individual, and they instigated a very violent episode by doing so. The older victim, Ronald Augustine, suffered significant damage, and whether it's a battery charge or disorderly conduct charge, that still is a fact. And Mr. Brown was present for it. I think there needs to be some accountability." (May 20,

2014 Sentencing Hearing Tr. 4:21-25; 5:1-6; App. 186 and 187). The trial court went on to state, “[c]ertainly, the victim deserves to be compensated for his bills and his injuries.” (May 20, 2014 Sentencing Hearing Tr. 5:13-14; App. 187). The trial court ordered restitution for Ronald Augustine in the amount of \$8,857.21, with a surcharge of \$885.72, for a total of \$9,742.93. (May 20, 2014 Sentencing Hearing Tr. 6:4-7; App. 188).

A restitution hearing was held on July 1, 2014. (July 1, 2014 Restitution Hearing Tr. 1; App. 192). The victim presented evidence of his medical bills from the July 1, 2013 incident and the trial court amended the restitution amount to \$6,401.11, with a restitution surcharge of \$640.11, for a total of \$7,041.22. (July 1, 2014 Restitution Hearing Tr. 21:15-25; App. 212).

During the July 1, 2014 restitution hearing, the Defendant-Appellant, through his attorney, attempted to introduce sworn affidavits from three individuals. (July 1, 2014 Restitution Hearing Tr. 16:10-21; App. 207). The Defendant-Appellant stated the affidavits would support the Defendant-Appellant’s self-defense argument. (July 1, 2014 Restitution Hearing Tr. 17:1-4; App. 208). The trial court found the proposed exhibits to be irrelevant to the

restitution hearing stating, “[t]he jury has already made a finding that Mr. Brown is guilty of disorderly conduct, and they specifically denied his self-defense argument on that issue, so we’re simply here on the issue of whether or not the restitution that’s being sought is reasonable.” (July 1, 2014 Restitution Hearing Tr. 17:7-12; App. 208). The Defendant-Appellant argued that the proposed affidavits were relevant because they dealt with whether the Defendant-Appellant’s acts of disorderly conduct caused the victim’s injuries. (July 1, 2014 Restitution Hearing Tr. 17:16-20; App. 208). The trial court responded stating, “[t]he Court has heard the testimony and makes a finding based on that testimony at trial that Mr. Brown’s actions were a cause of the victim’s injuries, so I don’t need to hear further testimony on that.” (July 1, 2014 Restitution Hearing Tr. 17:21-25; App. 208).

STATEMENT OF THE FACTS

The State will address additional relevant facts in the “Argument” portion of its brief.

STANDARD OF REVIEW

The scope of the trial court's authority to order restitution is a question of law that is to be reviewed de novo. *State v. Hoseman*, 2011 WI App 88, ¶ 12, 334 Wis.2d 415, 421, 799 N.W.2d 479, 483 citing *State v. Johnson*, 2002 WI App 166, ¶ 7, 256 Wis.2d 871, 649 N.W.2d 284 and *State v. Hughes*, 218 Wis.2d 538, 543, 582 N.W.2d 49 (Ct.App.1998). Restitution is required when "a crime considered at sentencing resulted in bodily injury." Wisconsin Stat. § 973.20(3). Therefore, restitution in this case - where the victim suffered bodily injury including the loss of a tooth - is within the scope of the trial court's authority.

Once it is determined that ordering restitution is within the scope of the circuit court, "[c]ircuit courts have discretion in deciding on the amount of restitution and *in determining whether the defendant's criminal activity was a substantial factor in causing any expenses for which restitution is claimed.*" *Johnson*, 2002 WI App 166 at ¶ 7, 256 Wis.2d at 877, 649 N.W.2d at 287 (italics added) citing *State v. Canady*, 2000 WI App 87, ¶¶ 6, 12, 234 Wis.2d 261, 610 N.W.2d 147; *State v. Behnke*, 203 Wis.2d 43, 57-58, 553 N.W.2d 265, 272 (Ct.App.1996). When

reviewing an exercise of discretion of a circuit court, such as in the present case, the Court of Appeals is to "examine the record to determine whether the circuit court logically interpreted the facts, applied the proper legal standard and used a demonstrated, rational process to reach a conclusion that a reasonable judge could reach." *Id.* citing *Crawford County v. Masel*, 2000 WI App 172, ¶ 5, 238 Wis.2d 380, 617 N.W.2d 188.

ARGUMENT

1. BECAUSE THE VICTIM HAS DEMONSTRATED THAT THE DEFENDANT-APPELLANT'S CRIMINAL ACTIVITY CAUSED THE VICTIM'S INJURIES, THE TRIAL COURT PROPERLY EXERCISED DISCRETION IN ORDERING RESTITUTION

A. Principles Governing Restitution

In order for a circuit court to order restitution, it must be established that there is a "causal nexus," *Canady*, 2000 WI App at ¶ 9, 234 Wis.2d at 267, 610 N.W.2d at 149, between "the 'crime considered at sentencing,' Wis. Stat. § 973.20(2), and the disputed damage." *Canady*, 2000 WI App at ¶ 9, 234 Wis.2d at 267, 610 N.W.2d at 150. "[A] causal link for restitution purposes is established when 'the defendant's criminal act set into motion events that resulted in the damage or injury.'" *State v. Longmire*, 2004 WI APP 90, ¶ 13, 272 Wis.2d 759, 774, 681 N.W.2d 534,

541 quoting *State v. Rash*, 2003 WI App 32, ¶ 7, 260 Wis.2d 369, ¶ 7, 659 N.W.2d 189.

"[I]n proving causation, a victim need only show that the defendant's criminal activity was a 'substantial factor' in causing damage." *State v. Madlock*, 230 Wis.2d 324, 333, 602 N.W.2d 104, 109 (1999) citing *Behnke*, 203 Wis.2d 43, 553 N.W.2d 265. "[T]he 'crime' encompasses 'all facts and reasonable inferences concerning the defendant's activity related to the 'crime' for which the defendant was convicted, not just those facts necessary to support the elements of the specific charge of which the defendant was convicted." *Canady*, 2000 WI App at ¶ 10, 234 Wis.2d at 267, 610 N.W.2d at 150 quoting *Madlock*, 230 Wis.2d 324, 333, 602 N.W.2d 104. In ordering restitution, "the sentencing court takes a defendant's entire course of conduct into consideration. The restitution statute does not empower the court to break down the defendant's conduct into its constituent parts and ascertain whether one or more parts were a cause of the victim's damages." *State v. Rodriguez*, 205 Wis.2d 620, 627, 556 N.W.2d 140 (1996).

It is well-established that courts are to interpret the restitution statute "broadly and liberally in order to allow victims to recover their losses as a result of a

defendant's criminal conduct." *State v. Anderson*, 215 Wis.2d 673, 682, 573 N.W.2d 872 (1997).

B. Application

The sole issue raised by the Defendant-Appellant is whether the trial court erred in ordering restitution because the Defendant-Appellant argues that the victim "failed to present any evidence that the appellant caused his injuries." See Defendant-Appellant's Brief at 4. In making that argument, the Defendant-Appellant completely ignores the record consisting of the testimony of several witnesses at trial (including the Defendant-Appellant's own testimony) as well as the statements made by the trial court at the sentencing and restitution hearings.

Several witnesses for the State - Nicole Bundy, Travis Augustine, Lori Berncich, Jacob Brantmeier, and Ronald Augustine - testified about the events of July 1, 2013. (May 20, 2014 Jury Trial Tr. App. 108-164). The witnesses testified that the Defendant-Appellant, along with three other individuals, came to the house of the victim, Ronald Augustine, at approximately 11:00 pm to 11:30 pm, and created a disturbance by yelling, knocking on the door, ringing the doorbell, and demanding money. (May 20, 2014 Jury Trial Tr. App. 110, 118, 123, 126, 136, 148-49, and

155-60). The witnesses testified that, during the disturbance, the Defendant-Appellant struck the victim, Ronald Augustine, in the face. (May 20, 2014 Jury Trial Tr. App. 110, 118, 123, 126, 136, 148-49, and 155-60).

Lori Berncich testified that she answered the door and the Defendant-Appellant pulled at her, trying to get into her house. (May 20, 2014 Jury Trial Tr. 142:2-11; App. 134). Ms. Berncich testified that the victim then exited the residence, was struck in the face one time by the Defendant-Appellant, and fell to the ground. (May 20, 2014 Jury Trial Tr. 143:14-25; 144:10-20; App. 135 and 136).

Additionally, the victim, Ronald Augustine, testified that he heard a disturbance, went outside, was punched in the mouth by the Defendant-Appellant, and fell to the ground. (May 20, 2014 Jury Trial Tr. 177:10-25; 180:13-25; 181:1-25; 182:1-19; App. 155 and 158-60). Mr. Augustine testified that the Defendant-Appellant's punch knocked one of his teeth out, resulted in two other "dead" teeth, and caused him a bloody lip as well as a swollen eye. (May 20, 2014 Jury Trial Tr. 183:6-7; 184:20-25; 185:1-10; App. 161-63).

In addition to the State's witnesses, the Defendant-Appellant himself testified that he went to the victim's

residence at approximately 11:30 pm, rang the doorbell, and knocked on the door. (May 20, 2014 Jury Trial Tr. 214:20-25; 215:1-25; App. 166-67). The Defendant-Appellant testified that an altercation ensued and he struck the victim in the mouth. (May 20, 2014 Jury Trial Tr. 217:18-23; App. 169).

The Defendant-Appellant's brief fails to acknowledge the content of the trial testimony presented above. The Defendant-Appellant claims that the trial court relieved the victim of the burden of proving causation yet, at the same time, acknowledges that the circuit court relied on trial testimony in making a finding of causation. See Defendant-Appellant's Brief at 7.

The Honorable Judge Mitchell Metropulos in Outagamie County Circuit Court Branch III presided over the jury trial as well as the sentencing and restitution hearings in this case. (May 20, 2014 Jury Trial Tr.; App. 107; May 20, 2014 Sentencing Hearing Tr. App. 183; July 1, 2014 Restitution Hearing Tr. App. 192). The circuit court considered the Defendant-Appellant's conduct during the entirety of the incident when determining that restitution for the victim's injuries was appropriate, stating, "when I look at this series of facts here what we have is an

individual, Mr. Brown, who for whatever reason decided to join the other subject in going to the victim's residence late at night to extort money out of an individual, and they instigated a very violent episode by doing so. The older victim, Ronald Augustine, suffered significant damage, and whether it's a battery charge or disorderly conduct charge, that still is a fact. And Mr. Brown was present for it. I think there needs to be some accountability." (May 20, 2014 Sentencing Hearing Tr. 4:21-25; 5:1-6; App. 186 and 187).

In confirming his decision to order restitution at the restitution hearing, the circuit court stated, "[t]he Court has heard the testimony and makes a finding based on that testimony at trial that Mr. Brown's actions were a cause of the victim's injuries." (July 1, 2014 Restitution Hearing Tr. 17:21-24; App. 208). Applying the restitution statute broadly and liberally and considering the entirety of the Defendant-Appellant's conduct as established through the trial testimony of several witnesses (creating the initial disturbance by going to the victim's residence at approximately 11:00 pm to 11:30 pm on a Monday night to collect money, banging on the door, ringing the doorbell, yelling, and eventually striking the victim in the face),

it is clear that the Defendant-Appellant's conduct was a substantial factor in causing the victim's injuries. In fact, the Defendant-Appellant's criminal conduct was the *only* cause of the victim's injuries. Such a finding is supported by trial testimony and is consistent with the circuit court's explanation for ordering restitution for the victim's injuries based on the Defendant-Appellant's disorderly conduct conviction.

CONCLUSION

For the foregoing reasons the Plaintiff-Respondent respectfully requests that the court deny the Defendant-Appellant's motion and uphold the trial court's order for restitution.

Respectfully submitted this 18th day of February, 2015.

By: _____
Peter A. Hahn
OUTAGAMIE COUNTY
ASSISTANT DISTRICT ATTORNEY

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief and appendix produced with a monospaced font. The length of this brief is 13 pages.

Dated: February 19, 2015

OUTAGAMIE COUNTY DISTRICT
ATTORNEY'S OFFICE

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APPENDIX

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CERTIFICATION OF THIRD-PARTY COMMERCIAL DELIVERY

I certify that on February 19, 2015, this brief or appendix was delivered to a third-party commercial carrier for delivery to the Clerk of the Court of Appeals within 3 calendar days. I further certify that the brief or appendix was correctly addressed.

Date: February 19, 2015

Signature: _____

APPELLANT'S BRIEF APPENDIX CERTIFICATION

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:

- (1) a table of contents;
- (2) relevant trial court record entries;
- (3) the findings or opinion of the trial court; and
- (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

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.

Dated: February 19, 2015

Signature:

Note: This certification should be appended to the appendix.

CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, including the appendix, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12) and Wis. Stat. § (Rule) 809.19(13).

I further certify that:

This electronic brief and appendix are identical in content and format to the printed form of the brief and appendix filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 19th day of February, 2015.

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