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**State of Wisconsin
Court of Appeals
District I
Appeal No. 2015AP498CR
Case No. 2014CT497**

State of Wisconsin,

Plaintiff-Respondent,

v.

Guadalupe Ronzon

Defendant-Appellant.

**Brief in Support of Appeal from a Restitution Judgment of the
Milwaukee County Circuit Court, The Honorable John Seifert,
Presiding**

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Table of Authorities

Cases

<i>State of Wisconsin v. Behnke</i> : 203 Wis.2d at 58, 553 N.W.2d 265	p. 5
<i>State of Wisconsin v. Dugan</i> : 193 Wis.2d 610, 621, 534 N.W.2d 897	p. 5

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Statement on Oral Argument and Publication

The issues presented by this appeal are not constitutional in nature, and, therefore, the appellant does not recommend oral argument and publication.

Statement of the Issue

Whether the evidence was sufficient, as a matter of law, to award the victim in this case \$8902.80 in restitution when no credible evidence of general or special damages were presented by the victim during the restitution hearing.

Answered by the trial court: Yes, the evidence was sufficient.

Summary of the Argument

On appeal, Ms. Ronzon challenges the appropriateness of the circuit court's decision to award the victim, Ms. Angela Evans, \$8902.80 in restitution after she presented exactly no evidence in support of an award in this amount. A victim should not be entitled to pull numbers from thin air and expect to receive that amount in restitution without even a shred of evidence to justify her proposed special damages.

Statement of the Case

I. Procedural History

On March 5, 2014, the State filed a complaint in Milwaukee circuit court, charging Ms. Ronzon with one count of Misdemeanor Hit and Run. Ms. Ronzon entered a guilty plea to this count on September 10, 2014. She was sentenced to one year of probation. A restitution hearing was held on February 4, 2015. Upon hearing the unsubstantiated testimony of the victim, Ms. Angela Evans, the circuit court judge awarded Ms. Evans restitution in the amount of \$8902.20.

Argument

I. The victim presented absolutely no documentary or otherwise credible evidence that her special damages totaled \$8902.20.

Section 973.29 of the Wisconsin Statutes governs restitution in criminal cases. The statutes provide that the restitution a court may order the defendant to pay special damages substantiated by evidence on the record. *Wis. Stats. 973.20(5)(a)*. The purpose of restitution is to return the victims to the position they were in before the defendant injured them, no more, no less. See ***State v. Dugan***, 193 Wis.2d 610, 621, 534 N.W.2d 897, 901 (Ct. App. 1995). This court has authority to review the restitution order for erroneous exercise of discretion on the part of the trial court. ***State v. Behnke***, 203 Wis.2d at 58, 553 N.W.2d at 272.

There are many inconsistencies in the victim's testimony at the restitution hearing. On page 11, line 16, Ms. Evans clearly states that she sold her car. Later in her testimony, on page 16, line 17 she changes her testimony to say that she junked the car. She further testifies that she has absolutely no evidence that the car was junked. *Transp. p.17, li. 3.* Further, her testimony about one of the items she was claiming, \$770.00 in damages, is nonsensical and the trial court clearly erred in allowing her those damages. The court awarded her \$770.00 for repairs that the court believes she had done to a car that she junked, in spite the fact that she testified that she did not have those repairs performed. *Transp. p. 17, li. 5-7.*

Regarding the victim's alleged lost wages, Ms. Evans claimed wages for eleven (11) days of missed work, again, with no documentation showing that those days were actually missed at her job. She presented a doctor's excuse allowing her to be off from work for a total of three days of work, yet she felt entitled to ask for lost wages for 3.67 times what she fairly should have received. Once again the trial court grossly abused its discretion and awarded her lost wages for eleven days with no shred of evidence showing that she did not work those days. Defense wonders if she had told the court that she had missed one month of work on a three-day doctor's excuse if the court would have awarded her lost wages for that amount of time without requiring any proof of her outrageous claims.

Conclusion

For the reasons set forth in this document, it is respectfully requested that the court vacate the trial court's restitution order, order the trial court to set this for a de novo restitution hearing and require the court to see verifiable evidence of the amounts of money that the victim is saying she is owed by ways of damages as a result of this crime having been committed against her.

Dated at Milwaukee, WI this 8th day of September, 2015.

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Certification as to Length and E-Filing

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 proportional serif font. The length of the brief is 1210 words.

This brief was prepared using Microsoft Word word processing software. The length of the brief was obtained by use of the Word Count function of the software.

I hereby certify that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

Dated this 8th day of September, 2015



Matthew T. Luening

Certificate of Service

I, Matthew T. Luening, attorney for the defendant/appellant, do hereby certify that a true and correct copy of the foregoing Brief was served on the State Attorney's Office via fed ex on September 10, 2015.



Matthew T. Luening