STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2015AP2320-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

THOMAS J. QUEEVER,

Defendant-Appellant.

ON APPEAL FROM A RESTITUTION ORDER ENTERED BY THE MARINETTE COUNTY CIRCUIT COURT, THE HONORABLE JAMES A. MORRISON, PRESIDING

BRIEF AND SUPPLEMENTAL APPENDIX OF PLAINTIFF-RESPONDENT

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C O U R T O F A P P E A L S

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STATEMENT ON PUBLICATION AND ORAL ARGUMENT

The State does not request oral argument because the briefs should adequately set forth the facts and applicable precedent. The State requests publication because this case involves application of "an established rule of law to a

factual situation significantly different from that in published opinions[.]" Wis. Stat. § (Rule) 809.23(1)(a)2.

STATEMENT OF THE CASE

Money from J.G.J.'s purse went missing on several occasions, once with a loss of $500. (34:2.) J.G.J., then age 86, and her family members began to think that she was confused or her memory was slipping. (34:2; 61:37.) After money from her purse went missing again, her family began to suspect that somebody had been entering her home and stealing money from her purse. (1:2; 34:2, 4; 61:38.) Her son installed a camera inside of her kitchen to catch the burglar. (1:2; 34:4; 61:38-39.)

In December 2013, J.G.J. noticed that money was missing from her purse again, so she watched the camera's video footage from the previous night. (1:2.) The footage showed a man entering J.G.J.'s home through a sliding glass door shortly before midnight. (1:2.) J.G.J. reported the burglary to the police. (1:2; 61:39.) The police installed a second camera inside of J.G.J.'s home because they were unable to determine the burglar's identity from J.G.J.'s footage. (1:2; 61:7, 39.)

In April 2014, J.G.J. again realized that money was missing from her purse. (1:2; 61:7.) She watched camera video footage from the previous night. (1:2.) The footage showed a man attempting to enter J.G.J.'s home, again shortly before midnight, through the same sliding glass door, which was locked this time. (1:2.) Police determined that the

burglar likely entered J.G.J.'s home that night through an unlocked window. (1:2.) In addition to stealing $150 from J.G.J.'s purse that night (1:2), the burglar looked for cash in sympathy cards for the recent passing of J.G.J.'s husband (34:4, 7, 8; 61:36, 52; R-Ap. 104).

Because the video footage from the two cameras did not prove the burglar's identity, J.G.J. installed a security system in July 2014. (61:6, 8; *see also* 33:2.) The security system included an alarm on the sliding glass door and an outdoor camera next to that door. (1:2; *see also* 61:15.)

Shortly before midnight in August 2014, the company that installed the security system called J.G.J. and told her that someone just tried to open her sliding glass door. (1:2.) A police officer later reviewed footage from the security system camera. (1:2-3.) The footage showed a man approaching the sliding glass door, pointing the camera in a slightly different direction, trying to open the sliding glass door, and then turning the camera toward the sky. (51:Exh. 3 at 9:40-11:00.)[1] The officer recognized the man as Thomas J. Queever. (1:3.) The officer showed still-frame photographs from the August 2014 video to Queever, and Queever admitted that he was pictured in the photographs. (1:3.)

The State charged Queever with one count of attempted burglary of a building or dwelling as a repeater

[1] When citing to a video, the State references the video player running time rather than the time stamp.

for the August 2014 attempted break-in. (1; 5.) Queever pled no contest to the charge absent the repeater enhancer, and the circuit court convicted him. (39; 60:4-5, 18.) J.G.J. sought restitution for the security system. (33.)

At the sentencing hearing, the district attorney and defense counsel presented argument on restitution. (61:11-22.) The circuit court found that Queever entered J.G.J.'s home multiple times before the August 2014 attempted burglary for which he was convicted. (61:53-54; R-Ap. 105-106.) The court also determined that it "logically follow[ed]" that the court could order restitution for the security system because prior burglaries caused J.G.J. to install the security system. (61:57; R-Ap. 109.) The court ordered Queever to reimburse J.G.J. for the security system, apparently both as victim restitution under Wis. Stat. § 973.20 and as a condition of extended supervision. (*See* 61:4, 58, 65, 67; R-Ap. 110, 117, 119.)

Queever appeals the restitution order. (*See* 46.) He argues that Wis. Stat. § 973.20 does not authorize restitution here because there was no causal nexus between his attempted burglary and J.G.J.'s prior installation of the security system. (Queever's Br. at 4-5.)[2]

[2] Queever does not contest the restitution amount, that a security system is a compensable loss, or that J.G.J. is a compensable victim. There does not appear to be a basis for any such challenges. *See State v. Johnson (Edward)*, 2002 WI App 166, ¶ 21, 256 Wis. 2d 871, 649 N.W.2d 284 (holding that a security system was compensable as special damages under Wis. Stat. § 973.20); *State v. Torpen*, 2001 WI App 273,

(continued on next page)

Queever is not entitled to relief because the circuit court properly exercised its discretion in finding a causal nexus between Queever's past burglaries of J.G.J.'s home and J.G.J.'s subsequent installation of a security system. Thus, Wis. Stat. § 973.20 authorized the restitution order. Alternatively, Wis. Stat. § 973.01(5) authorized the order as a condition of extended supervision.

ARGUMENT

I. The circuit court appropriately exercised its discretion in ordering Queever to pay victim restitution under Wis. Stat. § 973.20 for the cost of J.G.J.'s security system.

A. Standard of review.

"A request for restitution . . . is addressed to the circuit court's discretion and its decision will only be disturbed when there has been an erroneous exercise of that discretion." *State v. Gibson*, 2012 WI App 103, ¶ 8, 344 Wis. 2d 220, 822 N.W.2d 500 (citations omitted). "However, whether the circuit court is authorized to order restitution pursuant to Wis. Stat. § 973.20 under a certain set of facts presents a question of law that [this Court] review[s] de novo." *Id.* (citation omitted).

¶ 14, 248 Wis. 2d 951, 637 N.W.2d 481 (identifying the two types of compensable victims under § 973.20).

B. The circuit court appropriately exercised its discretion in finding a causal nexus between Queever's course of criminal conduct and J.G.J.'s claim for restitution.

"Before restitution can be ordered, a causal nexus must be established between the 'crime considered at sentencing,' Wis. Stat. § 973.20(2), and the disputed damage." *State v. Canady*, 2000 WI App 87, ¶ 9, 234 Wis. 2d 261, 610 N.W.2d 147 (citing *State v. Madlock*, 230 Wis. 2d 324, 333, 602 N.W.2d 104 (Ct. App. 1999)). "In proving causation, a victim must show that the defendant's criminal activity was a 'substantial factor' in causing damage." *Id.* (quoting *Madlock*, 230 Wis. 2d at 333). At sentencing, the district attorney has the burden of demonstrating the victim's loss by a preponderance of the evidence. *State v. Kayon*, 2002 WI App 178, ¶ 13, 256 Wis. 2d 577, 649 N.W.2d 334; *see also* Wis. Stat. § 973.20(14)(a).

"[T]rial courts have discretion . . . in determining whether the defendant's criminal activity was a substantial factor in causing any expenses for which restitution is claimed." *State v. Johnson (Mark)*, 2005 WI App 201, ¶ 10, 287 Wis. 2d 381, 704 N.W.2d 625 (citation omitted). When this Court reviews a circuit court's exercise of discretion, it "examine[s] the record to determine whether the trial 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.* (citation omitted).

Here, the circuit court appropriately exercised its discretion in finding a causal nexus between Queever's course of criminal conduct and J.G.J.'s claim for restitution for a security system that she installed in her home. At sentencing, the court made two key findings in this respect.

First, the circuit court found by a "preponderance of the evidence" that Queever had entered J.G.J.'s home multiple "times before" the attempted burglary for which he was being sentenced. (61:53-54; R-Ap. 105-106.) The court stated, "I think [Queever was] engaged in a pattern of activity here." (61:63; R-Ap. 115.)

Plenty of evidence supported that finding. At the sentencing hearing, the prosecutor introduced two videos from the April 2014 burglary as well as one video and two still-frame photographs from Queever's August 2014 attempted burglary. (61:7-8; *see also* 51:Exh. 1-4.) The prosecutor noted that Queever admitted to police that he was pictured in those photographs. (61:8-9; *see also* 1:2-3.) The court played the August 2014 video. (61:26.) The court noted that, based on the August 2014 video, it appeared that Queever had been to J.G.J.'s house before partly because he was "obviously trying to disable the yard light, obviously trying to protect [him]self[,]"[3] and "trying to disable" the "security system[.]" (61:53, 56-57; R-Ap. 105, 108-09.)

[3] The prosecutor explained earlier that the security system camera looked like an outside yard light. (61:15.)

A comparison of the State's video exhibits strongly indicates that Queever was the burglar in the April 2014 video. The April 2014 video briefly captured a fairly discernible side profile of the burglar's face, mullet haircut, and baseball cap. (51:Exh. 1 at 1:02-1:07.) The video and a still-frame photograph from Queever's August 2014 attempted burglary contain similar side shots of his face and show him with a mullet haircut and baseball cap. (51:Exh. 4:2; 51:Exh. 3 at 10:04, 10:18-10:33, 10:38-10:41.)

As the prosecutor argued at the sentencing hearing, Queever was the burglar in the April 2014 video because that burglar had the "same body type" and "same hairdo" as Queever and because the burglar held a flashlight in his right hand like Queever did in the August 2014 video. (61:21-22.) The prosecutor further argued that the August 2014 video showed Queever's prior planning because Queever wore gloves, held a flashlight, and turned the camera outside of J.G.J.'s house so it pointed in a different direction. (61:26.) The circuit court agreed with the prosecutor that the unidentified burglar "looks an awful lot like [Queever], who had the same dominant hand that [Queever] did, who wore the same kind of clothes that [Queever] did, [and] who was seen on tape and in pictures in the house[.]" (61:51-52; R-Ap. 103-04.)

Additional evidence indicated that Queever burglarized J.G.J.'s home before she installed a security system in July 2014. For example, both Queever and the

burglar in the December 2013 and April 2014 videos tried to enter J.G.J.'s home through the same sliding glass door shortly before midnight. (1:2-3.) Video footage showed an unidentified burglar enter J.G.J.'s home, walk straight to the cabinet where J.G.J. kept her purse, and remove cash from her wallet, which indicated that the burglar had been there before. (61:39.) J.G.J. never lost money or her purse again after Queever was arrested. (61:41-42.)

This Court must uphold the circuit court's finding that Queever burglarized J.G.J.'s home before the attempted burglary for which he was convicted here, because that finding is not clearly erroneous. *See State v. Holmgren*, 229 Wis. 2d 358, 366, 599 N.W.2d 876 (Ct. App. 1999) (citing Wis. Stat. § 805.17(2)). Queever does not appear to dispute that finding. (*See* Queever's Br. at 4-5.)

The circuit court's second key finding was that the break-ins that occurred before July 2014 caused J.G.J. to install a security system in her home, which made restitution for the security system permissible. Specifically, the court stated that defense counsel

> makes a very good argument that in fact if I impose restitution for the deployment of a security system when the security system was deployed before the crime occurred, that in and of itself, that doesn't follow logically. But it does follow logically from the fact that there clearly were prior home invasions, whether you did them or not. . . . It does follow that this family engaged in a series of steps including ultimately the police cameras and the more sophisticated system for which they seek compensation.

(61:57; R-Ap. 109.)[4]

The circuit court's finding of causation was also correct. At the sentencing hearing, the prosecutor stated that J.G.J.'s family installed a security system in her home because the initial burglary videos did not clearly enough show who the burglar was. (61:8.) Defense counsel stipulated to the prosecutor's summary of the facts. (61:10.) One of J.G.J.'s daughters spoke at the sentencing hearing and confirmed that the earlier videos "did not get a clear picture of [the burglar's] face, so we took it one step further and installed a complete security system." (61:39.) Several victim-impact letters written by J.G.J.'s family members confirmed that she installed the security system to catch the burglar who had been stealing money from her home. (34:2, 4, 7.)

For the foregoing reasons, the circuit court appropriately exercised its discretion in finding that Queever burglarized J.G.J.'s home multiple times and that those burglaries caused J.G.J. to install a security system in her home. The restitution order was proper here because of that causation. *See Canady*, 234 Wis. 2d 261, ¶ 12.

[4] The circuit court misspoke to the extent that it suggested that it could order restitution here under Wis. Stat. § 973.20 even if Queever had not previously entered J.G.J.'s home. However, that is not likely what the circuit court meant, given its "clear" finding "for all the world to hear" that a preponderance of the evidence showed that Queever previously entered J.G.J.'s home multiple times. (61:53-54; R-Ap. 105-06.)

C. Wisconsin Stat. § 973.20 authorized the circuit court to order restitution for a loss that J.G.J. incurred before Queever committed the specific acts necessary for his crime of conviction.

1. Wisconsin Stat. § 973.20 broadly allows restitution for any harm resulting from activity related to a defendant's crime.

Wisconsin law authorizes a circuit court to order restitution for harm caused by a "crime considered at sentencing." Wis. Stat. § 973.20(1r), (2), (3), (4), (5). "'Crime considered at sentencing' means any crime for which the defendant was convicted and any read-in crime." Wis. Stat. § 973.20(1g)(a).

"As contemplated by the restitution statute, the 'crime considered at sentencing' is defined in broad terms." *Canady*, 234 Wis. 2d 261, ¶ 10. "[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.'" *Id.* (emphases in original) (quoting *Madlock*, 230 Wis. 2d at 333).

Similarly, "'[u]nder the restitution statute, 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.'" *Madlock*, 230 Wis. 2d at 333 (emphasis added) (quoting *State v. Rodriguez*, 205 Wis. 2d 620, 627, 556 N.W.2d 140 (Ct. App. 1996)).

Queever's view of the restitution statute ignores those well-established principles. His argument suggests that this Court should narrowly focus on his acts that constituted the specific crime for which he was convicted. (*See* Queever's Br. at 4-5.) However, this Court should consider his entire course of conduct, including all facts and reasonable inferences concerning his activity *related to* the crime for which he was convicted. *Canady*, 234 Wis. 2d 261, ¶ 10.

Queever's past burglaries of J.G.J.'s home were related to the attempted burglary for which he was convicted. Those burglaries and the attempted burglary involved the same home, the same victim, the same time of night, and the same (attempted) point of entry—a sliding glass door. (1:2-3.) J.G.J. paid a security company to install an alarm and a camera on that door to catch the burglar. (1:2; 61:8, 39.) That alarm and camera—which were the basis for the restitution request (33)—allowed the police to determine the burglar's identity (*see* 1:2-3). The close relationship between Queever's crime of conviction and his past burglaries of J.G.J.'s home is highlighted by the fact that the criminal complaint against Queever discussed those past burglaries and J.G.J.'s installation of the security system. (1:2.)

2. Wisconsin Stat. § 973.20 liberally allows restitution for crime victims.

"[T]he purpose of restitution is to return victims of a crime to the position they were in before the defendant injured them." *Johnson (Mark)*, 287 Wis. 2d 381, ¶ 14 (citation omitted). This Court "therefore construe[s] the restitution statute broadly and liberally to allow victims to recover their losses resulting from the criminal conduct." *Id.* (citation omitted). "[T]his court has consistently recognized that Wis. Stat. § 973.20 creates a presumption that restitution will be ordered in criminal cases[.]" *Gibson*, 344 Wis. 2d 220, ¶ 10 (citation omitted).

Queever's argument, however, construes that statute in a way that would prevent the circuit court from ordering him to compensate J.G.J. for the financial harm that he caused her. His argument turns the presumption in favor of restitution on its head. If adopted, his argument would preclude restitution for any loss that a victim incurred *before* a defendant committed a crime of conviction or read-in crime—even if the defendant's related conduct caused the loss. (*See* Queever's Br. at 4-5.)

For example, Queever's argument would preclude restitution in a case where a defendant was convicted of receiving stolen property, because the victim lost the property *before* the defendant received it. An unjust result of that sort is inconsistent with Wisconsin's liberal policy favoring restitution for crime victims. *Cf. State v. Boffer*, 158

Wis. 2d 655, 462 N.W.2d 906 (Ct. App. 1990) (affirming a restitution order against a defendant convicted of receiving stolen property).[5]

3. Queever's argument, if adopted, would lead to absurd or unreasonable results.

This Court should reject Queever's view of the restitution statute because it would lead to absurd or unreasonable results if adopted. First, it would result in pressure on prosecutors to bring otherwise unnecessary charges simply to allow for restitution. *Cf. State v. Szarkowitz*, 157 Wis. 2d 740, 756, 460 N.W.2d 819 (Ct. App. 1990) (construing Wis. Stat. § 973.20 as allowing restitution for victims of read-in crimes because a contrary construction would produce an "absurd result" of pressuring prosecutors to "refuse to read in" crimes).

The sentencing transcript here shows the potential for that absurd result. The district attorney said multiple times that he could not have proven beyond a reasonable doubt that Queever committed past burglaries of J.G.J.'s home. (61:8, 21-22.) The prosecutor explained that the circuit court still could order restitution for the loss resulting from those burglaries because the burden of proof for restitution is the

[5] The defendant in *Boffer* did not raise the timing argument that Queever raises. The State here uses *Boffer* to illustrate one of the many scenarios in which Queever's timing argument would unjustly preclude restitution.

lower preponderance standard. (61:22.) The circuit court said that "the District Attorney had the good judgment to not charge crimes that he could not . . . prove beyond a reasonable doubt. It was ethical and appropriate for the District Attorney to charge exactly as he did." (61:50; R-Ap. 102.)

The circuit court's praise for the prosecutor's charging decision was warranted. A prosecutor merely needs probable cause to issue a criminal charge. S*tate ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 29, 271 Wis. 2d 633, 681 N.W.2d 110 (quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978)). However, "[a] district attorney generally should not bring a charge unless he or she believes the evidence can sustain a finding of guilt beyond a reasonable doubt." *Id.* ¶ 31.

If adopted, though, Queever's argument would pressure prosecutors in cases like his to issue weak charges that are supported by probable cause but that cannot be proven beyond a reasonable doubt. The weak charge could then be dismissed and read in to establish a basis for restitution. *See State v. Torpen*, 2001 WI App 273, ¶ 14, 248 Wis. 2d 951, 637 N.W.2d 481. This Court should reject Queever's argument and thereby avoid putting pressure on prosecutors to issue weak charges simply to allow for restitution.

This pressure on prosecutors, in turn, could burden the plea process. For example, the pressure to bring more

charges could hinder a prosecutor's ability to agree not to bring additional lawful charges in exchange for a defendant's plea. *See Bordenkircher*, 434 U.S. at 364-65 (upholding this plea practice). If a prosecutor brought a weak charge to allow for restitution and then entered into a plea agreement that required the prosecutor to move the circuit court to dismiss and read in the weak charge, the court could thwart the plea agreement by refusing to dismiss the charge. *See State v. Conger*, 2010 WI 56, ¶ 14, 325 Wis. 2d 664, 797 N.W.2d 341. The plea process would be best-served by not putting pressure on a prosecutor to bring otherwise unnecessary charges simply to allow for restitution.

Further, Queever's position burdens victims and defendants. If a prosecutor brought an extra charge simply to allow for restitution, the extra charge would subject the defendant to more exposure and could weaken the defendant's leverage in the plea process. On the other hand, if a prosecutor declined to issue charges that could not be proven beyond a reasonable doubt, victims could be deprived of restitution. The preponderance standard for restitution would effectively be turned into the higher beyond-a-reasonable-doubt standard in cases like Queever's. *Cf. State v. Kennedy*, 190 Wis. 2d 252, 258, 528 N.W.2d 9 (Ct. App. 1994) (noting that the burden of proof for restitution is a preponderance, not beyond a reasonable doubt). This Court should avoid all of those unreasonable results by affirming the restitution order here. *See Kalal*, 271 Wis. 2d 633, ¶ 46

(citations omitted) (Courts interpret statutory language "reasonably, to avoid absurd or unreasonable results.").

To be clear, the State is *not* urging this Court to interpret Wis. Stat. § 973.20 as allowing restitution for a defendant's conduct that has no relationship to a crime of conviction or read-in crime, or as allowing restitution for a person who is not a victim of either kind of crime. *See Torpen*, 248 Wis. 2d 951, ¶ 14 (noting that restitution is limited to these two kinds of victims).

Instead, the State is merely urging this Court to interpret Wis. Stat. § 973.20 as allowing a permissible victim to receive restitution for a loss caused by a defendant's conduct *related to* a crime of conviction or read-in crime, even if the victim incurred the loss *before* the defendant committed the specific acts necessary for proving the crime.

In sum, Wis. Stat. § 973.20 authorized the restitution order here.

II. Alternatively, the circuit court appropriately ordered Queever to reimburse J.G.J. for the cost of the security system as a condition of extended supervision under Wis. Stat. § 973.01(5).

A. Applicable legal principles.

"Wisconsin Stat. § 973.01(5) authorizes the trial court to impose conditions upon a term of extended supervision. It is within the broad discretion of the trial court to impose conditions as long as the conditions are reasonable and appropriate." *State v. Koenig*, 2003 WI App 12, ¶ 7, 259

Wis. 2d 833, 656 N.W.2d 499 (citation omitted). This Court reviews conditions of extended supervision "under the erroneous exercise of discretion standard to determine their validity and reasonableness measured by how well they serve their objectives: rehabilitation and protection of the state and community interest." *State v. Stewart*, 2006 WI App 67, ¶ 11, 291 Wis. 2d 480, 713 N.W.2d 165 (citations omitted).

"'[A] condition of extended supervision need not directly relate to the offense for which the defendant is convicted as long as the condition is reasonably related to the dual purposes of extended supervision.'" *State v. Agosto*, 2008 WI App 149, ¶ 12, 314 Wis. 2d 385, 760 N.W.2d 415 (quoting *State v. Miller (Brad)*, 2005 WI App 114, ¶¶ 11, 13, 283 Wis. 2d 465, 701 N.W.2d 47). Similarly, a condition of extended supervision may seek to rehabilitate a defendant for "past criminal conduct." *See Miller (Brad)*, 283 Wis. 2d 465, ¶ 14; *State v. Miller (Eugene)*, 175 Wis. 2d 204, 210, 499 N.W.2d 215 (Ct. App. 1993).

A circuit court may order a defendant to reimburse someone as a condition of extended supervision. *Agosto*, 314 Wis. 2d 385, ¶¶ 11-14. If this Court affirms a reimbursement order as a reasonable and appropriate condition of extended supervision, it may thereby avoid determining whether Wis. Stat. § 973.20 authorized the order as victim restitution. *See State v. Brown*, 174 Wis. 2d 550, 553 n.2, 497 N.W.2d 463

(Ct. App. 1993) (probation condition).[6] In any event, a circuit court may order a reimbursement condition of extended supervision even if § 973.20 did not authorize the order as victim restitution. *See Agosto*, 314 Wis. 2d 385, ¶ 11; *see also State v. Johnson (Edward)*, 2002 WI App 166, ¶¶ 25-26, 256 Wis. 2d 871, 649 N.W.2d 284.

B. The restitution order here was a reasonable and appropriate condition of extended supervision.

Here, the sentencing court stated multiple times that it was ordering restitution for J.G.J.'s security system as a condition of Queever's extended supervision. (61:58, 65; R-Ap. 110, 117.) That reimbursement order was lawful under Wis. Stat. § 973.01(5), even if it was not lawful as victim restitution under Wis. Stat. § 973.20. *See State v. Heyn*, 155 Wis. 2d 621, 629-30, 456 N.W.2d 157 (1990).

The defendant in *Heyn* was convicted for burglarizing a home. *Id.* at 624. As a condition of probation, the circuit court ordered Heyn to reimburse the homeowners for a "burglar alarm" that they installed in their home as a result of his burglary. *Id.* at 625. The supreme court affirmed the order because it was a reasonable and appropriate condition of probation, even if the order could not be upheld as victim restitution. *Id.* at 629-30.

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[6] "Case law relating to the propriety of conditions of probation is applicable to conditions of supervision." *State v. Miller (Brad)*, 2005 WI App 114, ¶ 13 n.3, 283 Wis. 2d 465, 701 N.W.2d 47 (citation omitted).

The supreme court reasoned that the probation condition would aid in Heyn's rehabilitation because

> [s]uch a condition aids the offender's reformation by educating him or her that a burglary is not simply a taking or destruction of personal property, but is also an unjustifiable and unlawful personal intrusion which greatly diminishes or destroys the sense of security that each person has a right to expect in his or her home. The condition therefore impresses upon the convicted person the full extent of the harm caused by his or her criminal activities and teaches the offender to consider more carefully the consequences of his or her actions in the future.

Id. at 630. The supreme court also reasoned that "[t]he community benefits, in turn, from the rehabilitative effects of the condition on the convicted person." *Id.*

The supreme court in *Heyn* further concluded that the probation condition was reasonable "on the facts" of that case because the homeowners would not have installed the alarm system "but for the defendant's criminal activities," and because the circuit court "directed the probation department to reassess Heyn's ability to pay for the cost of the alarm at the time of the commencement of his probation." *Id.*

Similarly, here, the restitution order serves the dual goals of extended supervision. First, it aids Queever's rehabilitation by teaching him that burglary of a home "destroys the sense of security that each person has a right to expect in his or her home." *Id.* When imposing sentence, the circuit court noted that J.G.J.'s family and friends said that the burglaries caused a "horrible loss of security[.]" (61:51; R-Ap. 103.) The victim-impact letters and statements

made by J.G.J.'s family and friends at the sentencing hearing bore out their lost sense of security. (34:1-8, 10-12; 61:40, 42, 43.)

Second, the restitution order here will protect the community's interests. Its rehabilitative effects on Queever will protect the community. *See Heyn*, 155 Wis. 2d at 630; *see also Brown*, 174 Wis. 2d at 554 (citing *Heyn*, 155 Wis. 2d at 630) (stating that the community would benefit "from the rehabilitative effects of the tuition reimbursement condition imposed on Brown"). The order also aims to restore the victim, which is a community interest. *See Huggett v. State*, 83 Wis. 2d 790, 798, 266 N.W.2d 403 (1978).

Further, like the burglary in *Heyn*, Queever's past burglaries of J.G.J.'s home caused her to install a security system, as explained above. Although the circuit court here, unlike in *Heyn*, did not mention Queever's ability to pay, it was not required to do so because it ordered restitution as a condition of extended supervision rather than probation. (61:57, 58, 65; R-Ap. 109, 110, 117.) *See State v. Galvan*, 2007 WI App 173, ¶ 17, 304 Wis. 2d 466, 736 N.W.2d 890.

In sum, Wis. Stat. § 973.01(5) authorized the circuit court's condition of extended supervision requiring Queever to reimburse J.G.J. for her security system.[7]

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court affirm the circuit court's restitution order.

Dated this 21st day of April, 2016.

Respectfully submitted,

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[7] The circuit court ordered Queever to pay $2744.50 for restitution (61:4, 67; R-Ap. 119), which consisted of $2495 for the security system and $249.50 as a restitution surcharge (61:4; *see also* 33). A circuit court "shall" impose a surcharge "equal to 10% of any restitution ordered under [Wis. Stat. §] 973.20[.]" Wis. Stat. § 973.06(1)(g). If this Court holds that the restitution order was permissible under Wis. Stat. § 973.01(5) *but not* under § 973.20, it perhaps must vacate the $249.50 restitution surcharge.

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4820 words.

_____
Scott E. Rosenow
Assistant Attorney General

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I hereby certify that:

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

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Dated this 21st day of April, 2016.

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