

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT 4

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN,
Plaintiff-Respondent,
v.

Appeal No. 2016AP000177 CR
TERRY C. CRAIG JR.
Defendant-Appellant.

ON APPEAL FROM A RESTITUTION ORDER
ENTERED BY THE CIRCUIT COURT FOR LA CROSSE COUNTY
THE HONORABLE GLORIA DOYLE, PRESIDING
BRIEF OF TERRY C. CRAIG JR.

Respectfully submitted,
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STATE OF WISCONSIN,

Plaintiff-Respondent,

V.

Appeal No.: 2016AP177 CR

Circuit Court Case No.: 2015CM458

TERRY C. CRAIG,

Defendant-Appellant.

BRIEF OF DEFENDANT-APPELLANT

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TABLES OF CONTENTS

ISSUE	2
STATEMENT ON ORAL ARGUMENT AND PUBLICATION	2
STATEMENT OF THE CASE	2
ARGUMENT	3
I. Circuit Court ordered an improper amount of restitution in the amount of the full value of the automobile when the automobile's taillight was the only "real" damage caused by the defendant.....	3
CONCLUSION.....	5
FORM AND LENGTH CERTIFICATION.....	6
CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12).....	7
CERTIFICATION OF MAILING.....	8
CERTIFICATION AS TO APPENDIX.....	9
APPENDIX TABLE OF CONTENTS.....	10

CASES CITED

<i>State v. Behnke</i> , 203 Wis.2d 43, 57-58, 553 N.W.2d 265 (Ct. App. 1996)	4
<i>State v. Canady</i> , 2000 WI App 87, 6, 12, 234 Wis.2d 261, 610 N.W.2d 147	4
<i>State v. Fernandez</i> , 316 Wis.2d 598, 764 N.W.2d 509 (2009)	4
<i>State v. Johnson</i> , 2002 WI App 166, 7, 256 Wis.2d 871, 649 N.W.2d 284	4
<i>State v. Ziegler</i> , 2005 WI App 69, 10, 280 Wis.2d 860, 695 N.W.2d 895	4

STATUTES CITED

Wisconsin Statutes	
§809.23	2
§973.20(2)	3

ISSUE

1. Is the victim entitled to restitution totaling the full value of the vehicle given the previous damage that was present when the victim purchased the vehicle?

The trial court answered yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Appellant believes that the Court can decide the issues based on the briefs and the need for oral argument is not necessary in this matter. Furthermore, publication is most likely not warranted pursuant to Wis. Stat. §809.23.

STATEMENT OF THE CASE

On October 26, 2015, the defendant entered a plea to obstructing an officer while reading in the criminal damage to property and disorderly conduct. The defendant posted \$350.00 to be held by the court until a restitution hearing could be held.

The following facts were set forth at the restitution hearing:

Some short time prior to December 2014, Troy Anderson (the father of the victim) purchased a 2001 Volkswagen Beetle (restitution hearing transcript page 21, line 25)¹. The vehicle was purchased for \$1,200.00. There was existing damage to the quarter panel area which included a hole the size of a baseball and a crack (transcript page 23, line 9)².

On April 7, 2015, the defendant caused a domestic disturbance by yelling at his wife. The defendant left the residence that he and his wife had been fighting at and when he left, his wife called law enforcement. Law enforcement arrived at the residence and after questioning other individuals at the residence as to what happened, they decided to go out into the garage where two cars were parked. At this time law enforcement noticed the back left taillight assembly had been smashed in and the plastic housing was lying on the ground.

¹ A copy of restitution hearing transcript page 21 is included as page App 1 in the Appendix.

² A copy of restitution hearing transcript page 23 is included as page App 2 in the Appendix.

The victim, Sydney Anderson, indicated to the officer on that day that all the damage that was done that night included a broken tail lamp lens along with its assembly. The estimate for replacement of those items along with labor would be \$160.00 (transcript page 16, line 3-19)³.

A week or two later, she noticed a lower crack that was new, that the hole appeared to be a different shape, and an upper crack (previously there, but was longer) (transcript page 21, line 2-6)⁴. Mr. Anderson indicated that it was his intention to fix the preexisting hole, but hadn't done anything to it. He agreed that if the vehicle was going to be fixed from its preexisting condition, it would need a new fender or somebody that worked in fiberglass to fix it (transcript page 21, line 19-25, page 22, line 1-13)⁵.

The court ordered \$1,200.00 restitution along with \$120.00 restitution surcharge. The defendant appeals the order.⁶

ARGUMENT

I. Circuit Court ordered an improper amount of restitution in the amount of the full value of the vehicle when the vehicle's taillight was the only "real" damage caused by the defendant.

Wis. Stat. 973.20(2) provides as follows:

"If a crime considered at sentencing resulted in damage to or loss or destruction of property, the restitution order may require that the defendant:

(a) Return the property to the owner or owner's designee; or

(b) If return of the property under par. (a) is impossible, impractical or inadequate, pay the owner or owner's designee the reasonable repair or replacement cost [...]."

As it relates to this matter, the property has always been in the possession of Ms. Anderson. Therefore, the question is whether (b) applies and what does reasonable repair or replacement cost mean. There is no dispute that the taillight and assembly were damaged. There is further no dispute that the estimate provided by Ms.

³ A copy of restitution hearing transcript page 16 is included as page App 3 in the Appendix.

⁴ A copy of restitution hearing transcript page 21 is included as page App 1 in the Appendix.

⁵ A copy of restitution hearing transcript page 21 and 22 is included as page App 1 and App 4 in the Appendix.

⁶ A copy of the Court's Order is included as page App 5 of the Appendix.

Anderson indicates that the damage and labor would total \$160.00. There is further no dispute that the defendant is responsible for the cost to repair the taillight and assembly in the amount of \$160.00.

The real issue presented is whether the defendant is required to compensate Ms. Anderson for any additional damage caused to the fender when the fender was substantially damaged prior to the above-entitled matter.

The Court ruled without explanation that the defendant caused damage to the taillight and taillight assembly and it is not beyond a reasonable assumption that when you take an object and hit it on the taillight that you could cause other cracks to the car. While the Court found Ms. Anderson and her father more credible than the defendant's wife, the Court did not give any articulate reason to impose \$1,200.00 in restitution (transcript page 37, line 16-20)⁷.

"Trial 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." *State v. Ziegler*, 2005 WI App 69, 10, 280 Wis.2d 860, 695 N.W.2d 895, 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 (Ct. App. 1996). A court erroneously exercises its discretion when it applies the wrong legal standard or grounds its decision on an illogical interpretation of the facts. *State v. Fernandez*, 316 Wis.2d 598, 50. Additionally, when reviewing a circuit court's exercise of discretion, this court examines the record to determine whether the circuit court "used a demonstrated, rational process to reach a conclusion that a reasonable judge could reach." *State v. Johnson*, 2002 WI App 166, 7, 256 Wis.2d 871, 649 N.W.2d 284.

It is undisputed that there was a baseball size hole and crack in the fender at the time the defendant purchased the vehicle. It is further undisputed that the father would have had to repair the entire fender and contemplated such prior to any further damage by the defendant. On cross-examination of Troy Anderson, defense counsel asked:

Q: So, you were going to have to change the whole area where the hole was anyway, correct?

A: If the vehicle was going to be fixed, it would need a new fender or someone that worked in fiberglass to fix it.

⁷ A copy of restitution hearing transcript page 37 is included as page App 6 in the Appendix.

THE COURT: Wait a minute. Sir, are you talking about originally or after the damage by the defendant?

Witness: Well, either time.

THE COURT: Okay.

Witness: Either time. It would have to be done by somebody who worked with fiber—I think it's fiberglass, in my opinion. It might be plastic, I'm not sure.

To the Court's own question, the victim's father acknowledges that the preexisting damage would have had to have been fixed in the same way that it would have been after any damage to the fender done by the defendant (if any).

There is no evidence that the damage that occurred after the purchase reduced the value of the property nor is there any logical basis to require the defendant to pay for the replacement of the fender which was in need of replacement at the time of the purchase of the vehicle.

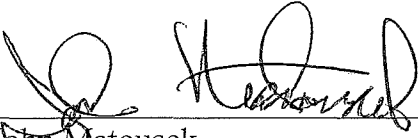
The State submits that if a vase is worth \$100.00 brand new, but is purchased with four substantial cracks, and a defendant by intentional act adds a fifth crack, that the defendant is on the hook for the entire value of the vase (\$100.00). The State would submit that premise even if there was no reduction in value of the cracked vase by adding one more crack. However, this is not the law.

CONCLUSION

The Court abused its discretion in ordering restitution for the full value of the vehicle when there was preexisting damage.

For the reasons set forth above, the defendant-appellant respectfully requests this Court vacate the portion of the restitution order requiring \$1,200.00 to Sydney Anderson. The defendant-appellant further asks this Court for an order determining restitution in the amount of \$160.00 plus the \$16.00 restitution surcharge.

Dated this 14 day of April, 2016.

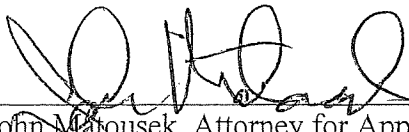


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FORM AND LENGTH CERTIFICATION §809.19(8)(d))

I hereby certify that this brief conforms to the rules contained in s.809.19(8)(b) and (c) for a brief and appendix produced with a proportional font. The length of this brief is five pages and 1,501 words.

Signed:

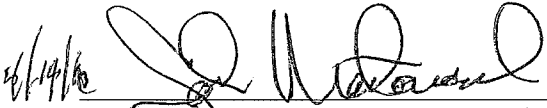
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John Matousek, Attorney for Appellant
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CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19 (12). I further certify that:

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

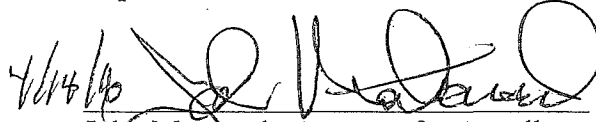
A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Signed: 
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CERTIFICATION OF MAILING

I certify that this brief or appendix was deposited in the United States Mail for delivery to the Clerk of Court of Appeals by first-class mail, or other class of mail that is at least expeditious, on April 14, 2016.

Signed:

A handwritten signature in black ink, appearing to read "John Matousek", written over a horizontal line.

John Matousek, Attorney for Appellant
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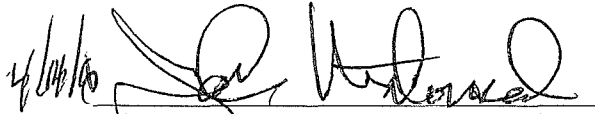
CERTIFICATION AS TO APPENDIX (Wis. Stat. §809.19(2)(b))

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 the 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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