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COURT OF APPEALS **CLERK OF COURT OF APPEALS
OF WISCONSIN**

DISTRICT IV

Case No. 2016AP000177-CR

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TERRY C. CRAIG JR.,

DEFENDANT-APPELLANT.

APPEAL FROM THE JUDGMENT OF RESTITUTION ENTERED ON
DECEMBER 2, 2015, IN THE CIRCUIT COURT OF LA CROSSE COUNTY,
THE HONORABLE GLORIA DOYLE, PRESIDING

BRIEF OF THE PLAINTIFF-RESPONDENT

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BRIEF OF THE PLAINTIFF-RESPONDENT

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. This case may be resolved by applying well-established legal principles and a plain reading of statutory language to the facts of this case.

STATEMENT OF THE ISSUE

Whether the circuit court erroneously exercised its discretion in awarding restitution to the victim for losses she sustained as a result of Terry C. Craig Jr.'s criminal activity.

SUPPLEMENTAL STATEMENT OF THE CASE

As the plaintiff-respondent, the State exercises its option not to present a full statement of the case, but will supplement facts as needed in its arguments. *See* Wis. Stat. § (Rule) 809.19(3)(a)2.

ARGUMENT

On appeal, defendant-appellant Craig claims that the restitution order of \$1,200.00 under Wis. Stat. 973.20 was an improper amount because defendant-appellant believes that the only “real” damage was worth approximately \$160.00. Craig’s Br. at 3-5. For the reasons set forth below, the State respectfully requests that this this court affirm the restitution order of \$1,200.00 by the circuit court.

I. Standard of Review and Relevant Law

Trial courts retain “discretion in deciding on the amount of restitution.” *State v. Ziegler*, 2005 WI App 69, 10, 280 Wis. 2d 860, 868, 695 N.W.2d 895, 898. Restitution orders are reviewed de novo along a “clearly erroneous” standard. *State v. Anderson*, 215 Wis. 2d 673, 677, 573 N.W.2d 872, 873 (Ct. App. 1997). Under this standard, examination of the record determines whether the 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.” *State v. Johnson*, 2002 WI App 166, ¶ 7, 256 Wis. 2d 871, 877, 649 N.W.2d 284, 287. Appellate courts “may reverse a discretionary decision only if the trial court applied the wrong legal standard or did not ground its decision on a logical interpretation of the facts.” *State v. Behnke*, 203 Wis. 2d 43, 58, 553 N.W.2d 265, 272 (Ct. App. 1996).

Restitution in criminal cases is governed by Wis. Stat. 973.20(2), which provides the following:

“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 or the greater of:
 - 1. The value of the property on the date of its damage, loss or destruction; or
 - 2. The value of the property on the date of sentencing, less the value of any part of the property returned, as of the date of its return. The value of retail merchandise shall be its retail value.”

In addition, Wis. Stat. 973.20(14)(a) provides that:

“The burden of demonstrating by the preponderance of the evidence the amount of loss sustained by a victim as a result of a crime considered at sentencing is on the victim.”

The Circuit Court's decision in this case interpreted the facts logically, applied the correct legal standard, and used a demonstrated, rational process in determining restitution.

II. The circuit court's restitution order was reasonable and within its discretion.

A. The circuit court correctly interpreted the facts of the case.

When making determinations of restitution, circuit courts must first find a causal relationship between the defendant's action and the damages as a factual basis for restitution. *State v. Johnson*, 2002 WI App 166, ¶ 7. This "causal nexus" does not require the damage to be immediately visible, nor does that the damage come directly from the defendant's hand; rather, the causation must merely have set into motion the events that caused the damage (*see, State v. Canady*, where defendant's criminal actions which inspired a police officer to break down the door was sufficient to require restitution for the broken door, as the criminal actions had caused the breakage in a "but-for" sense. 2000 WI App 87, 234 Wis. 2d 261, 610 N.W.2d 147; *State v. Rash*, where the defendant was found liable for damages to an unlocked and vulnerable car by a third-party after defendant had kidnapped the car owner. 2003 WI App 32, 260 Wis. 2d 369, 659 N.W.2d 189; and in *State v. Madlock*, the court writes, "an offender cannot escape responsibility for restitution simply because his or her conduct did not directly cause the damage." 230 Wis. 2d 324, 336, 602 N.W.2d 104, 110 (Ct. App. 1999).)

The court found a satisfactory relationship between the damages and defendant-appellant's actions. (25:37; R-App. 137). While defendant-appellant concedes the damages to the taillight in this case, he finds improper the courts assessment that the expansion of the pre-existing hole was caused by defendant-appellant's criminal behavior. Craig's Br. at 4.

In determining restitution for the non-taillight damages, the court found the testimony of the victim and the victim's father more credible than that of appellant-defendant's wife (25:38; R-App. 138). The victim's father had closely inspected the car after purchasing it (25:20; R-App. 120). In contrast, appellant-defendant's wife had limited interactions with the car and had not closely inspected the damage (25:31; R-App. 131). Determining that there were increased damages to the car that had been initiated by appellant-defendant's actions was not unreasonable. As the court plainly stated, "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 this car" (25:37; R-App. 137).

B. The circuit court applied the correct legal standard.

The circuit court applied the correct legal standard both in determining the non-taillight damage satisfied the standard for restitution and the full value of the automobile as the quantity of restitution. The restitution statute should be construed "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, 875 (Ct. App. 1997). Appellant's brief very narrowly

interprets the restitution statute and notably misses key passages of Wis. Stat. 973.20.

First, when the court found that the victim and the victim's father had more credibility than the appellant-defendant's wife, its determination satisfied 973.20(14)(a), which states that damages for restitution are proven by a mere "preponderance of the evidence." (see also, *State v. Wamser*, 2015 WI App 13, ¶ 7, 359 Wis. 2d 676, 859 N.W.2d 629). The evidence reviewed and interpreted by the court creates a likelihood, more likely than not, that appellant-defendant's criminal action caused damage to the car. In the court's interpretation of this evidence, it viewed appellant-defendant's actions as having a causal nexus to the increase in non-tailight damage on the victim's car. Having satisfied both the causal relationship to the damage and a preponderance of evidence in regard to the full amount of damage, appellant-defendant is reasonably required to make restitution for the full amount of the damage.

Wis. Stat. 973.20(2) says that restitution orders "may require" that defendants pay the "reasonable repair or replacement cost" or the larger of "(1) The value of the property on the date of its damage, loss, or destruction; or (2) the value of the property on the date of sentencing, less the value of any part of the property returned, as of its return." It is well within the court's authority in ordering restitution to require that defendant pays the "value of the property on the date of its damage," amounting to \$1,200.00 in accordance with Wis. Stat. 973.20(b)(1). The car was purchased for \$1,200.00. (25:23; R-App. 123). That is

the last known established value of the car prior to defendant-appellant's criminal damage to the car on April 7, 2015.

Compliance with the judicial options for restitution found in Wis. Stat. 973.20 guided the court's decision: "I will indicate that given the purchase price of the car was \$1,200, the \$1,430 – I'm sorry, \$1,453.82 is probably inappropriate...therefore, I set the amount of restitution at \$1,200 rather than \$1,453.82." (25:37-38; R-App. 137-138).

C. The circuit court used a demonstrated, rational process in determining restitution.

In setting restitution at \$1,200.00, the court used a demonstrated rational process to reach a reasonable conclusion based in the law. First, the court determined a causal nexus between the damage to the car and defendant-appellant's criminal actions. The court determined that, according to the "substantial factor" test deeply rooted in precedent, defendant-appellant's actions qualified as a substantial factor in causing damage to the car. The cost to fix the total damage to car was assessed at \$1,453.82 (18; R-App. 142-144).

Second, the court applied the law to the facts. The court's relied on the testimony of two individuals with intimate knowledge of the changes in damage to the car as opposed to someone with limited exposure to the car's damage when determining the full amount of damage, which satisfied the preponderance of evidence required by law. In addition, the court exercised its discretion in applying 973.20(2)(b)(1), which allows courts to determine restitution at the value of the

damaged property prior to damage. The court chose \$1,200.00 because of that was the value of the car when it was initially purchased, and is a reasonable representation of the value of the car prior to damage.

CONCLUSION

For the reasons explained above, the State respectfully requests that this court affirm the judgment setting restitution to be paid by Terry Craig, Jr. at \$1,200.00.

Dated this 7th of June, 2016.

Respectfully submitted,

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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 1,540 words.

Justine Suleski
Assistant District Attorney

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (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 Wis. Stat. § (Rule) 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.

Dated at La Crosse, Wisconsin, this 7th of June, 2016.

Justine Suleski
Assistant District Attorney

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 Wis. Stat. § 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.

Dated this 7th of June, 2016.

Justine Suleski
Assistant District Attorney

CERTIFICATION OF MAILING

I hereby certify in accordance with Wis. Stat. 809.80(4), on June 7, 2016, I deposited in the United States mail for delivery to the clerk by first-class mail, the original and ten copies of the plaintiff-respondent's brief and appendix.

Dated this 7th of June, 2016.

Justine Suleski
Assistant District Attorney