

State of Wisconsin
Court of Appeals
District IV

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Appeal No. 2016 AP 1611 - CR
Dane County Case No. 2015 CM 883

State of Wisconsin,
Plaintiff-Respondent,

v.

Shaun R. Ezrow,
Defendant-Appellant.

Reply Brief of Defendant-Appellant

On appeal from a judgment of the Dane County Circuit Court,
The Honorable David T. Flanagan III, presiding.

Brandon Kuhl
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Argument

The State analogizes this case to three others involving the limits of special damages and restitution. In each case, the circuit courts found that a sufficient basis existed to order restitution, and appellate courts affirmed the decision.

The first case the State analogizes is *State v. Canady*, in which police accidentally broke a door in an apartment complex while disarming a burglar of a pry bar they feared he might use as a weapon, 2000 WI App. 87, 234 Wis. 2d 261, 610 N.W.2d 265. The court analyzed only whether the defendant's conduct were not too remote a cause of the broken door.

Quoting *Canady*, the State correctly notes that the restitution statute should be interpreted “broadly and liberally in order **to allow victims to recover their losses** as a result of a defendant's criminal conduct.” (Emphasis added). In this case, however, the issue is that the corporate victim seeks not just to recover losses but to use restitution to pay for security system improvements. As such, they seek not special damages intended to place them in the

position in which they found themselves prior to the incident; they seek instead to enhance their previous condition.

Next, the State quotes *State v. Behnke*, in which a victim had been “imprisoned, battered and sexually assaulted” and subsequently needed mental health treatment and a dead bolt lock to help her deal with the trauma of the attack and to return to a feeling of safety, 203 Wis. 2d 43, 553 N.W.2d. 265 (1996). The defendant challenged the restitution on a number of grounds, one of which was the extent to which the crime was actually the cause of the need for mental health treatment. The court found that, despite the victim having needed mental health treatment prior to the attack, the need for additional treatment resulted from a regression of symptoms after defendant’s criminal conduct. The goal of the restitution award was, again, to return the victim to something akin to her status prior to the attack.

In this case, however, the corporate victim never testified to having suffered trauma from Mr. Ezrow’s theft. Instead, they simply decided to improve their security system after the theft. Under the State’s analysis, it is difficult to know precisely what

limits the discretion of a corporate victim to make improvements arguably related to “security” in the aftermath of a crime and simply bill the defendant with court approval. Instead, some reasonably clear, rational limit should be imposed to guide circuit courts in the consistent and just application of the restitution statute.

Finally, the State cites *State v. Johnson* for the proposition that security system upgrades inherently warrant compensation under the restitution statute. 2002 WI App 166, 256 Wis. 2d 871, 649 N.W.2d 284. The facts in *Johnson*, however, involve a young man forcing two younger girls into a car and mistreating them over the course of hours. The court reasoned that a security system was reasonably necessary to return one of the victims to a pre-existing sense of security after suffering the trauma.

The State attempts to claim that a security system improvement is necessary in this case to make sure the corporate defendant “and its employees felt safe.” No evidence exists in the record tending to show that the theft made anyone feel unsafe. Further, the facts of *Johnson* are vastly more harrowing in comparison

with those in this case, as Mr. Ezrow was an employee of N.G. and, thus, did not need to engage in any frightening or even unusually risky behavior in order to pull off his heist.

The State argues that Mr. Ezrow's criminal conduct caused a need for enhancement of the security system, but the record shows that the enhancement was previously considered as a possible, eventual upgrade. As such, Mr. Ezrow's conduct did not cause N.G.'s preexisting desire to improve the system; instead, N.G. simply decided, upon reflection after the event, to add a few cameras they implied previously having considered adding eventually.

Conclusion

Mr. Ezrow requests that this court either (1) Reduce the restitution order by the amount of the security system upgrade, \$2,150.00 or (2) order that the circuit court hold a fact-finding hearing to determine if any additional basis exists to support including the cost of the security system upgrades in the restitution order.

Dated this 27th day of March 2017.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brandon Kuhl". The signature is fluid and cursive, with the first name "Brandon" and last name "Kuhl" clearly distinguishable.

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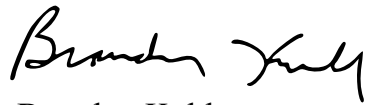
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Rule 809.19(8)(d) Certificate

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 serif font. The length of this brief is 731 words.

Dated this 27th day of March 2017.

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Rule 809.19(12)(f) Certificate

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after 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.

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Certificate of Mailing

I hereby certify pursuant to Wis. Stat. (Rule) 809.80(4) that I caused ten copies of the Reply Brief of Defendant-Appellant to be mailed by Priority Mail to the Wisconsin Court of Appeals, PO Box 1688, Madison WI 53701-1688, three copies to the State by Attorney Allison Cogbill, Room 3000, 215 South Hamilton, Madison WI 53703-3211, and one copy to Shaun Ezrow at 2382 Ofsthun Road, Apt. 2, Cottage Grove WI 53527.

Dated this 27th day of March 2017.

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