

RECEIVED**11-27-2019****CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff

vs.

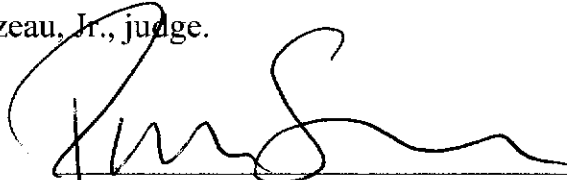
MICHAEL S. COLEMAN,

Defendant

No. 2019AP001999 CR

BRIEF OF APPELLANT MICHAEL S. COLEMAN

Appeal from the judgment of the circuit court for Wood County,
the Honorable Nicholas J. Brazeau, Jr., judge.



Patricia Sommer

State Bar No. 1031925

Attorney for Michael S. Coleman

Sommer Law Office, LLC

509 Nova Way

Madison, WI 53704

(608) 957-4959

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ISSUE PRESENTED

Was the restitution award supported by the evidence?

The circuit court said yes.

STATEMENTS ON ORAL ARGUMENT AND PUBLICATION

Neither oral argument nor publication is warranted.

STATEMENT OF THE CASE AND THE FACTS

Following a guilty plea to a charge of resisting an officer, Michael Coleman, was convicted and sentenced to nine months, withheld. R.35:13. The court ordered Coleman to pay \$2,881.71, subject to a restitution hearing. R.35:14. This restitution was for damages to a squad car from Coleman banging his head against the car. R.3:3. The amount was confirmed at the restitution hearing. R.31:18. It is the amount of restitution for damage to the squad car that Coleman challenges in this appeal.¹

¹ The State also alleged damages to a sign. R.3:3. Coleman does not dispute these damages.

ARGUMENT

A. The Circuit Court's Discretion with Regard to the Restitution Award Is Not Unfettered.

WISCONSIN STAT. § 973.20(1r) mandates the award of restitution to any victim of a crime considered at sentencing. The amount of the restitution award is within the discretion of the circuit court, though of course the court must exercise its discretion in making the award. *State v. Johnson*, 2005 WI App 201, ¶10, 287 Wis. 2d 381, 704 N. W. 2d 625. A circuit court's discretion is not unfettered. It must show that it has "examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." *Loy v. Bunderson*, 107 Wis. 2d 400, 415, 320 N.W.2d 175 (1982).

B. The Circuit Court Erred in Awarding Restitution that the Evidence Did Not Support.

Under WIS. STAT. 973.20(14)(a), "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."

Here, there was an insufficient showing of the amount of damage. A police officer, not a car damage expert, presented an estimate of the squad car repair in the amount of \$2,881.71. R.31:6, 8. The estimate was dated January 4, 2019, while the incident occurred on July 15, 2019. R.31:8, 9. An estimate predating the incident by six months is not relevant. Furthermore, the damage was not so bad as to make the vehicle unusable, and the police continued to use it after the incident. R.31:9. Finally, the

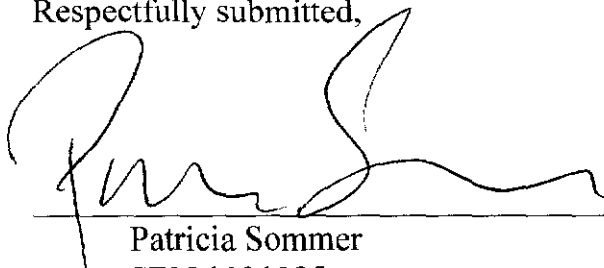
damage was never submitted to the department's insurer, at least not according to the insurance company representative who testified at the hearing. R.31:12-13. The insurance company never paid a claim. R.31:14. Although the circuit court was correct in noting that we don't need to know who paid to find that there was damage, R.31:18, we do need to know that the damage was caused by the incident. Here, the date of the estimate more than suggests that the damage was preexisting. Additionally, even though car damage is often greater than one would think, nearly \$3000 in damage from a person banging his head on the car stretches the imagination.

CONCLUSION

The evidence was insufficient to support the circuit court award of \$2881.71 in restitution for Mr. Coleman hitting his head on the squad care. This award should be vacated or remanded to the circuit court for rehearing.

Dated this 23rd day of November, 2019.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Patricia Sommer', is written over a horizontal line.

Patricia Sommer

SBN 1031925

Attorney for Michael S. Coleman

Sommer Law Officer, LLC
509 Nova Way
Madison, WI 53704
(608) 947-4959

CERTIFICATION

I certify that this brief conforms to the rules contained in WIS. STAT. § 809.19(8)(b) and (c) for a brief produced using a proportional serif font with minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points, maximum of 60 characters per full line of body text. The length of this brief is 733 words.

Dated: November 26, 2019


Patricia Sommer**CERTIFICATION OF COMPLIANCE WITH WIS STAT. § 809.19(12)(f)**

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. § 809.19(12)(f).

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 this 26th day of November, 2019.


Patricia Sommer

SBN 1031925
Sommer Law Office, LLC
509 Nova Way
Madison, WI 53704
(608) 957-4959

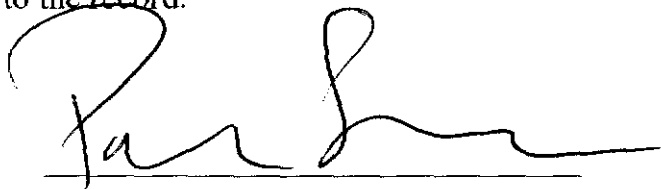
Certification of Appendix

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. 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 WIS. STAT. 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 one or more initials or other appropriate pseudonym or designation 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:

A handwritten signature in black ink, appearing to read 'Patricia Sommer', written over a horizontal line.

Patricia Sommer