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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV
Case No. 2019AP001999CR

STATE OF WISCONSIN

Plaintiff-Respondent,

v.

MICHAEL S. COLEMAN

Defendant-Appellant.

On Appeal from a Judgment of the Wood County Circuit Court, Case No.
18CM466, The Honorable Nicholas J. Brazeau, Jr., Presiding

BRIEF OF RESPONDENT STATE OF WISCONSIN

Submitted by:

Nathan Oswald
Assistant District Attorney
Attorney for Plaintiff-Respondent
Wisconsin State Bar No. 1117323

Wood County District Attorney's Office
400 Market Street
P.O. Box 8095
Wisconsin Rapids, WI 54495-8095
(715)421-8515

TABLE OF CONTENTS

	Page
STATEMENT ON ORAL ARGUMENT AND PUBLICATION	1
STATEMENT OF THE CASE AND FACTS	1
ARGUMENT	2
A. The Court should find Mr. Coleman's assignments of error not well-taken because he failed to preserve them in the circuit court.	2
B. The circuit court ordered Mr. Coleman to pay restitution for damage to a squad car that was repaired almost six months after Mr. Coleman caused the damage.	3
C. There is no requirement that the State present expert testimony at a restitution hearing to establish the reasonableness of the cost to repair an automobile..	4
D. The Court should not speculate about evidence that Mr. Coleman failed to present at the restitution hearing..	5
CONCLUSION	6
CERTIFICATION AS TO FORM/LENGTH	7
CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)	7

TABLE OF AUTHORITIES

Cases	Page
<i>State v. Johnson</i> , 2005 WI App 201, 287 Wis. 2d 381, 704 N.W.2d 625	4
<i>Village of Trempealau v. Mirut</i> , 2004 WI 79, 273 Wis.2d 76, 681 N.W.2d 190	2
Statutes	
Wis. Stat. 973.20	5

**STATEMENT REGARDING ORAL ARGUMENT
AND PUBLICATION**

The State does not believe that oral argument or publication is necessary in this case.

STATEMENT OF THE CASE AND FACTS

Michael S. Coleman was convicted in Wood County Circuit Court case no. 18CM466 of resisting an officer and disorderly conduct as a result of Mr. Coleman's conduct on July 15, 2018. Among other things, while Mr. Coleman was being transported he was "combative and striking his head on the cage [in the squad car] and [was] kicking the squad door and kicking the squad door caused the squad door to be pushed out and also the window." R. 31:7-10. The police department obtained an estimate for the repairs to the squad car on July 30, 2018. R. 31:10. The repairs were made several months later on January 4, 2019. R. 31:8.

On January 10, 2019, Mr. Coleman appeared before the Wood County Circuit Court for a restitution hearing. R. 31:1. At the hearing, the State presented evidence of the amount of the squad car repairs and the timeline of events regarding the repairs. R. 31:4-6, 9-11. Following the presentation of evidence, Mr. Coleman made two arguments. First, he argued that the damage to the squad car did not result from a crime that the court considered at sentencing. R. 31:15-17. Second, Mr. Coleman argued that a restitution award was inappropriate without more evidence

that the repair bill was already paid. R. 31:16. The circuit court overruled both objections and ordered Mr. Coleman to pay restitution including \$2,881.71 for repairs to the squad car. R. 31:18. Mr. Coleman declined to raise either of these issues in this appeal.

ARGUMENT

The Circuit Court rightly ordered Michael S. Coleman to pay restitution in the amount of \$2,881.71 for damage that Mr. Coleman caused to a squad car, based on the evidence in the record.

A. The Court should find Mr. Coleman’s assignments of error not well-taken because he failed to preserve them in the circuit court.

“It is a fundamental principle of appellate review that issues must be preserved at the circuit court. Issues that are not preserved at the circuit court, even alleged constitutional errors, generally will not be considered on appeal.” *Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶15, 273 Wis.2d 76, 681 N.W.2d 190 (quoting *State v. Huebner*, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727). “The waiver rule is ‘not merely a technicality or a rule of convenience; it is an essential principle of the orderly administration of justice.’” *Id.* (quoting *Huebner*, at ¶11).

Mr. Coleman argues in this appeal that “[t]he circuit court erred in awarding restitution that the evidence did not support.” Brief of Appellant, at 4. He did not

object in the circuit court that there was enough evidence to support the amount of restitution. Even if Mr. Coleman had preserved this issue in the circuit court, however, it is meritless.

B. The circuit court ordered Mr. Coleman to pay restitution for damage to a squad car that was repaired almost six months after Mr. Coleman caused the damage.

Mr. Coleman's principal argument on appeal is a frontal assault on the State's ethics; specifically, Mr. Coleman claims that the State persuaded the lower court to award restitution for damages that occurred before Mr. Coleman committed his offense. He argues that "[t]he estimate [of the cost to repair the squad car] was dated January 4, 2019, while the incident occurred on July 15, 2019. . . . An estimate predating the incident by six months is not relevant." Brief of Appellant, at 4 (internal citations omitted).

This argument is groundless for two reasons. First, Mr. Coleman wrongly states—or perhaps misunderstands—the evidence in the record. The estimate to repair the squad car, contrary to Mr. Coleman's assertion, was not dated January 4, 2019. Rather, the repairs happened on January 4, 2019.

Defense counsel: So would that, what I'm pointing at, be the date?

Witness: That it was repaired? Correct.

Defense counsel: Can you read that for us?

Witness: 1-4-2019.

R. 31:8.

Second, Mr. Coleman wrongly focuses on a witness's misstatement that was quickly corrected. The State's first witness at the restitution hearing was Mike Potocki, a patrol lieutenant with the Wisconsin Rapids Police Department. According to Mr. Coleman, Lieutenant Potocki testified on cross examination that "the incident occurred on July 15, 2019." Brief of Appellant, at 4. This was a misstatement by Lieutenant Potocki. The State's first questions on redirect examination clarified the timeline.

Question: The estimate [for repairs to the squad car] was provided on July 30th of 2018, that's 15 days after this incident; is that right?

Lieutenant Potocki: Yes

R. 31:10. The record leaves no question that the squad car repairs happened almost six months after Mr. Coleman's offenses.

C. There is no requirement that the State present expert testimony at a restitution hearing to establish the reasonableness of the cost to repair an automobile.

Wisconsin courts "construe the restitution statute broadly and liberally to allow victims to recover their losses resulting from the criminal conduct." *State v. Johnson*, 2005 WI App 201, ¶14, 287 Wis. 2d 381, 394, 704 N.W.2d 625, 631–32 (citing *State v. Holmgren*, 229 Wis.2d 358, 366, 599 N.W.2d 876 (Ct.App.1999)). Thus the "court, arbitrator or referee . . . may waive the rules of practice, procedure,

pleading or evidence, except provisions relating to” certain communications. Wis. Stat. 973.20(14)(d). There is no requirement that parties seeking restitution present expert testimony to support requests for automotive repairs. This Court should reject Mr. Coleman’s complaint that the State offered testimony from a “police officer, not a car damage expert,” to present the estimate for the repairs to the squad car. Brief of Appellant, at 4. Mr. Coleman made no objection at the restitution hearing about the absence of an expert witness.

D. The Court should not speculate about evidence that Mr. Coleman failed to present at the restitution hearing.

At the close of his brief Mr. Coleman makes a passing claim that “nearly \$3000 in damage from a person banging his head on the car stretches the imagination.” Brief of Appellant, at 5. Again, Mr. Coleman made no argument at the restitution that the cost to repair the squad car was unreasonable. If Mr. Coleman wished to challenge the amount of restitution he had various options to do so. He could have sought to obtain an alternate estimate of the cost to repair the squad car. He could have called a qualified witness to offer an opinion regarding the reasonableness of the repair bill. He could have gathered and presented repair bills from other cars that suffered similar damage. Or perhaps he could have presented other evidence. But he chose not to do any of this. This Court should not now read

into the record evidence that Mr. Coleman made no effort to introduce at the restitution hearing.

CONCLUSION

The State presented ample evidence at the restitution hearing to support the amount of damage that Mr. Coleman caused while thrashing about in a squad car. The Court should affirm the restitution award.

Dated this 27th day of December, 2019.

Respectfully submitted:

WOOD COUNTY DISTRICT ATTORNEY

/s/ Nathan Oswald

Nathan Oswald
Assistant District Attorney
Attorney for Plaintiff-Respondent
State Bar Number: 1117323

Wood County District Attorney's Office
400 Market Street
P.O. Box 8095
Wisconsin Rapids, WI 54495-8095
(715)421-8515

CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 6 pages.

**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 § 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.

Dated this 27th day of December, 2019.

Respectfully submitted,

WOOD COUNTY DISTRICT ATTORNEY

/s/ Nathan Oswald

Nathan Oswald
Assistant District Attorney
Attorney for Plaintiff-Respondent
State Bar Number: 1117323

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