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OF WISCONSIN****CLERK OF COURT OF APPEALS
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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff

vs.

MICHAEL S. COLEMAN,

Defendant

No. 2019AP001999 CR

REPLY 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

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Attorney for Michael S. Coleman

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ARGUMENT

A. Coleman Objected to the Amount of Restitution in the Circuit Court and thus the Issue Is Preserved for Appeal.

To avoid waiver, a party needs to bring an issue to the circuit court's attention sufficiently to alert the circuit court that relief is requested. *Beacon Bowl v. Wisconsin Elec. Power Co.*, 176 Wis. 2d 740, 790, 501 N.W.2d 897 (1990).

Here, Coleman objected to the amount of restitution at sentencing, as indicated by his assertion that he would be requesting a restitution hearing. R.35:3. Then there was an entire restitution hearing devoted to whether the \$2,881.71 represented fair compensation for the damages to the squad car. R.31. Coleman did not waive the issue of restitution for damage to the squad car.

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

It is the State's burden to prove the amount of restitution. The State, in its response, lists several way in which Coleman could have undermined the State's restitution claim. But this is not Coleman's role. Rather, the State must show the restitution amount was reasonable and causally connected to the crime.

One fact that makes the causal connection dubious here is the delay in repairing the squad. The police department waited six months to repair the squad. Resp. at 3. Why would the police department continue to use a squad for six months when the squad suffered from nearly \$3000 in damages? This delay raises questions about the connection between the crime and the damages.

Questions about the causal connection and the amount of damages cast doubt on the circuit court's exercise of discretion. Under the rule of lenity, these doubts should be resolved in Coleman's favor.

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 January, 2020.

Respectfully submitted,

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

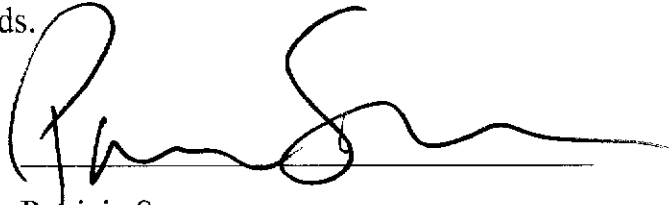
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CERTIFICATION

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 422 words.

Dated: January 23, 2020



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: January 23, 2020.


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