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COURT OF APPEALS**

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2021AP002212-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JEFFREY W. BUTLER,

Defendant-Appellant.

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On appeal from a restitution decision and amended judgment of conviction entered in the Winnebago County Circuit Court, the Honorable Scott C. Woldt, presiding.

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REPLY BRIEF OF  
DEFENDANT-APPELLANT

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JOSEPH N. EHMANN  
Regional Attorney Manager –  
Madison Appellate  
State Bar No. 1016411

Office of the State Public Defender  
Post Office Box 7862  
Madison, WI 53707-7862  
(608) 266-8388  
ehmannj@opd.wi.gov

Attorney for Defendant-Appellant

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## ARGUMENT

**The evidence was insufficient to support a \$500 restitution order against Mr. Butler for damage to an unspecified assortment of clothing items.**

The state opines it to be “[w]ith idealistic expectations” Mr. Butler expects to hold the government to its legal burden of proof when the government seized and redistributed his property via a restitution claim. (State’s brief p. 5). The gist of the state’s point appears to be that due process is an aspirational concept rather than a foundational constitutional requirement. Three pages of the state’s four-and-a-half-page argument is devoted to a point not in dispute—that a crime victim is entitled to financial compensation from a defendant for damage caused by the defendant’s criminal conduct. What the state glosses over is this type of seizure and redistribution still requires the government to meet a relatively low burden of proving by a preponderance of evidence what was damaged or lost and prove its value. The record establishes the government did not do that with respect to the \$500 at stake here.

The three cases the state relies upon in its brief; *State v. Anderson*, 215 Wis. 2d 673,<sup>1</sup> 573 N.W.2d 872 (Ct. App. 1997), *State v. Boffer*, 158 Wis. 2d 655, 462 N.W.2d 906 (Ct. App. 1990), and *State v. Loutsch*, 2003 WI App 16, 259 Wis. 2d 901, 656 N.W.2d 781; are a curious choice given all three are representative examples of the type of proof required for a restitution award, which is lacking here. *Loutsch* involved

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<sup>1</sup> The state incorrectly cites *Anderson* as being found at 215 Wis. 2d 667, the correct citation is 215 Wis. 2d 673.

reimbursement for sick leave used by a victim police officer when Loutsch purposefully crashed into the officer's car after being pulled over. The state presented proof specifically of what was lost (552 hours of sick leave), and of its value to fund retirement health insurance based upon the officer's employment contract (twice the value of the officer's hourly rate of pay), which came to \$26,257.52.

In this same vein, in *Anderson*, a securities fraud and theft by bailee case, the state presented proof specifically of what was lost (money investors gave to Anderson for a particular security investment, partnership shares in IVC Rentals, and attorney fees spent to try to recover the money) and proof of the value, \$95,445.69 and \$28,313.66 respectively. In *Boffer* the state presented proof of what was lost (damage caused by Boffer removing a stereo from a boat in a storage yard), and its value as established by an insurance claim, \$2377.07, which included the \$2242.07 replacement cost of the stereo.

The judge here noted "when someone comes to court, they have a burden ... to prove damages," and accurately assessed what proof the state presented regarding the \$500 at issue stating "I have nothing." (34:18). Mr. Butler took responsibility for his unfortunate and indefensible conduct by pleading no contest, and not contesting the victim's proved restitution claims. The victim acknowledged Mr. Butler sent her multiple direct payments via electronic transfer prior to the restitution hearing, but which the victim chose to consider reimbursement not for the claimed restitution items, but for expenses incurred while she and Mr. Butler were dating or

engaged—to wit, she applied them “just towards bills because he was living with me, eating my food.” (34:7).

The state cites *Boffer* for the proposition that “the ultimate determination of the amount of restitution owed rests within the discretion of the trial court.” (State’s brief p. 5). This is true to a point, but the restitution order must still be based upon evidence and not speculation or conjecture. At issue in *Boffer* was the manner and amount of restitution based upon the fact the item stolen and damaged was recovered, and whether *Boffer* was entitled to an off-set for the value of the recovered item. In exercise of discretion, the court ruled he was not. But, again, in *Boffer*, unlike here, the restitution order was based upon evidence or proof of what was lost and of its value, and not amorphous conjecture or speculation.

Here the victim claimed photos existed of clothing items Mr. Butler supposedly damaged, but no such photos were presented at the restitution hearing. (34:5). The victim acknowledged she was “asked by the prosecutor to provide receipts for any damages related to this case,” but stated “[m]ost of us don’t save receipts for clothing,” and no receipts were produced at the restitution hearing. (34:9-10). Again, regarding what evidence or proof was presented regarding \$500 in question here, the court accurately stated it to be “Nothing, I have nothing.” (34:18). Under these circumstances the record is insufficient to sustain the part of the restitution order directing Mr. Butler to pay \$500 for clothing where there was no proof of what was damaged or its value.

## CONCLUSION

For the above-stated reasons, and those presented in Mr. Butler's opening brief, the record insufficient to support the circuit court's order regarding restitution for the victim's claims regarding her clothes. Accordingly, Mr. Butler ask that this court reverse, in part, the circuit court's restitution order and remand the case with instructions to reduce the ordered restitution amount by \$500 and amend the judgment accordingly.

Dated this 26th day of October, 2022.

Respectfully submitted,

*Electronically signed by*

*Joseph N. Ehmann*

JOSEPH N. EHMANN

Regional Attorney Manager –

Madison Appellate

State Bar No. 1016411

Office of the State Public Defender

Post Office Box 7862

Madison, WI 53707-7862

(608) 266-8388

ehmannj@opd.wi.gov

Attorney for Defendant-Appellant

**CERTIFICATION AS TO FORM/LENGTH**

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 870 words.

Dated this 26th day of October, 2025.

Signed:

*Electronically signed by*

*Joseph N. Ehmann*

JOSEPH N. EHMANN

Regional Attorney Manager –  
Madison Appellate