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CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DAECORION J. ROBINSON,

Defendant-Appellant.

Hon. J. D. Watts
Milwaukee County
Circuit Case No. 20CF410
Appeal Case No. 22AP2087

**ON APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN
MILWAUKEE COUNTY CIRCUIT COURT,
THE HONORABLE J. D. WATTS PRESIDING**

BRIEF OF DEFENDANT-APPELLANT

NELIDA CORTES
Attorney for Defendant-Appellant

Cortes Consultations, LLC
PO Box 14694
West Allis, WI 53214
(414)217-4533, Office Number
(262)563-3265, Alternate Number
cortesconsultations@gmail.com

TABLE OF CONTENTS

	Page
STATEMENT OF ORAL ARGUMENT AND PUBLICATION.....	4
STATEMENT OF ISSUES PRESENTED.....	4
STATEMENT OF THE CASE.....	5
1. Nature of the Case.....	5
2. Procedural History and Statement of Facts.....	5
ARGUMENT	11
THE CIRCUIT COURT ERRED WHEN IT ORDERED MR. ROBINSON TO PAY RESTITUTION TO THE VICTIM'S OF HIS BROTHER'S CRIMES BECAUSE NO CAUSAL CONNECTION EXISTS BETWEEN MR. ROBINSON'S CRIMES AND THE INJURIES SUSTAINED BY THE VICTIMS. SECTION 9M OF SECTION 9 OF THE WISCONSIN CONSTITUTION DOES NOT ABROGATE THAT REQUIREMENT.....	11
1. Summary of the Argument.....	11
2. Standard of Review	12
3. The circuit court erred when it ordered Mr. Robinson to pay restitution to the victims of his brother's crimes because no causal connection exists between Mr. Robinson's crime and the victim of his brother's crimes; Mr. Robinson's criminal conduct was not a substantial factor in causing the injuries to the victims.	13
4. Marsy's Law does not confer authority upon the court to order restitution in the absence of a causal nexus between the criminal conduct considered at sentencing and the losses claimed.	18
CONCLUSION.....	19
CERTIFICATIONS.....	20
APPENDIX FILED SEPERATELY	

CASES

	Page
STATE V. CANADY	14
STATE V. JOHNSON (2002)	12,14
STATE V. JOHNSON (2005)	12
STATE V. LONGMIRE	15,17
STATE V. LOUTSCH.....	12
STATE V. MADLOCK	12
STATE V. RASH.....	14
STATE V. TARLO	9, 10, 13-17

WISCONSIN CONSTITUTION AND STATUTES

WI CONST ART I §9M(2)	18
WI CONST ART I §9M(2)(M)	18
WIS. STAT. SEC. 946.479(1)(B)	5
WIS. STAT. SEC. 973.20.....	12, 18, 19
WIS. STAT. SEC. 973.20(1G)(A).....	13
WIS. STAT. SEC. 973.20(1R).....	5, 13
WIS. STAT. SEC. 973.20(14)(A).....	14, 15

JURY INSTRUCTIONS

WI JI 1791.....	5, 6
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**STATEMENT ON ORAL ARGUMENT
AND PUBLICATION**

The defendant-appellant, Mr. Daecorion J. Robinson, does not request oral argument because the briefs should sufficiently set forth the facts and applicable precedent. Mr. Robinson does, however, suggest publication because the Court's opinion may provide further guidance and understanding regarding the application § 973.20, Wis. Stats., to scenarios similar to those presented herein.

STATEMENT OF THE ISSUES PRESENTED

1. Does Marsy's law permit the payment of restitution when no causal connection exists between the defendant's crime at the time of sentencing and the loss suffered by the victim?

The trial court answered in the affirmative.

2. Can the circuit court order the payment of restitution pursuant to sec. 973.20(1r), Wis. Stats., when the defendant's criminal conduct did not cause the loss suffered by the victims?

The trial court answered in the affirmative.

STATEMENT OF THE CASE

1. Nature of the Case

This matter is an appeal of the circuit court's restitution order. The court ordered Mr. Robinson to pay restitution to the victims of his brother's crimes. The court reasoned that Mr. Robinson's actions on October 25, 2019, subjected him to pay restitution in relation to the damages caused by his brother's actions on October 24, 2019. Mr. Robinson disagrees with the court's rationale and decision and submits the matter for appellate review.

2. Procedural History and Statement of Facts

On January 27, 2020, the State charged Mr. Daecorion Robinson (Mr. Robinson) with one count of Harboring or Aiding a Felon – Falsifying Information, contrary to sec. 946.479(1)(b), Wis. Stats. (2). The underlying facts leading up to the charge stemmed from an incident which occurred on October 24, 2019, wherein Mr. Robinson's brother, Daetwan Robinson (D.R.), recklessly drove his vehicle on a Milwaukee city street striking three children. (2:1) Two of the children passed away from their injuries, and the third child "suffered serious injuries," but survived. (2:1) The State charged D.R. with 10 criminal offenses in Milwaukee County Case No. 2019CF4856. (37:1) D.R. ultimately "pled guilty to two counts of hit and run resulting in death and one count of hit and run involving great bodily injury." (58:4).

On May 19, 2021, Mr. Robinson pled guilty to the count of aiding or harboring a felon. (54:4) In preparation for the plea hearing, trial counsel submitted Jury Instruction number 1791 bearing the elements for the crime to which Mr. Robinson would be pleading. (25) Those elements are as follows:

1. D.R. (person aided) was a felon.

2. The defendant knew that D.R. had engaged in conduct which constituted (charges filed against D.R.).
3. The defendant (destroyed) (altered) (hid) (disguised) physical evidence.
4. The defendant (destroyed) (altered) (hid) (disguised) physical evidence with the intent to prevent the (apprehension) (prosecution) (conviction) of D.R. (person aided).

The jury instruction goes on to note that, “[t]his element requires that the defendant had the purpose of preventing (D.R.) from being (taken into custody) (prosecuted) (convicted) or was aware that his conduct was practically certain to cause that result.” *Wisconsin JJ-1791*.

During the plea colloquy, the court informed Mr. Robinson that his “attorney ha[d] provided [the court] with the jury instructions for [the] offense,” referring to the aforementioned instructions. (54:4) The court then asked Mr. Robinson if he “carefully” reviewed the submitted jury instruction, to which Mr. Robinson responded, “Yes.” (54:4) Mr. Robinson’s guilty plea related to his conduct “after the fact,” specifically, to his conduct on October 25, 2019, when he assisted D.R. after D.R. struck the children on October 24, 2019. (44:3) Mr. Robinson was accused of, and pled to, assisting D.R. by partially spray painting the vehicle driven by D.R. on October 24, 2019 – the vehicle that struck the children. (2:2)

At the time of sentencing, the State made several points. First, the State agreed that Mr. Robinson was not the driver of the vehicle that struck the children on October 24, 2019, but rather, it was his brother, D.R., who drove the vehicle. (44:15-16) Second, the State noted that it had “concerns because [Mr. Robinson’s] conduct was essentially to then aid his brother in attempting to cover up the incident.” (44:15) Third, the State went on to state that after D.R. fled the scene, Mr. Robinson aided his brother “in spray-painting the car that was involved in an attempt to disguise that vehicle.” (44:16) Fourth, the State informed the court that in his confession to the

police, Mr. Robinson admitted to “being involved in the spray-painting of the vehicle and the aiding and covering up this offense after the fact....” (44:16) Finally, the Stated noted that D.R.’s case “was more involved given [D.R.] was the person that was responsible for the deaths and the serious injury and the driving and the primary conduct at issue here....” (44:16)¹

The court also noted several factors at the sentencing hearing. First, the court reiterated the elements of the crime of harboring or aiding a felon. (44:33) In so doing, the court referenced Mr. Robinson’s conduct in spray-painting D.R.’s vehicle in an attempt to “disguise the car as being involved in a horrible hit-and-run....” (44:33) Second, when referencing the crimes of which D.R. was guilty, the court acknowledged that Mr. Robinson was “not here for any of those,” and “[h]e’s not party to a crime.” (44:35) Third, the court noted that the court was not “saying that ... [Mr. Robinson] urged his brother to do it or that [Mr. Robinson] had anything to do to create it....” (referencing the crimes attributed to D.R.) (44:34) Finally, the court noted that Mr. Robinson was being sentenced for the “crime of harboring or aiding a felon, and [that] crime itself is different (from D.R.’s crimes).” (44:35) The court ultimately sentenced Mr. Robinson to 41 months in the Wisconsin State Prison System bifurcated as 17 months of initial confinement followed by 24 months of extended supervision. (44:41) The confinement portion of the sentence was considered served because Mr. Robinson had accumulated 17 months and 22 days of pretrial credit. (44:12, 41)

As to the matter of restitution, the Crime Victim Compensation Fund submitted a claim in the amount of \$10,820.12. (44:3) The claim consisted of \$10,000 related to funeral costs for the two children who passed away, and \$820.12 in lost wages for the parents of the children. (44:3) At the outset of the sentencing hearing, the court

¹ See also the State’s acknowledgement that Mr. Robinson was “someone who [was] assisting his brother after the fact - - he was not the driver and so forth....” (44:23)

addressed the matter of restitution. (44:4) The court questioned what “impact...Marsy’s Law and the constitutional language that victims are entitled to full compensation” had on the court’s decision to order restitution. (44:4-5) Here, the court referenced article I, section 9m of the Wisconsin constitution (hereinafter referred to as “Marsy’s Law”). (44:5) Trial counsel opposed the imposition of restitution against Mr. Robinson, arguing that while “victims are entitled to full compensation,” as noted in Marsy’s Law, the loss suffered by the victims in the present matter “was not a result of Mr. Robinson’s crime, but rather his brother’s.” (44:5) Because the issue of restitution was contested, and the impact of Marsy’s Law upon the ordering of restitution was questioned, the court put the matter over for hearing. (44:8-9, 43) The restitution hearing took place on October 19, 2021. (58)

At the hearing, the State argued that a causal connection existed between Mr. Robinson’s actions and the injuries sustained by the three children on October 24, 2019. Specifically, the State noted that:

The State’s argument is premised on the fact that this defendant’s intentional actions of attempting to alter and destroy evidence in furtherance of ensuring that his brother.... But suffice it to say, the intent was at a minimum to ensure that the actions of his brother who was the driver were not able to be prosecuted. (58:8)

This was an attempt to thwart justice in this case. And the fact of the matter is the restitution is something that’s acquired during the course of prosecuting the case. This was an intentional attempt at interfering with that in aiding the primary defendant here. (58:8)

And the State’s argument to the court for it to consider is that this conduct does directly impact the victim. And for that reason, he should be liable for the restitution. (58:8-9)

The defense objected to the payment of restitution on two grounds. First, the defense maintained that the children’s parents, while direct victims of D.R.’s crimes, were not direct victims of Mr. Robinson’s criminal conduct, which was to partially spray paint his brother’s vehicle after the fact of the hit and run. (58:4) Second, the

defense argued that no causal connection existed between the crime to which Mr. Robinson pled, and the criminal conduct that caused the injuries to the children. (58:4) Specifically, the defense argued that:

The Wisconsin Appellate Court system has defined when restitution can be ordered. The causal connection portion of that is that there has to be – the defendant’s criminal conduct has to be a substantial factor in causing the economic loss to the victim....” (58:4)

Mr. Robinson’s acts of aiding his brother did not set into motion the events that resulted in the damage or injury to the claimants...in this case. I think that’s fairly straightforward. (58:5)

The defense further noted that it did not believe the passage of “Marsy’s law...change[s] or affects the Court’s discretionary decision with regard to whether to order restitution.” (58:5) Finally, the defense stated that the State’s “submission” that Mr. Robinson “sought to inhibit prosecution” substantiated the defense’s position that the parents of the children were not victims of Mr. Robinson’s crime as they were not direct victims of harboring or aiding a felon. (58:6)

Before rendering its decision, the court noted that the issue presented to the court in this case appeared to be one of “first impression” in Wisconsin. (58:9) The court identified *State v. Tarlo*, 2016 WI APP 81, 372 Wis. 2d 333, 887 N.W.2d 898, as instructive and recited the following language from that court’s opinion:

[T]here must be a ‘causal nexus’ between the crime considered at sentencing and the damage. In proving causation, a victim must show that the defendant’s criminal activity was a ‘substantial factor’ in causing damage. The defendant’s action must be the ‘precipitating cause of the injury’ and the harm must have resulted from ‘the natural consequences of the actions.’ (58:10)

Circuit courts have discretion in determining whether the defendant's criminal activity was a substantial factor in causing any expenses for which restitution is claimed. (58:11)

[W]hile we are to construe 'the restitution statute broadly and liberally in order to allow victims to recover their losses,' those losses must still be shown to be 'as a result of the defendant's criminal conduct. (58:11)

It's a 'bedrock principle' that restitution should reflect and a defendant should be made liable for, 'the consequences of the defendant's own conduct,' 'not the conduct of others.' (58:11)

After noting the language in *State v. Tarlo*, the court stated that, "I recited the applicable law and I have to now cite the applicable facts and then apply the facts to the law." (58:11)

Concerning the applicable facts, the court began by examining each element of the crime of aiding or harboring a felon. Regarding the first element, the court noted that "that element was easily met in this case because the defendant was a passenger in the vehicle when the underlying crime occurred." (58:12) In addressing the second element, the court stated that it was "fairly obvious" that Mr. Robinson was aware that D.R. "had engaged in conduct which constituted the crime of hit and run causing death." (58:13) Moving on to the third and fourth elements, the court identified Mr. Robinson's act of spray painting D.R.'s car as conduct that "altered or disguised the physical evidence" so as to prevent D.R.'s conviction. (58:13)

The court then went on to reason that "when you look at the way that crime is defined, the crime sits in juxtaposition but it also includes the hit and run causing death." (58:13) The court found this rationale significant and indicated that D.R.'s criminal conduct was "included in element 1 of aiding a felon." (58:14). The court also reasoned that Mr. Robinson "was there and knew everything that happened regarding the hit and run causing death." (58:14)

The court mentioned Marsy's law when making its decision. Specifically, the court stated that, "I'm reminded that Marsy's law may enhance the victim's opportunity both to be designated as victims to recover restitution, but primarily the Court's argument is that the conduct of this defendant did substantially cause the damage because of the intertwining of the hit and run causing death in the aiding a felon statute." (58:15) At its conclusion, the court ordered Mr. Robinson to pay restitution to the Crime Victim Compensation Program in the amount of \$10,820.12, joint and several with D.R. (58:16)²

Mr. Robinson subsequently filed a Notice of Intent to Pursue Postconviction Relief on October 22, 2021. (42) The Notice of Appeal was filed on December 5, 2022. (63)

ARGUMENT

THE CIRCUIT COURT ERRED WHEN IT ORDERED MR. ROBINSON TO PAY RESTITUTION TO THE VICTIMS OF HIS BROTHER'S CRIMES BECAUSE NO CAUSAL CONNECTION EXISTS BETWEEN MR. ROBINSON'S CRIMES AND THE INJURIES SUSTAINED BY THE VICTIMS. SECTION 9M OF SECTION 9 OF THE WISCONSIN CONSTITUTION DOES NOT ABROGATE THAT REQUIREMENT.

1. Summary of the Argument

Mr. Robinson maintains that the court erroneously exercised its discretion when it ordered Mr. Robinson to pay restitution in this matter. Mr. Robinson argues that while the claimants were victims, they were not victims of Mr. Robinson's crime, but rather they were victims of D.R.'s crimes.³ Mr.

² Mr. Robinson does not contest that the Crime Victim Compensation Program may claim restitution, generally, for monies paid by the Fund to the parents of the victims of his brother's crimes to cover funeral expenses and lost wages. Moreover, Mr. Robinson does not contest that the Crime Victim Compensation Fund paid \$10,820.12 to the parents of the deceased children. (58:3) Mr. Robinson argues that he cannot be made responsible for that cost and that the cost is rightfully attributed to his brother, D.R. (58:3)

³ Mr. Robinson acknowledges that the Crime Victim Compensation Program is the claimant here but he refers to the actual victims of the case in his argument and analysis as their initial claim is what is at issue here.

Robinson further maintains that the court erred in ordering restitution here because no causal connection exists between Mr. Robinson's crime and the loss suffered by the victims.

Wisconsin law requires that a causal nexus exist between the crime considered at sentencing and the loss claimed. Wis. Stats. § 973.20. The enactment of Marsy's Law does not abrogate the requirement of this finding. Because no causal nexus exists between Mr. Robinson's crime and the loss suffered by D.R.'s victims, the circuit court erred when it ordered restitution here and the decision should be reversed.

2. Standard of Review

The interpretation of a statute, and the application of that statute "to a given set of facts presents a question of law," which the court reviews de novo. *State v. Johnson*, 2005 WI APP 201, ¶ 10, 287 Wis. 2d 381, 704 N.W.2d 625, citing, *State v. Loutsch*, 2003 WI APP 16, ¶ 10, 259 Wis. 2d 901, 656 N.W.2d 781. That said, trial courts exercise their discretion when deciding whether a defendant's conduct "was a substantial factor in causing any expenses for which restitution is claimed." *Johnson*, 2005 WI APP 201, ¶ 10, citing, *State v. Johnson*, 2002 WI APP 166, ¶ 7, 256 Wis. 2d 871, 649 N.W.2d 284. A court's discretionary decision "should only be disturbed when there has been an erroneous exercise of that discretion." *State v. Madlock*, 230 Wis. 2d 324, 329, 602 N.W.2d 104 (Ct. App. 1999). In examining the trial court's exercise of discretion, the court reviews "the record to determine whether the trial court logically interpreted the facts, applied the proper legal standard and used a demonstrated, rational process to reach a conclusion that a reasonable judge could reach." *Johnson*, 2005 WI APP 201, ¶ 10, citing, *State v. Longmire*, 2004 WI APP 90, ¶ 16, 272 Wis. 2d 759, 681 N.W.2d 534.

- 3. The circuit court erred when it ordered Mr. Robinson to pay restitution to the victims of his brother's crimes because no causal connection exists between Mr. Robinson's crime and the victim of his brother's crimes; Mr. Robinson's criminal conduct was not a substantial factor in causing the injuries to the victims.**

Wisconsin law sets forth the parameters within which a court must operate when ordering restitution. Section 973.20(1r), Wis. Stats. states in relevant part that:

When imposing sentence...for any crime...for which the defendant was convicted, the court...shall order the defendant to make full or partial restitution under this section to any victim of a crime considered at sentencing, or if the victim is deceased, to his or her estate, unless the court finds substantial reason not to do so and states the reason on the record. Wis. Stats., §973.20(1r).

Section 973.20(1g)(a), of the Wisconsin Statutes defines “crime considered at sentencing” as “any crime for which the defendant was convicted and any read-in crime.” Wis. Stats. §973.20(1g)(a). As such, when a court considers whether to order the payment of restitution, the court must determine whether the restitution sought is for a victim of the crime considered at sentencing.

Wisconsin appellate court decisions have considered the language of section 973.20(1r), Wis. Stats., and have expounded on what must be present before a court may order a defendant to pay restitution. The circuit court here referred to *State v. Tarlo* at the outset of its restitution analysis, and therefore this is where the defense will begin its argument.

In *State v. Tarlo*, the court examined whether the defendant could be ordered to pay the restitution claimed by the victim's mother; the victim being one of the children depicted in the child pornography possessed by the defendant. The defendant in that matter pled guilty to one count of possession of child pornography. *State v. Tarlo*, at ¶2. The mother of one of the children in the images claimed restitution for lost financial support. *Tarlo*, at ¶3. Evidence presented at a hearing revealed that the mother's husband produced the images of her daughter that were later viewed and possessed by the defendant. *Tarlo*, at ¶3. The evidence

also showed that the victim's mother lost her husband's financial support when he was later arrested and incarcerated for producing the pornography at issue. *Tarlo*, at ¶3. In that case, the State "argued that the restitution was appropriate because Tarlo had viewed and possessed the image." *Tarlo*, at ¶3. The circuit court agreed and ordered the defendant to pay restitution. *Tarlo*, at ¶4.⁴ The court of appeals reversed.

On appeal, the defendant argued that "the circuit court erroneously exercised its discretion" when it ordered the payment of restitution. *Tarlo*, at ¶5. Specifically, the defendant argued that "'the family's lost income [was] not related to [his] possession' of the daughter's image." *Tarlo*, at ¶5. The court of appeals agreed.

In rendering its decision, the court of appeals examined whether the victim's loss occurred "*as a result of a crime considered at sentencing.*" *Tarlo*, at ¶6. *citing*, Wis. Stat. §973.20(14)(a) (2013-2014) (emphasis in original). In so doing, the court noted that before a defendant may be ordered to pay restitution, "'a causal nexus' between the 'crime considered at sentencing' and the damage" claimed must exist. *Tarlo*, at ¶6, *citing State v. Rash*, 2003 WI APP 32, ¶6, 260 Wis. 2d 369, 659 N.W.2d 189. The court went on to note that:

In proving causation, a victim must show that the defendant's criminal activity was a 'substantial factor' in causing damage. The defendant's actions must be the 'precipitating cause of the injury' and the harm must have resulted from 'the natural consequence[s] of the actions. (alteration in original; citation omitted)' *Tarlo*, at ¶6.

The court also noted that circuit courts have discretion when "'determining whether the defendant's criminal activity was a substantial factor in causing any expenses for which restitution is claimed.'" *Tarlo*, at ¶6, *citing State v. Johnson*, 2002 WI APP 166, ¶7, 256 Wis. 2d 871, 649 N.W.2d 284, *citing State v. Canady*, 2000 WI APP 87, ¶¶6, 12, 234 Wis. 2d 261, 610 N.W.2d 147. Moreover, courts

⁴ The victim's mother claimed restitution in the amount of \$60,000. The circuit court ultimately ordered the payment of \$10,000. *Tarlo*, at ¶4.

“are to ‘construe the restitution statute broadly and liberally in order to allow victims to recover their losses.’” *Tarlo*, at ¶7, citing *State v. Longmire*, 2004 WI APP 90, ¶11, 272 Wis. 2d 759, 681 N.W.2d 534. Nonetheless, losses claimed by victims “must still be shown to be ‘as a result of a defendant’s criminal conduct.’” *Tarlo*, at ¶7, citing *State v. Longmire*, supra (emphasis in original). On the matter of “result”, the court in *Tarlo* specifically noted that,

A ‘result’ of a crime follows from the commission of the crime; the result does not precede the crime. *See Result*, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining ‘result’ as ‘[a] consequence, effect, or conclusion,’ ‘[t]hat which is achieved, brought about, or obtained, esp. by purposeful action,’ and ‘[t]o be a physical, logical, or legal consequence; to proceed as an outcome or conclusion’); *Result*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (1993) (defining ‘result’ as ‘to proceed, spring, or arise as a consequence, effect, or conclusion’). *Tarlo*, at ¶18.

In *Tarlo*, the court of appeals agreed with the defendant and found that no evidence existed showing a causal nexus between the claimed loss and the defendant’s criminal conduct. In its reasoning, the court stated:

[T]he evidence nonetheless still failed to establish a “causal nexus” between the lost income and the viewing and possession of the image. The evidence established that the income was lost due to the husband’s earlier production of child pornography and related arrest and incarceration; no evidence was presented from which the court could reasonably infer that the viewing and possession of the daughter’s image by Tarlo or others *caused* any of the income loss for which the mother sought restitution. *Tarlo*, at ¶9, citing WIS. STAT. § 973.20(14)(a) (emphasis added).

Although the court did not doubt that certain circumstances testified to by the victim’s mother served to revictimize the mother and her daughter, the court found that “evidence still needed to be presented from which the circuit court could conclude that financial losses claimed by the mother resulted from the viewing and possession of her daughter’s image—and not just the earlier criminal conduct of her husband.” *Tarlo*, at ¶11.

Like the evidence presented in *Tarlo*, the evidence presented by the State here does not establish a causal nexus between Mr. Robinson's crime at the time of sentencing and the tragic losses experienced by the victims. Simply put, Mr. Robinson's criminal conduct, the conduct for which he was sentenced, did not cause the loss suffered by the victims.

As the court noted in *Tarlo*, the loss claimed must be the result of the defendant's criminal conduct – conduct for which he or she was sentenced. In the present matter, the tragic loss suffered by the victims was entirely attributed to the conduct of Mr. Robinson's brother, D.R., on October 24, 2019. The relevant sequence of events is as follows:

1. On October 24, 2019, D.R. drove his vehicle recklessly on a Milwaukee city street. (44:15)
2. While recklessly driving his vehicle, D.R. struck three young children who were crossing the street. (44:15)
3. As a direct result of being struck by the vehicle D.R. was driving, two of the children succumbed to their injuries and passed away. (44:15)
4. As a direct result of being struck by the vehicle D.R. was driving, the third child suffered serious injuries but survived. (44:15)
5. The vehicle driven by D.R. then fled the scene. (44:15)
6. Mr. Robinson was in the passenger seat of the vehicle at the time. (44:15)
7. On the following day, October 25, 2019, Mr. Robinson assisted D.R. in spray painting the vehicle involved in the noted accident – the vehicle driven by D.R. (2:3, 44:16)
8. On January 27, 2020, Mr. Robinson was charged with one count of harboring or aiding a felon. (2)
9. On May 19, 2020, Mr. Robinson pleaded guilty to the sole count charged. (54:4)

Mr. Robinson's criminal conduct was the act of assisting D.R. in spray painting D.R.'s vehicle on the day after the accident. The act of spray painting the vehicle in no way played a role in causing the accident that led to the injuries

suffered by the children. The act of spray painting the vehicle was not a substantial factor in causing the loss of the children – or the resulting funeral expenses. The act of spray painting the vehicle on the day following the accident did not precipitate the injuries that led to the loss suffered. The loss suffered by the children did not result from the act of spray painting the vehicle. Under these circumstances, it cannot be said that Mr. Robinson’s actions caused the loss for which restitution is claimed.

The defense agrees that the circuit court has discretion when making determinations involving restitution. That said, the court is still required to find that the loss is “*a result of a defendant’s criminal conduct.*” *Tarlo*, at ¶7, citing *State v. Longmire*, 2004 WI APP 90, ¶11 (emphasis in original). Accordingly, a causal link for restitution purposes is established when “the defendant’s criminal act set into motion events that resulted in the damage or injury.” *Longmire*, supra, ¶ 13. As demonstrated, the losses suffered by the children, and the children’s parents, were not a result of Mr. Robinson’s act of spray painting D.R.’s vehicle the day after the accident. Put another way, the loss suffered by the children would have occurred regardless of Mr. Robinson’s decision to spray paint D.R.’s vehicle on the day after the accident. As such, no causal nexus exists between Mr. Robinson’s criminal conduct and the losses suffered by the victims. Therefore, the court erroneously exercised its discretion when it ordered Mr. Robinson to pay restitution.

Mr. Robinson understands that the court gave weight to two additional factors when arriving at its decision to order restitution in this matter. The first was information that Mr. Robinson “was there” when D.R. struck the children. (58:14) The second was that Mr. Robinson “knew everything that happened regarding the hit and run causing death.” (58:14) The defense maintains that the court erred in considering these factors for the purpose of ordering restitution because they do not demonstrate that Mr. Robinson’s criminal conduct – spray painting the vehicle – was a substantial factor in causing the loss at issue.

As noted by the court, Mr. Robinson was not charged as party to the crime with regard to D.R.'s charges. Moreover, the record is void as to any evidence that Mr. Robinson engaged in any act that assisted D.R. at the time that D.R. drove the vehicle and struck the children. The defense asserts that being present and being aware do not equate to conduct that causes a particular loss. Here, the conduct that caused the loss is clear – D.R.'s reckless driving. The court erred when it considered these two additional factors for the purpose of ordering restitution and the court's decision should be reversed.

4. Marsy's Law does not confer authority upon the court to order restitution in the absence of a causal nexus between the criminal conduct considered at sentencing and the losses claimed.

Article I, §9m(2) of the Wisconsin Constitution provides in relevant part that:

In order to preserve and protect victims' rights to justice and due process throughout the criminal and juvenile justice process, victims shall be entitled to all of the following rights which shall vest at the time of victimization and be protected by law in a manner no less vigorous than the protections afforded the accused. WI Const art I §9m(2).

Article I, §9m(2)(m) identifies one of the rights afforded to victims as the right to "full restitution from any person who has been ordered to pay restitution to the victim and to be provided with assistance collecting restitution." WI Const Art I §9m(2)(m). A review of the language contained in Marsy's Law does not reveal any exception to the requirement that prior to ordering restitution, circuit courts are to find that a causal nexus exists between the crime considered at sentencing and the loss presented for restitution. Moreover, the language contained in Marsy's Law does not express a different procedure for the courts to follow, outside of the parameters expressed in §973.20, Wis. Stats.

The defense agrees with the circuit court that pursuant to Marsy's Law, "victims of crime are entitled to full restitution from any person who has been ordered to pay restitution to the victim and to be provided with assistance collecting restitution." (44:9, *citing* WI Const art I §9m(2)(m)) The key language

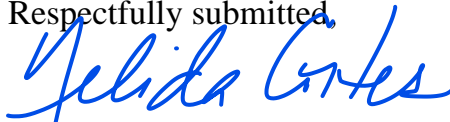
here, however, is “from any person *who has been ordered to pay restitution* to the victim.” Again, Marsy’s Law does not provide parameters within which the court is to decide who is to pay restitution and why. Those parameters come from §973.20, Wis. Stats., and the relevant case law. As such, the court must still make a determination that a causal nexus exists between the crime considered at sentencing and the loss claimed. Because such a showing did not occur in this matter, the circuit court erred in ordering Mr. Robinson to pay restitution to D.R.’s victims and said order should be reversed.

CONCLUSION

Counsel respectfully submits that the circuit court erroneously exercised its discretion when it ordered Mr. Robinson to pay restitution under the circumstances of this case. Thus, counsel respectfully requests an order reversing the circuit court's decision.

Dated this 1st day of November, 2023.

Respectfully submitted,



NELIDA CORTES

Attorney for Defendant

State Bar No. 1022815

Cortes Consultations, LLC

Post Office Box 14694

West Allis, WI 53214

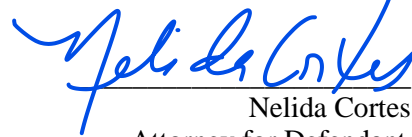
(262)-563-3265

cortesconsultations@gmail.com

cc: Milwaukee County Clerk of Circuit Court -Electronic Notice
Milwaukee County District Attorney’s Office -Electronic Notice
Winn S. Collins, Assistant Attorney General
PO Box 7857
Madison, WI 53703
Mr. Daecorion Robinson -U.S. Mail

CERTIFICATION

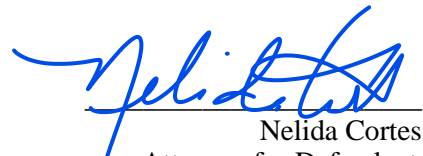
I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,815 words.


Nelida Cortes
Attorney for DefendantCERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (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 Wis. Stat. § (Rule) 809.19(12). 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 any paper copies of this brief filed with the court and served on all opposing parties.

Dated this 1st day of November, 2023.

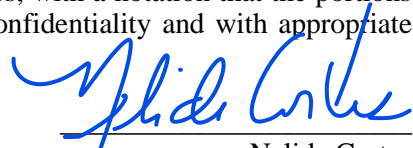

Nelida Cortes
Attorney for Defendant

CERTIFICATION ON APPENDIX

I hereby certify that counsel will file an appendix to this brief that complies with 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 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. Said appendix will be filed on November 2, 2023.

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.


Nelida Cortes
Attorney for Defendant