STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT I

Case No. 2022AP2087-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DAECORION J. ROBINSON,

Defendant-Appellant.

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

BRIEF OF PLAINTIFF-RESPONDENT

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INTRODUCTION

This appeal concerns a restitution issue. The circuit court ordered Daecorion J. Robinson jointly and severally liable for restitution that his older brother was ordered to pay. The restitution relates to a hit-and-run crash that killed two young children and seriously injured a third. Robinson's brother was recklessly driving the car that struck the three children, and Robinson was riding as a front seat passenger. Rather than stopping to render aid or reporting the crash, the brothers left the scene and then worked together to conceal the car. Robinson's brother was convicted of hit-and-run, and Robinson was convicted of aiding-a-felon in the separate case underlying this appeal. Robinson's brother was ordered to pay restitution in the form of the victims' funeral expenses and lost wages. After a restitution hearing in Robinson's case, the circuit court ordered Robinson jointly and severally liable for that restitution award.

When ordering Robinson to pay restitution, the circuit court identified the core issue, which was whether there was a causal nexus between the crime considered at Robinson's sentencing and the damage the victims sustained. Recognizing that there were valid arguments on both sides of the question, the court concluded that a causal nexus existed, because Robinson's crimes were interconnected with his older brother's crimes by virtue of their elements, as well as the specific facts surrounding Robinson's course of conduct. The court also noted that Marsy's Law weighed in favor of its conclusion.

This Court should affirm. Deciding whether a sufficient causal nexus exists between the crime considered at sentencing and the damage victims sustained is a discretionary decision. This Court may reverse a discretionary decision only if the circuit court applied the wrong legal standard or did not ground its decision on a

logical interpretation of the facts. Here, the circuit court identified the correct legal standard and logically applied the novel facts to that standard, given the Wisconsin Supreme Court's broad treatment of what constitutes a crime considered at sentencing. Because the circuit court properly exercised its discretion, the restitution award should be upheld.

STATEMENT OF THE ISSUE[1]

Did the circuit court properly exercise its discretion when it ordered Robinson jointly and severally liable for restitution his brother was ordered to pay?

The circuit court answered yes.

This Court should answer yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request oral argument or publication. This Court can decide the issue by applying well-settled legal standards to the unique facts, which are unlikely to recur with any frequency. This case therefore has no significant value as precedent. Wis. Stat. § (Rule) 809.23(1)(b)1., 6.

[1] The State reframes the issues presented as a single issue, because the circuit court did not rely on Marsy's Law in the manner Robinson suggests in his Issue Two. (Robinson's Br. 5.) As explained below, that issue is not actually presented in this case.

STATEMENT OF THE CASE

A. Robinson is charged with harboring or aiding a felon – falsifying information, and his brother is charged with hit-and-run and other offenses.

The charges in this case stem from a hit-and-run crash involving Robinson and his older brother, Daetwan Robinson.[2] According to the complaint, several children were crossing the street at an intersection in Milwaukee, when traffic was stopped and the children had the walk signal. (R. 2:1.)[3] Witnesses saw a gray car driving in the bicycle lane at a high rate of speed toward the intersection where the children were crossing. (R. 2:1.) The car went around other vehicles that had stopped at the light, and struck three of the children crossing the street. (R. 2:1.) Two of the children, ages four and six, died from their injuries. (R. 2:1.) A third child, age 10, suffered serious injuries but survived. (R. 2:1.) The gray car left the scene without stopping to render aid. (R. 2:2; 55:6.)

The hit-and-run was caught on video. At the preliminary hearing, one of the responding officers described the video footage as showing the gray car becoming "airborne briefly" before striking the three children. (R. 55:6.) As the car continued down the street, it "actually spins out and is facing west in the westbound lanes." (R. 55:6.) The car then "makes a U-turn . . . and travels north out of the camera view." (R. 55:6.)

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[2] In this brief, the State refers to the defendant in this appeal, Daecorion Robinson, as "Robinson," and his older brother Daetwan Robinson as "Daetwan."

[3] Robinson pleaded guilty to the charged offense, and at the plea hearing, he acknowledged that the facts stated in the complaint were accurate. (R. 54:9.) The trial court used the complaint to form the factual basis for the plea. (R. 54:9.)

A police investigation began immediately, which revealed that Daetwan owned the gray car, a gray Saturn Aura. (R. 2:2; *see also* 55:8–11.) Daetwan was driving, and Robinson was riding as a front seat passenger when the car struck the children and left the scene. (R. 2:3; *see also* 55:8–13.)

After the hit-and-run, Daetwan and Robinson hid the car in their family's garage. (R. 2:2.) Robinson helped spray paint the car black. (R. 2:2.) Law enforcement obtained a search warrant and discovered the partially painted car in the garage. (R. 2:2.) Robinson's fingerprints were found on cans of black spray paint at the residence, and black paint was found on Robinson's hands when he was arrested. (R. 2:2.)

Robinson initially lied to law enforcement about the paint, and stated that he was playing with markers with his nephew. (R. 2:3; 55:14.) He later admitted that he and Daetwan spray painted Daetwan's car that day, but he "did not know why." (R. 2:3; 55:14.) He claimed that he was not with Daetwan when the hit-and-run occurred, but data from Robinson's cell phone placed his phone at the scene, and he does not dispute that he was in the passenger seat that day. (R. 2:3; 55:13–14; Robinson's Br. 16.)

Daetwan was charged with ten offenses, including hit-and-run resulting in death, party to a crime, in Milwaukee County Case No. 2019CF4856. Ultimately, Daetwan pleaded guilty to two counts of Hit and Run – Resulting in Death (party to a crime) and one count of Hit and Run – Involve Great Bodily Harm (party to a crime), under Wis. Stat. §§ 346.67(1) and 939.05.[4]

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[4] *See State v. Daetwan C. Robinson*, Milw. Cnty Case No. 2019CF4856, Wis. Ct. Sys. Sup. Ct. & Ct. App. Access, https://wcca.wicourts.gov/caseDetail.html?caseNo=2019CF004856&countyNo=40&mode=details (last visited Jan. 29, 2024).

Robinson was charged with one count of harboring or aiding a felon – falsifying information, in a separate case, Milwaukee County Case No. 2020CF410. (R. 2:1.) Robinson pleaded guilty to aiding or harboring a felon. (R. 54:4.) No other charges were brought against Robinson or read in. (R. 54:4.)

During Robinson's sentencing, the court observed that one of the most serious aspects of his aiding-a-felon crime "is [that he] was present as the front seat passenger of the vehicle his brother uses in creating these multiple felonies." (R. 44:34.) The court noted that this wasn't a case where a felon came to an uninvolved person and asked the person to hide evidence. (R. 44:35.) Rather, Robinson "was fully informed of the horror of the crime that his brother had committed" when he helped his brother cover up that crime. (R. 44:35.)

B. Robinson and his brother are ordered to pay restitution.

When Daetwan was sentenced, he was ordered to pay $10,820.12 to the Crime Victim Compensation Fund for payments to the deceased children's parents for burial expenses and lost wages.[5] (R. 44:2, 43–44.) The burial expenses totaled $10,000, and the lost wages totaled $820.12. (R. 29; 58:3.)

At Robinson's sentencing hearing, the State requested that Robinson be made jointly and severally liable for the restitution that his older brother Daetwan was ordered to pay. (R. 44:3.) The court scheduled a restitution hearing for Robinson. (R. 44:43–44.)

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[5] The Crime Victim's Compensation Fund reimbursed the victims $10,820.12, and then filed a claim for reimbursement of that amount. (R. 29.) The record reflects that Robinson has satisfied $10,000 of that amount via a bail offset. (R. 41.)

At the restitution hearing, the amount of restitution owed to the victims was not in dispute, nor was Daetwan's liability for that restitution disputed. The hearing focused on whether Robinson could be made jointly and severally liable for the restitution his brother owed, in the form of the victims' funeral expenses and lost wages. Robinson's counsel argued that there was no causal connection between Robinson's crime and the victims' injuries, so a restitution award against Robinson would not be proper. (R. 58:4–5.)

The circuit court disagreed, and ordered Robinson jointly and severally liable for the restitution that Daetwan was ordered to pay. (R. 58:9–10, 16.)

The court's oral decision proceeded as follows. The court began by noting that it did not find any case law that dealt with restitution in aiding-a-felon convictions. (R. 58:10–11.) The court cited *Tarlo*[6] for the governing legal standard for awarding restitution, which states that there must be a causal nexus between the crime considered at sentencing and the damage. (R. 58:10.) The court indicated that the defense provided a correct statement of the law, but "it's going to be the practical application in this case that is the determination for the outcome." (R. 58:10.)

Applying that standard, the court reasoned that Robinson's crimes were interconnected with his older brother's crimes, because the first element of aiding and abetting a felon required an analysis of the crime for which his brother was convicted, namely, hit-and-run. (R. 58:11–14.) Thus, in Robinson's case, the State would have had to prove that Daetwan "committed the crime and was aided by the defendant and then it lists the elements for hit and run causing death." (R. 58:13.) The elements for Robinson's crime

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[6] *State v. Tarlo*, 2016 WI App 81, ¶¶ 6–7, 372 Wis. 2d 333, 337, 887 N.W.2d 898, 900.

"include[] the hit and run causing death." (R. 58:14.) In addition to the embedded elements, the court found it significant "that this defendant was there and knew everything that happened regarding the hit and run causing death." (R. 58:14.)

Regarding its findings on causation, the court stated:

> And when we get to the causality, I see this defendant as involved, that is, a substantial factor in causing the damage, and that he's responsible for his own conduct which led him to be convicted for aiding a felon but - - and not the hit and run causing death, but nonetheless because they're intertwined in the jury instruction, I do find that this defendant's criminal conduct, the losses were the result of this defendant's criminal conduct.

(R. 58:15–16.)

Construing the restitution statute "broadly and liberally," the court found a sufficient causal nexus between the crime considered at sentencing and the victims' losses. (R. 58:13–16.) The court also noted Marsy's Law "as an additional basis to enhance both the definition of the connection of this defendant to the crime and the assurance that the victim's rights to restitution are protected and construed broadly to provide the victim's protection."[7] (R. 58:16.) The court ordered the restitution in the amount of $10,820.12 to be paid jointly and severally.

Robinson appeals.

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[7] In 2020, voters ratified Marsy's Law, which amended the Wisconsin Constitution to provide victims certain rights, including the right "[t]o full restitution from any person who has been ordered to pay restitution to the victim and to be provided with assistance collecting restitution." Wis. Const. art. I, § 9m(2)(m).

STANDARD OF REVIEW

"The scope of the trial court's authority to order restitution is a question of statutory interpretation." *State v. Hoseman*, 2011 WI App 88, ¶ 12, 334 Wis. 2d 415, 799 N.W.2d 479. This Court reviews de novo whether "the trial court is authorized to order restitution under a certain set of facts." *State v. Vanbeek*, 2009 WI App 37, ¶ 6, 316 Wis. 2d 527, 765 N.W.2d 834.

After reviewing the scope of the trial court's authority to order restitution, this Court then turns to review a discretionary act, as "[c]ircuit courts have discretion . . . in determining whether the defendant's criminal activity was a substantial factor in causing any expenses for which restitution is claimed." *Hoseman*, 334 Wis. 2d 415, ¶ 13 (quoting *State v. Johnson*, 2002 WI App 166, ¶ 7, 256 Wis. 2d 871, 649 N.W.2d 284). This Court may reverse a discretionary decision "only if the [circuit] court applied the wrong legal standard or did not ground its decision on a logical interpretation of the facts." *State v. Wiskerchen*, 2019 WI 1, ¶ 18, 385 Wis. 2d 120, 921 N.W.2d 730 (citation omitted). Appellate courts "look for reasons to sustain a circuit court's discretionary decision." *Id.* (citation omitted). "Therefore, if the circuit court grounded its decision in a logical interpretation of the facts and applied the correct legal standard, [this Court] will uphold it." *State v. Muth*, 2020 WI 65, ¶ 14, 392 Wis. 2d 578, 945 N.W.2d 645.

ARGUMENT

The circuit court properly exercised its discretion when it ordered Robinson jointly and severally liable for the cost of the victim's funeral expenses and lost wages.

When ordering restitution for Robinson, the circuit court identified the correct legal standard, and logically applied that standard to the facts. This court should affirm the circuit court's order because the court properly exercised its discretion.

A. Wisconsin's restitution statute is liberally construed in favor of compensating victims for losses caused by a defendant's criminal conduct.

Wisconsin's restitution statute, Wis. Stat. § 973.20(1r), states that a court "shall order the defendant to make full or partial restitution . . . to any victim of a crime considered at sentencing . . . unless the court finds substantial reason not to do so and states the reason on the record." Under this statute, victims have the initial burden to show "by the preponderance of the evidence the amount of loss sustained by a victim as a result of a crime considered at sentencing."[8] Wis. Stat. § 973.20(14)(a); *see also Muth*, 392 Wis. 2d 578, ¶ 16. "Once this burden is satisfied, restitution is mandatory 'unless the court finds substantial reason not to do so and states the reason on the record.'" *Muth*, 392 Wis. 2d 578, ¶ 16 (quoting Wis. Stat. § 973.20(1r)).

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[8] In Wisconsin, a victim is defined by statutes and by the constitution to include the victim's parent if that victim is deceased, except when the parent is the defendant. Wis. Stat. § 950.02(4)(a)4.a., (b); Wis. Const. art. I, § 9m(1)(a)2., (b). Thus, a surviving parent is a victim with both a constitutional entitlement and a statutory right to restitution.

This mandate is to be interpreted liberally. Restitution is the rule and not the exception, and its primary purpose is to compensate victims. *State v. Canady,* 2000 WI App 87, ¶ 8, 234 Wis. 2d 261, 610 N.W.2d 147. In construing a statute, this Court favors "a construction that fulfills the purpose of the statute over one that defeats statutory purpose." *Wiskerchen,* 385 Wis. 2d 120, ¶ 21 (citation omitted). The restitution statute reflects the "strong equitable public policy that victims should not have to bear the burden of losses if the defendant is capable of making restitution *Id.* ¶ 22 (citing *Canady,* 234 Wis. 2d 261, ¶ 8).

The victim has the burden of proving a "causal nexus" between the crime considered at sentencing and the amount of loss sustained by the victim as a result of that crime, showing that "the defendant's criminal activity was a 'substantial factor'" in causing the victim's loss. *Wiskerchen*, 385 Wis. 2d 120, ¶ 25*; Canady,* 234 Wis. 2d 261, ¶ 9. A "'crime considered at sentencing' means the crime of conviction and any read-in crime. Wis. Stat. § 973.20(1g)(a)." *Wiskerchen*, 385 Wis. 2d 120, ¶ 24. In Wisconsin, "courts have interpreted 'crime considered at sentencing' quite broadly" to encompass "all facts and reasonable inferences concerning the defendant's activity related to the 'crime' for which the defendant was convicted, not just those facts necessary to support the elements of the specific charge of which the defendant was convicted." *Id.* ¶25 (citation omitted).

The court considers the "entire course of conduct" related to the defendant's crimes, "not merely the facts necessary to support the conviction." *Wiskerchen*, 385 Wis. 2d 120, ¶ 25 (citation omitted). The defendant's actions must be the "precipitating cause of the injury" and the harm must be "the natural consequence[s] of the actions." *Canady,* 234 Wis. 2d 261, ¶ 9 (alteration in original) (citation omitted.) In other words, "but for" the defendant's crimes, the harm for which the victim seeks restitution "would not have occurred."

Id. ¶ 12; *see also State v. Queever*, 2016 WI App 87, ¶¶ 23–24, 372 Wis. 2d 388, 887 N.W.2d 912. "'[P]recipitating cause' merely means that the defendant's criminal act set into motion events that resulted in the damage or injury." *State v. Rash*, 2003 WI App 32, ¶ 7, 260 Wis. 2d 369, 659 N.W.2d 189. The defendant's crime considered at sentencing does not need to directly cause the damage or even intend or expect it; it is "sufficient if the defendant's 'actions were a substantial factor' in causing the damage in a 'but for' sense." *Id.* (citation omitted).

Circuit courts are limited regarding the type of damages for which they may order restitution. "In any case, the restitution order may require that the defendant . . . . [p]ay all special damages, but not general damages, substantiated by evidence in the record, which could be recovered in a civil action against the defendant for his or her conduct in the commission of a crime considered at sentencing." Wis. Stat. § 973.20(5), (5)(a). The term "special damages" as used in the criminal restitution context, means "[a]ny readily ascertainable pecuniary expenditure paid out because of the crime." *State v. Holmgren*, 229 Wis. 2d 358, 365, 599 N.W.2d 876 (Ct. App. 1999). Such damages include wage losses, medical, hospital or other similar expenses. *Id.*

B. The circuit court applied the correct legal standard to order Robinson to pay restitution.

In this case, it is not disputed that the victims' losses, in the form of funeral expenses and lost wages, are compensable under Wisconsin's restitution statute. Nor is the specific amount, or Daetwan's liability, in dispute. The issue is whether the court properly exercised its discretion to order Robinson jointly and severally liable, by concluding that there was a sufficient causal nexus between the crime considered at Robinson's sentencing and the loss sustained by the victims.

The answer is yes, because the court applied the correct legal standard and grounded its decision "on a logical interpretation of the facts." *Wiskerchen*, 385 Wis. 2d 120, ¶ 18 (citation omitted).

The court identified the correct legal standard as contained in *Tarlo*, and correctly recognized the primary issue as one of causal nexus to the crime considered at sentencing. (R. 58:10.) The court also accurately noted the lack of case law that dealt with restitution in aiding-a-felon convictions, and reasonably observed that "one can see arguments on both sides" of the issue. (R. 58:10–11.) Recognizing this, the court reasoned that (1) the embedded elements of Daetwan's hit-and-run crime within Robinson's aiding-a-felon crime, combined with (2) the specific facts surrounding Robinson's course of conduct, sufficiently showed a causal nexus between the victims' losses and the crime considered at sentencing. (R. 58:15–16); Wis. Stat. § 973.20(1r).

Especially considering the supreme court's historically broad interpretation of "crime considered at sentencing," *Wiskerchen*, 385 Wis. 2d 120, ¶ 24, the court's application of the legal standard to this case's novel facts was a proper exercise of discretion. *Wiskerchen*, 385 Wis. 2d 120, ¶ 18 (citation omitted) (this Court may reverse a discretionary decision "only if the circuit court applied the wrong legal standard or did not ground its decision on a logical interpretation of the facts"); *see also Id.* ¶ 18 (citation omitted) (appellate courts "look for reasons to sustain a circuit court's discretionary decision"). A review of the court's two primary points of reasoning shows why this is so.

First, the circuit court recognized that the elements of Robinson's charged offense include, and would have required the State to prove, that Daetwan committed the crime of hit-and-run. (R. 58:12–13.) Aiding a felon by destroying physical evidence includes four elements. Those elements are summarized here:

> (1) The person the defendant aided was a felon;
>
> (2) the defendant knew that the person aided engaged in conduct that qualifies as a crime;
>
> (3) the defendant altered or disguised physical evidence; and
>
> (4) the defendant altered or disguised physical evidence with the intent to prevent the apprehension, prosecution, or conviction of the person aided.

Wis. JI–Criminal 1791 (2015). (*See also* R. 25.) To prove the first element, the State must show that the person aided committed a crime punishable by imprisonment in the Wisconsin State Prisons, and that the person aided committed that crime. In satisfying the first element, the Wisconsin Jury Instructions Committee recommends "that a complete listing of the elements of the 'embedded crime' [as identified in the uniform instruction] be provided." Wis. JI–Criminal 1791, Cmt. 4 (2015).

Relevant to the first element, Daetwan's criminal conduct resulted in multiple charges against him, and he pleaded guilty to three counts of felony hit-and-run, party to a crime.[9] The uniform instruction for the statute underlying this crime provides the following general elements:

> (1) defendant operated a motor vehicle involved in an accident;
>
> (2) the accident resulted in injury [or death] to any person;

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[9] *State v. Daetwan C. Robinson*, Milw. Cnty. Case No. 2019CF4856, Wis. Ct. Sys. Sup. Ct. & Ct. App. Access, https://wcca.wicourts.gov/caseDetail.html?caseNo=2019CF004856&countyNo=40&mode=details (last visited Jan. 29, 2024).

> (3) defendant knew that he had been involved in such an accident;
>
> (4) defendant did not remain at the scene of the accident until he had:
>
> > (a) given his name, address, and the registration number of the vehicle he was driving to the operator of or person attending any vehicle collided with; and
> >
> > (b) rendered to any person injured in such accident reasonable assistance including the carrying or the making of arrangements for the carrying of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person;
>
> (5) defendant was physically capable of complying with the above requirements.

State v. Lloyd, 104 Wis. 2d 49, 59 & n.4, 310 N.W.2d 617 (Ct. App. 1981); *see also* Wis. JI-Criminal 2670 (2018) (Failure to Give Information or Render Aid Following An Accident - § 346.67)[10].

In summary, the elements of hit-and-run are included in the first element of the crime for which Robinson was convicted. (R. 58:12–13); *see also* Wis. JI-Criminal 2670 (2018).

The intertwined elements of the crime, combined with the facts surrounding Robinson's course of conduct, support the circuit court's finding of a sufficient causal nexus between the victims' losses and the crime considered at sentencing. When sentencing Robinson, the court found it significant that Robinson "was fully informed of the horror of the crime that his brother had committed" when he helped his brother cover up that crime. (R. 44:35.) Robinson was a front-seat passenger

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[10] *Available at*: https://wilawlibrary.gov/jury/files/criminal/2670.pdf.

in the vehicle when the fatal crash occurred. (R. 2:3; Robinson's Br. 16.) His decision to do nothing to aid the victims, but instead to drive away with his brother and conceal the crime after the fact, is all part of a course of conduct that essentially aided his brother in the hit-and-run crime considered at Robinson's sentencing.

In Wisconsin, "courts have interpreted 'crime considered at sentencing' quite broadly" to encompass "all facts and reasonable inferences concerning the defendant's activity *related to* the 'crime' for which the defendant was convicted, not just those facts *necessary* to support the elements of the specific charge of which the defendant was convicted." *Wiskerchen*, 385 Wis. 2d 120, ¶ 25 (citation omitted).

Robinson's activity related to the crime for which he was convicted include the following undisputed facts:

> (1) Robinson was the front-seat passenger in his brother's car, which was driving in a bicycle lane, passing a line of cars that were stopped at an intersection;
>
> (2) the car hit three children crossing at the intersection;
>
> (3) the car didn't stop after hitting the children;
>
> (4) Robinson did not report the accident, but instead, helped his brother spray paint the car a different color within a day of the crash.

Based on these facts, it is reasonable to infer that Robinson knew that his brother was driving recklessly when the car hit the children, and knew that death or serious injury likely resulted. But instead of stopping or reporting the accident, Robinson helped his brother hide the evidence. (R. 44:24.)

To be clear, the record does not reveal what Robinson said or did inside the car that day, and the circuit court did not make findings that Robinson directly caused the car's collision with the children. But the entire course of conduct for Robinson's charged offense, including that he was present in the car that was driving so recklessly that it caused a visibly fatal crash, that he did nothing to help the victims afterward, and that he helped conceal the car and lied to law enforcement about his involvement, supports a finding that his actions were a substantial factor in causing the victims' compensable injuries.[11] The defendant's crime considered at sentencing does not need to directly cause the damage or even intend or expect it; it is "sufficient if the defendant's 'actions were a substantial factor' in causing the damage in a 'but for' sense." *Rash*, 260 Wis. 2d 369, ¶ 7.

Based on the elements of the crime for which Robinson was convicted, which include the embedded crime of hit-and-run, as well as the facts and reasonable inferences from Robinson's entire course of conduct concerning his activity related to the crime for which he was convicted, the hit-and-run qualified as a crime considered at sentencing. Thus, it was proper for the circuit court to order Robinson to pay restitution for the funeral expenses and lost wages, which

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[11] Under Wis. Stat. § 346.70 the "occupant of a vehicle involved in an accident resulting in injury to or death of any person . . . shall immediately by the quickest means of communication give notice of such accident to the police department." Interpreting a closely related statute that requires reporting accidents, Wis. Stat. § 346.67 (Duty upon striking person or attended or occupied vehicle), this Court has said that the requirement exists "so that innocent persons injured in accidents do not go uncompensated, and, of course, to ensure that anyone injured in the accident will be attended to without delay." *State v. Roling*, 191 Wis. 2d 754, 766, 530 N.W.2d 434 (Ct. App. 1995). At a minimum, Robinson's failure to report the accident could have prevented compensation to the victims if his cover-up had been successful.

compensated the victims "of a crime considered at [Robinson's] sentencing." Wis. Stat. § 973.20(1r).

C. Robinson's contrary arguments miss the mark.

Robinson argues that the circuit court erred in ordering restitution because his crime, which he describes as spray painting the car, was not a substantial factor in causing the victims' injuries for funeral expenses and lost wages. (Robinson Br. 13–18.) He also argues that Marsy's Law does not allow a court to order restitution in the absence of a causal nexus between the crime considered at sentencing and the victims' losses. (Robinson Br. 18–19.) Both arguments miss the mark.

Robinson relies on *Tarlo* to argue that spray painting Daetwan's car "in no way played a role in causing the accident that led to the injuries suffered by the children." (Robinson Br. 15–17.) As an initial matter, the circuit court relied on *Tarlo* for the core legal standard pertaining to causal nexus, not the case's specific facts. (R. 58:10–11.) *Tarlo* involved whether a defendant could be ordered to pay restitution for a victim's lost wages, due to his possession of a pornographic image of the victim's daughter. *State v. Tarlo*, 2016 WI App 81, ¶ 5, 372 Wis. 2d 333, 887 N.W.2d 898. Comparing this case to the facts of *Tarlo* is not helpful here, because the facts are materially different, and the circuit court was not relying on them for its restitution decision.

In any event, *Tarlo* is distinguishable. There, the defendant challenged the circuit court's award of restitution to the mother of a victim of child pornography. *Tarlo*, 372 Wis. 2d 333, ¶¶ 1, 8. This Court found causation lacking, because "[t]here simply was no evidence presented of income lost or treatment costs incurred, or of income that will be lost or costs that will be incurred, as a result of Tarlo or others viewing and possessing the daughter's image." *Id.* ¶ 15. The

court concluded that the mother failed to meet her burden of proving she incurred any losses as a result of Tarlo's conduct. *Id*. ¶ 19.

While Tarlo focused on how one defines causation, *id*. ¶ 18, this case comes down to whether the hit-and-run events are included in the crime considered at sentencing. They were. Robinson fails to grapple with the circuit court's finding that Robinson's crime considered at sentencing included his brother's hit-and-run crime and Robinson's front-seat awareness of, and involvement in, that crime. *See* Arg. Sec. B., *infra*. The restitution statute requires that the court "shall order the defendant to make full or partial restitution under this section to any victim of a crime considered at sentencing." Wis. Stat. § 973.20(1r). Given the circuit court's reasonable conclusion that the hit-and-run crime was included in the crime considered at sentencing, it properly found a causal nexus between the crime considered at sentencing and the victims' losses, and it was a proper exercise of discretion to order Robinson to pay restitution.

Robinson essentially argues that he had to literally cause the children's death by driving the car himself, in order for the court to find a causal nexus between his crime considered at sentencing and the victims' injuries. That view is misguided. Courts can order restitution for financial losses that result from a course of criminal conduct, even when the losses were not directly caused by the defendant's actions.

State v. Queever is instructive on this point. There, a defendant was convicted of attempted burglary. *Queever*, 372 Wis. 2d 388, ¶ 19. The burglary considered at sentencing occurred on August 5, 2014. *Id*. Months before that crime, the victim's family suspected a burglar was entering her home at night while she slept, and the family purchased a security system to monitor the apartment for burglary. When the burglar was caught and charged with the August 5 burglary,

he was ordered to pay restitution for the cost of the security system. *Id*. ¶ 6–8.

Queever objected, arguing that the system was purchased before the conduct underlying his conviction for the August 5 burglary occurred. *Id*. ¶ 8. Queever argued that the circuit court "interpreted the statutory term 'crime considered at sentencing' too broadly by considering the burglaries that were committed before August 5, 2014." *Id*. ¶ 19. He argued that the "crime considered at sentencing" in his case was limited to the August 5, 2014 attempted burglary. *Id*. As such, the cost to install the security system "cannot possibly have been caused by the August 5, 2014 burglary because it was incurred before that date." *Id*.

This Court disagreed, concluding that Queever interpreted "crime considered at sentencing" too narrowly. *Id*. ¶ 20. The circuit court found that Queever committed the previous burglaries of the victim's residence, and those prior burglaries were related to the attempted burglary considered at sentencing. *Id*. ¶ 22. On those facts, the prior burglaries and attempted burglaries were part of a single course of conduct. *Id*. ¶ 22. "Under a liberal interpretation of the restitution statute, and keeping in mind the strong public policy in favor of compensating crime victims, the prior burglaries therefore constituted part of the crime considered at Queever's sentencing." *Id*. ¶ 25.

This Court should make the same conclusion here. The elements of Daetwan's hit-and-run crime are embedded in the elements of Robinson's aiding a felon crime. And Robinson's involvement in his brother's crime is highlighted by the fact that he sat front row and observed the horror of his brother's actions, and then instead of rendering aid or reporting, he covered the crime up. As the supreme court has noted, "crime considered at sentencing" is to be broadly construed. The circuit court's discretionary decision is in line with that guidance.

Robinson also argues that Marsy's Law does not allow a court to order restitution in the absence of a causal nexus between the crime considered at sentencing and the victims' losses. (Robinson's Br. 18.) Under 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." Wis. Const. Art. I § 9m(2)(m).

Notably, the circuit court did not rely on Marsy's Law for its award of restitution here. As shown above, its award was grounded squarely in the statutory mandate that courts award restitution "to any victim of a crime considered at sentencing," Wis. Stat. § 973.20(1r). Marsy's Law provided "an additional basis to enhance both the definition of the connection of this defendant to the crime and the assurance that the victims rights to restitution are protected and construed broadly to provide the victim's protection." (R. 58:16.) In other words, in close case such as this one, the court found that Marsy's Law provided an additional basis to tip the balance in favor of the victim.

This Court need not decide whether Marsy's Law confers 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. As explained above, the circuit court properly exercised its discretion when it found a sufficient causal nexus between the crime considered at sentencing and the victims' losses.

CONCLUSION

This Court should affirm the circuit court's discretionary decision to award restitution.

Dated: February 2, 2024

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 5578 words.

Dated: February 2, 2024

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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

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