FILED
12-13-2023
CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Appellate Case No. 2023AP1444-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

PAUL R. NOBLE,

Defendant-Appellant.

Appeal from the Decision entered on Nov. 18, 2022, in the Waukesha County Circuit Court, the Hon. Paul F. Reilly presiding, the corresponding Order, filed on October 30, 2023, and the Judgment in Waukesha County Case No. 2019CM000828, entered on Dec. 12, 2022.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

NICOLE M. MASNICA
State Bar No. 1079819
nmasnica@grgblaw.com

Attorney for Defendant-Appellant.

GIMBEL, REILLY, GUERIN & BROWN, L.L.P.
330 East Kilbourne Avenue, Suite 1170
Milwaukee, Wisconsin 53202
414-271-1440

TABLE OF CONTENTS

CASES CITED

CONSTITUTIONAL PROVISIONS AND STATUTES CITED

Wisconsin Statutes

STATEMENT ON THE CASE & ISSUES PRESENTED

Paul R. Noble pleaded guilty to the single count of Misuse of GPS Device, contrary to Wis. Stat. § 940.315(1)(a) in Case No. 2019CM0828 out of Waukesha County. In exchange, the state agreed to recommend probation and to dismiss and read in two counts of Disorderly Conduct and one count of Battery in Case No. 2018CM2619 out of Waukesha County. The victim in 2018CM2619, who was also the victim in 2019CM0828, and the Crime Victim Compensation Fund (CVC), requested a substantial amount of restitution based on those read-in offenses. The court held multiple hearings after sentencing and prevented the defendant from challenging the causal nexus between the read-in offenses and the restitution sought. Following the court's order regarding the causal nexus and the restitution request, two years after Mr. Noble's sentencing hearing and one year after he completed his term of probation, Mr. Noble agreed to pay a negotiated restitution amount to the victim. The court ordered him to pay $40,000 in restitution to the CVC.

1. Did the circuit court err when it prevented the defendant from challenging the causal nexus between the read-in offenses and the restitution sought?

The circuit court held that, by accepting the charges as read-in offenses, the defendant lost the right to challenge the causal nexus between said offenses and any restitution the victim claimed was connected to the offenses. It also found that any cross-examination or presentation of evidence pertaining to the causal nexus between the read-in offenses and any restitution the victim claimed was connected to the offenses was not relevant and would not be permitted.

This court should find that, even when the defendant accepts a read-in offense as part of a plea agreement, and even though the court may acknowledge the charges as true, the defendant should still be given an opportunity to explain or dispute the causal nexus between the read-in offenses and the restitution requested.

2. Is there a sufficient factual basis for the restitution requested by the CVC?

The circuit court prohibited Mr. Noble from challenging the causal nexus and factual basis for the restitution request and therefore, did not address this question.

Should the circuit court have permitted Mr. Noble to challenge the nexus between the read-in offenses and the restitution, it would have been clear that no such nexus existed between the read-in offenses and the restitution the CVC requested. The factual insufficiency here is clear based on the victim's initial description of the events to police on the night of the events underlying the read-in offenses. This court should hold that there is not a sufficient factual basis for the restitution awarded to the CVC.

3. Is the restitution order to the CVC valid despite the fact that it was entered in violation of Wis. Stat. § 973.20(13)(c) in that the restitution order was issued more than two years following the date of conviction, far exceeding the 60 days permitted by statute?

Mr. Noble's sentencing hearing took place on October 12, 2020. The restitution order awarding restitution to the CVC was entered on December 12, 2022, along with an amended judgment of conviction. That it took 791 days after the sentencing hearing for the circuit court to enter the restitution order is a violation of Wis. Stat. § 973.20(13)(c). In turn, this

court should vacate the restitution order awarding restitution to the CVC.

POSITION ON ORAL ARGUMENT AND PUBLICATION

The issue presented will be sufficiently addressed in the briefs, but oral argument is welcome in this case because it involves the intricate application of fact and law.

Publication may be warranted if the court remands with instructions for further fact-finding or if the court applies a novel test.

PROCEDURAL HISTORY OF THE CASE

This is the appeal of a restitution order. The facts underlying the restitution order stem from the three charges in Case Number 2018CM2619 out of Waukesha County, which were dismissed and read into the plea agreement in Case Number 2019CM0828 out of Waukesha County. Both cases involve the same defendant and the same victim: Mr. Noble and Karen Tatsis.[1]

In 2018CM2619, Mr. Noble was charged with two counts of disorderly conduct and one count of battery. (2018CM2619, Doc. 1[2]). In 2019CM0828, Mr. Noble was charged with one count of placing a GPS device on Karen's car without her consent, contrary to Wis. Stat. § 940.315(1)(a). (Doc. 1). Mr. Noble pleaded guilty to the single charge in 2019CM0828, and as part of the plea agreement, the three charges in 2018CM2619 were dismissed and read in. (Docs 22, 188). On October 12, 2020, Mr. Noble was placed on one year of probation, which he completed successfully. (Docs 52, 71).

More than two years after his sentencing hearing and more than one year after his successful discharge from probation, Mr. Noble was ordered to pay a total of $99,000 in restitution in 2019CM0828 for the read-in offenses from 2018CM2619. (Doc. 181). During the second of three restitution

---

[1] "Karen Tatsis" is a pseudonym for the victim. It will be used throughout this brief in place of the victim's real name. The appellate briefs of the parties in a criminal case shall not identify a victim by any part of his or her name but may identify a victim by one or more initials or other appropriate pseudonym or designation.

[2] All citations to docket numbers for case number 2018CM2619 will include the case number before the docket number. Citations to docket numbers for case number 2019CM0828 will not include the case number before the docket number.

hearings, the court, the Honorable Paul F. Reilly presiding, ruled that defense counsel could not elicit testimony that would challenge the causal nexus between the underlying offenses and the restitution the victim sought. (Doc. 221:62-67, 89-96). On November 17, 2022, defense counsel filed three documents addressing her objection and the court's ruling: Defendant's Offer of Proof with Supporting Documents A-O (Doc. 133), Attachments A through F (Doc. 134), and Attachments G through O (Doc. 135).

Ultimately, the court ordered Mr. Noble to pay $40,000 in restitution to the CVC, the amount of money the CVC had paid out to Karen in response to her claims. (Doc. 181). The remaining $59,000 was to be paid to Karen according to the terms of the amended restitution stipulation between Mr. Noble and Karen. (Doc. 182).

Mr. Noble filed a timely notice of intent to seek postconviction relief and filed a Notice of Appeal on August 8, 2023. (Doc. 217). This appeal addresses only the CVC's request for restitution; it does not challenge the amended restitution stipulation between Mr. Noble and Karen.

STATEMENT OF RELEVANT FACTS

Karen was not completely surprised to learn that Mr. Noble had placed a GPS device on her car on September 8, 2018—she had placed a similar one on Mr. Noble's car. When she found a device attached to her car, she assumed he had put it there. (Doc. 1 at 3). She called the police and reported Mr. Noble but told them she did not want to press charges. (*Id.* at 2). Mr. Noble readily admitted that he had placed the GPS on the car and reported that Karen had placed a similar device on his car without his consent. (*Id.* at 3). Seven months later, Mr.

Noble was charged with misuse of GPS in Waukesha County under case number 2019CM0828. Karen was not charged.

Karen again called the police on Mr. Noble on October 25, 2018. (2018CM2619 Doc. 1 at 2). According to the facts alleged in the probable cause section of the complaint on 2018CM2619, which was filed on December 17, 2018, and contained two counts of disorderly conduct and one count of battery with domestic abuse modifiers, the couple had gone to Majestic Theater in Brookfield to watch a movie. (*Id.*). Mr. Noble and Karen got into an argument in the theater hallway after she received a text message from her ex-husband. (*Id.* at 2–3). Eventually, Mr. Noble walked out of the theater, leaving Karen without a ride. (*Id*. at 3). He was gone for about fifteen minutes before returning to get her. (*Id*.). Karen had spent those fifteen minutes trying to get an Uber but was unable to find one, so when Mr. Noble offered to drive her home, she accepted. (*Id*.).

During the drive, Mr. Noble accused Karen of cheating on him. (*Id.*). After Mr. Noble's accusation, Karen told him she did not want him to spend the night at her house and asked him to drop her off at the curb near her house. (*Id*.). She then opened the car door while it was still moving, so Mr. Noble grabbed at her by the hair to keep her in the car (*Id*.). Mr. Noble then pulled up to Karen's house and let go of her once the car stopped moving and pushed Karen out of the car. (*Id.*). Karen fell out of the car and onto the driveway, where she scraped her knees. (*Id*.).

Karen told police officers that Mr. Noble did not live in the house but had been staying there regularly during the two months prior. (*Id.* at 4). Mr. Noble had clothes in a dresser drawer and knew the code to the garage door. (*Id*.). After parking in the driveway, Mr. Noble entered the code, walked inside the house, and went upstairs to get his things. (*Id*. at 3).

Karen grabbed at him to keep him from entering the house and from getting his things. (*Id.*). He pushed her off him and made his way up the stairs. (*Id.*). At that point, Karen called 911 "because she wanted someone to hear what was going on," but she hung up without speaking to dispatch. (*Id.*). Dispatch called her back and she said she had "an argument with her boyfriend and declined medical attention, saying it was not physical." (*Id.* at 2).

When the police arrived, they spoke to Karen in the kitchen. (*Id.* at 3). She told them about the argument in the theater and on the drive home and said she had physically tried to keep Mr. Noble from entering the house. (*Id.*). She said that one of the times she grabbed at him, he pushed her away and she fell onto a dog gate in the garage, which caused a small laceration on her left jawline. (*Id.*).

Responding officers observed abrasions and redness on Karen's knees, and a bleeding cut around her jaw. (*Id.* at 4). Karen told the officers that her knees and jaw hurt and that her head was sore around the area where Mr. Noble pulled her hair. (*Id.*).

Mr. Noble was standing near his car when the police arrived. (*Id.*). He told them about the argument in the theater and on the drive home, but he denied that anything physical had happened. (*Id.*). He said he may have pushed her away when she grabbed at him but that he had not done anything physical to hurt her. (*Id.*). Karen did not wish to file a written statement, and Mr. Noble was not arrested or charged at that time.

After several court appearances for 2018CM2619, Mr. Noble was charged under case number 2019CM0828 on April 25, 2019.

Although he took issue with the fact that he was charged with a crime (misuse of GPS) for doing the same thing Karen had done to him, Mr. Noble was willing to accept responsibility for his actions. However, the state's pretrial offer included an agreement that the charges from 2018CM2619 would be dismissed and read in, and Mr. Noble knew that Karen was planning on requesting a substantial amount of restitution in that case. Mr. Noble did not want to change his plea without knowing the amount of restitution she was requesting. During three separate hearings in 2019—August 5, October 2, and December 18 —Mr. Noble stated on the record "that he wanted to know the amount of restitution the victim was requesting before agreeing to change his plea." (Doc 188 at 16).

On February 5, 2020, Mr. Noble entered a no contest plea to the single count in 2019CM0828 (misuse of GPS), and in exchange, the state moved to dismiss and read in the three charges in 2018CM2619 and agreed to recommend a withheld sentence with standard conditions of probation. (*Id.* at 3). One of the conditions of probation included "payment of restitution as determined through a restitution hearing," and the court informed Mr. Noble that he "would be responsible for paying what the Court would determine would be the appropriate amount of restitution" associated with the dismissed and read-in charges. (*Id.* at 3, 9).

The circuit court pointed out that no restitution request had been filed before the plea hearing. (*Id.* at 16). The state said it was aware that the Crime Victim Compensation Fund (CVC) would be requesting approximately $15,000, that Karen would be requesting another $3,000, and that they would ask the court for a restitution hearing after sentencing during which she would be represented by a private attorney. (*Id.* at 16–19). The court ordered Karen to file a Restitution Affidavit seven days

prior to sentencing, which in turn was scheduled for April 20, 2020. (188:19).

On March 17, 2020, the Supreme Court of Wisconsin issued its first in a series of orders addressing Governor Evers' declaration of a public health emergency for the State of Wisconsin in connection with the COVID-19 pandemic. In turn, Mr. Noble's sentencing hearing was delayed until October 12, 2020. (Doc. 60). The parties did not stipulate to any amount of restitution, so the court scheduled the matter for a restitution hearing. The court held a series of hearings after the sentencing hearing, three of which included the presentation of evidence related to restitution: November 15, 2021, October 26, 2022, and November 18, 2022.

Karen testified during the first hearing. (Doc. 222). Her description of what happened on October 25, 2018, during that hearing significantly differed from the description she provided to police on the night of the incident. Notably, she testified that Mr. Noble grabbed a chunk of her hair when she first attempted to get out of his car and then accelerated the car into her driveway while holding her hair. (*Id.* at 29). Further, she "believed," but did not know for sure, whether Mr. Noble pushed her out of the car or whether she fell out of the car. (*Id.* at 31). She also testified that Mr. Noble pushed and kicked her before kicking in a door to her house. (*Id.* at 32–33). After he entered the house, she testified that he continuously pounded her head into a wall in the laundry room by the washing machine, causing her face to bleed and blood to splatter on the machine. (*Id.* at 35). Finally, she testified that he threw her to the ground a total of four times (*Id.* at 37–38).

Karen then testified about various physical and emotional injuries she had suffered since the incident. These included severe physical injuries, including injuries to her back and neck, that required medical attention, mental diagnoses

like post-traumatic stress disorder and depression, and cognitive issues (*Id.* at 47–64). Specifically, she noted that she suffered from "severe complex post-traumatic stress disorder and trauma", neck injuries from the "sudden twisting and force" from the incident, and that she would have a permanent scar on her face. (*Id.* at 47–48). She also noted "vitamin B12 depletions" that required injections, hair loss aside from hair she claimed Mr. Noble pulled out on the night of the incident, a loss of circulation in her legs that required acupuncture, injuries to discs in her back that required chiropractic treatment, and injuries to her throat that required speech therapy. (*Id.* at 49–62). The hearing was ultimately adjourned before Karen concluded her testimony.

The second hearing, which took place nearly one year after the first hearing, began with the remainder of Karen's direct testimony. (Doc. 221). During defense counsel's cross-examination, the court, the Honorable Judge Paul F. Reilly presiding, *sua sponte* objected to defense counsel's line of questioning regarding the causal nexus between the read-in charges and Karen's restitution claims. (*Id.* at 62–67). The court invited counsel to "make an offer of proof … for the purpose of the appellate court," but it refused to allow testimony relevant to the causal nexus between the read in charges and the victim's restitution claims. Defense counsel later raised the issue again, and the court addressed its ruling regarding the factual basis for the offense in more detail. (*Id.* at 89–96). The court emphasized that it would not "re-try" the underlying case. (*Id.* at 89).

Prior to the conclusion of that hearing, a claims specialist from the CVC testified about damages it had paid to Karen. (*Id.* at 67). The claims specialist testified that the CVC paid $40,000 to Karen for "expenses including mental health, medical, wage loss, and securing of a crime scene" and that it sought that

amount in restitution. (*Id.* at 70, 77). Through exhibits, the claims specialist provided testimony about how the CVC calculated its payout for lost wages and damages to Karen's door but did not go into detail about the CVCs payout for medical or mental health-related expenses or the relationship between those expenses and the incident. (*Id.* at 70–77).

On November 17[3], defense counsel filed three documents addressing her objection—an offer of proof and two filings with attachments to the offer of proof. (Docs. 133–135).[3]

Before the circuit court ruled on the restitution issue, Mr. Noble entered into a stipulation with the victim wherein he agreed to pay her $59,000.00. (Doc. 182). However, Mr. Noble did not stipulate to the CVC's restitution request for $40,000.00. (Doc. 190 at 2).

The stipulation between Karen and Mr. Noble was accepted by the court on November 18, 2022. Defense counsel renewed her objection to the court's ruling regarding the causal nexus as it pertained to the CVC restitution claim. (Doc. 190 at 4). The court found that the CVC "carried their burden of proving their claim, loss of 40,000, by a preponderance of the evidence" and ordered Mr. Noble to pay that much to the CVC in restitution. (Doc 190 at 4–5). The court did not provide further reasoning as to why it believed the CVC carried its burden.

Mr. Noble filed a timely notice of intent to seek postconviction relief and filed a Notice of Appeal on August 8, 2023. (217). This appeal addresses only the CVC's request for

[3] Counsel also filed a two-page document in letter form titled "Defendant's Motion for Reconsideration of Court's Ruling Restricting Cross Examination," but the court did not revisit its ruling or make a new ruling with regard to the motion for reconsideration. (*See* Doc. 132).

restitution and not the stipulated restitution order between Mr. Noble and the victim.

ARGUMENT

I. Mr. Noble had the right to challenge the conflicting evidence presented in support of the causal nexus between the read-in offenses and the restitution request, and the court was wrong to limit the defendant's questioning and proffered evidence.

The court, in determining whether to order restitution and the amount thereof, shall consider, among other things, "[t]he amount of loss suffered by any victim as a result of a crime considered at sentencing." Wis. Stat. § 973.20(13)(a)1. A "crime considered at sentencing" means any crime for which the defendant was convicted and any read-in crime. Wis. Stat. § 973.20(1g)(a). A "read-in crime" is any crime that is "dismissed as part of a plea agreement, that the defendant agrees to be considered by the court at the time of sentencing and that the court considers at the time of sentencing." Wis. Stat. § 973.20(1g)(b).

Restitution requests are addressed at a sentencing court's discretion. *State v. Johnson*, 2005 WI App 201, ¶ 10, 287 Wis. 2d 381, 704 N.W.2d 625. Under Wis. Stat. § 973.20(14)(d), "**[a]ll parties interested in the matter shall have an opportunity to be heard, personally or through counsel, to present evidence and to cross-examine witnesses called by other parties**." (emphasis added). The statute permits not only "a challenge to the amount of restitution" but also "**to the underlying fact of the damage itself or the causation question**." *State v. Madlock*, 230 Wis. 2d 324, 335, 602 N.W.2d 104 (Ct. App. 1999)[emphasis added].

Here, the complaint alleges only that Mr. Noble pushed off the victim when she tried to keep him from going inside to get his things, and at some point during that encounter she fell and hit her chin on the dog gate. The officers noticed a small laceration on her jaw. The victim also complained of pain in her hair and her knees based on where Mr. Noble grabbed her before they exited the car and where she scraped her knees.

At sentencing, she told a very different story of what happened that night. She testified about repeated blows to the head, blood streaming from her face, and being knocked to the ground several times. None of those details were provided to police who responded that night, nor did police observe any serious injuries. Moreover, as the complaint notes, the victim *declined medical attention* when calling 911 and told the dispatcher that nothing physical had taken place. Further, responding officers did not notice any serious injuries.

The effect of Mr. Noble's agreement to read in the charges from 2018CM2619 was to allow the court to consider whether they gave rise to any restitution claims. Mr. Noble did not admit to or accept anything she said at sentencing, where she gave a very different and much more aggravated version of the events of that night.

That is why the circuit court erred when finding that any cross-examination or presentation of evidence pertaining to the causal nexus between the read-in offenses and any restitution the victim claimed was connected to the offenses was not relevant and would not be permitted. Though the victim is free to address the court, the court must determine whether the victim is credible. In turn, the court cannot prohibit cross-examination of the victim or the introduction of evidence contradicting her statements when it is tasked with making such a determination.

This court should find that even when the defendant accepts a read-in offense as part of a plea agreement, and even though the court may acknowledge the charges as true, the defendant should still be given an opportunity to explain or dispute the causal nexus between the read-in offenses and the restitution requested. Based on the circuit court's failure to allow Mr. Noble to do so, the restitution award to the CVC must be vacated.

II. The factual basis underlying the read-in offenses from Case No. 2018CM2619 does not support the restitution awarded to the CVC.

Before a court may order restitution, a "causal nexus" must be established between a crime considered at sentencing and the victim's alleged damage. *State v. Canady*, 2000 WI App 87, ¶ 9, 234 Wis. 2d 261, 610 N.W.2d 147. The victim bears the burden of proving causation, which requires proof that the defendant's criminal activity was a substantial factor in causing the claimed damage, and the defendant's actions must be the precipitating cause of the injury—the harm to the victim must have resulted from the natural consequences of the defendant's actions. *Id*.

Because the circuit court exercises its discretion when determining whether there exists a causal nexus between the crime and the damage, this court must review the decision for an erroneous exercise of discretion. *Johnson*, 287 Wis. 2d 381, ¶ 10. This court must "examine the record to determine whether the court logically interpreted the facts, applied the proper legal standard, and used a rational process to reach a reasonable conclusion." *Id*. If the court fails to explain its reasoning, this court may "search the record to determine if it supports the court's discretionary decision." *Randall v. Randall*, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737.

"Read-in charges are acknowledged as true and are subject to restitution. They may not be prosecuted separately in the future." *State v. Frey*, 2012 WI 99, ¶ 43, 343 Wis. 2d 358, 817 N.W.2d 436. But what does it mean that read-in charges are to be "acknowledged as true"? Existing case law suggests that by accepting a read-in offense as part of a plea agreement, the defendant agrees that the court will treat the offense like a permissive inference, not as an established fact.

In *State v. Straszkowski*, 2008 WI 65, 310 Wis. 2d 259, 750 N.W.2d 835, the Court took an historical look at Wisconsin's read-in procedure. It conducted a survey of existing case law and found three somewhat divergent views of the read in procedure. One procedure involved (though did not necessarily require) "the defendant's actual admission to the read-in charge for sentencing purposes." *Straszkowski*, 310 Wis. 2d 259, ¶ 91. The second applied the following rule: in the absence of any objections to the crimes being read in, the court may assume that the defendant admits the crimes for purposes of being considered at sentencing. *Id*. The third applied the statutory definition and made no reference to an admission of the read-in crimes; rather, it described only the effect of the read-in, that it may be considered at sentencing and would bar the state from future prosecution of the crime. *Id*.

The Court held that "Wisconsin's read-in procedure does not require a defendant to admit guilt of a read-in charge for purposes of sentencing and does not require a circuit court to deem the defendant to admit as a matter of law to the read-in crime for purposes of sentencing." *Id*. at ¶ 92. Moreover, a court "should not deem a defendant's agreement to have a charge read in for consideration at sentencing and dismissed on the merits to be an admission of guilt of the read-in charge for purposes of sentencing." *Id*. Absent an actual admission by the defendant, the effects of a defendant's agreement to read in a

charge are the following: "a circuit court may consider the read-in charge when imposing sentence;" it prohibits the state "from future prosecution of the read-in charge;" and "a circuit court may require a defendant to pay restitution on the read-in charges." *Id*. at ¶ 93.

The second effect of the read-in charge, the bar to future prosecution, is instructive. The "bar to future prosecution is protected by due process." *Frey*, 343 Wis. 2d 358, ¶ 72. By exposing himself to a sentencing hearing during which a read-in offense is considered, the defendant ensures he cannot be charged with that identical offense in the future. If he is prosecuted for the same crime in the future, then he will assert a violation of his protection against double jeopardy. "[A]ny offenses in the present prosecution that are identical in law and in fact to an offense in the prior prosecution are barred by double jeopardy." *State v. Killian*, 2023 WI 52, ¶ 23, 408 Wis. 2d 92, 991 N.W.2d 387. The defendant's "scope of jeopardy" is that which is "created by a fair reading of the charging documents." *Id*., ¶ 35. "Mere overlap in proof between two prosecutions does not establish a double jeopardy violation, nor does the prosecutor's intent. The inquiry must always focus on the defendant's actual exposure to jeopardy in a prior prosecution." *Id*., ¶ 38 (internal citations omitted). It stands to reason, then, that when determining the presumptions or permissive inferences of the defendant's read-in offenses, the court should look to the charging instruments underlying those offenses.

In turn, the court may be right to presume that the probable cause section of the complaint is true but there is no such presumption afforded the victim's statement at sentencing. This is especially true where, as here, the victim's description about the facts underlying the read-in offenses is

vastly different than the description in the probable cause section of the complaint.

When looking strictly at the complaint, it is clear that the facts underlying the read-in charges do not support the $40,000 award to the CVC. At most, the court might have found that the victim lost some hair and suffered minor injuries that she admitted did not require medical attention. It might also have reasoned that the victim was traumatized by the incident, although she declined to press charges. But these reasonable inferences drawn from the complaint in no way support a relationship between the incident and the thousands and thousands of dollars the CVC paid to the victim. To claim there is a relationship between the injuries described in the complaint and the extensive treatment the CVC covered—namely, acupuncture, chiropractor visits, and injections—is absurd. Minor scrapes and cuts simply do not give rise to this level of medical care.

Even if the court were able to consider the victim's vastly different account of the incident during the restitution hearings, the circuit court did not indicate how much of that version of the story led to its ruling that a $40,000 award was appropriate. In turn, it is unclear based on the court's ruling how much the victim's additional testimony contributed to its decision. And because defense counsel was not able to cross-examine the victim about causation, it is frankly impossible to discern what, if any of these exorbitant medical expenses are attributable to the conduct underlying the read-in offenses.

In sum, if the circuit court had acted properly and made its decision based primarily off the facts in the complaint, it is likely that it would not have awarded $40,000 to the CVC. Alternatively, as stated earlier, the circuit court erred when it permitted testimony from the victim and CVC claim specialist without allowing defense counsel to cross-examine the

witnesses about causation. Therefore, the restitution award to the CVC must be vacated.

III. This court should vacate the restitution order mandating payment to the CVC an impermissible violation of Wis. Stat. § 973.20(13)(c) because it was entered 791 days after sentencing in violation.

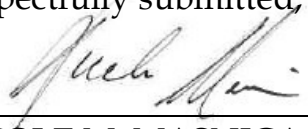
The sentencing hearing took place on October 12, 2020, and the restitution order was entered on December 12, 2022, along with an amended judgment of conviction. The 791 days between the sentencing hearing and restitution order are an impermissible violation of Wis. Stat. § 973.20(13)(c), which requires that a restitution order be entered within, at the latest, 90 days of the sentencing hearing. In turn this court should vacate the restitution awarded to the CVC through the December 12, 2022, restitution order, especially given that the delay in the conclusion of the restitution proceedings and ultimate issuance of the order were a result of delays by the victim and her attorneys.

CONCLUSION

For the reasons stated above, Mr. Noble respectfully requests that this court reverse the circuit court's decision and vacate the restitution order in the CVC's favor.

Dated this 13th day of December, 2023.

Respectfully submitted,



NICOLE M. MASNICA
State Bar No. 1079819
nmasnica@grgblaw.com

Attorneys for Defendant-Appellant.

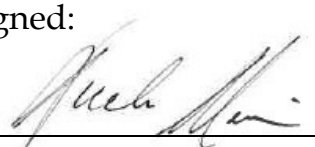
GIMBEL, REILLY, GUERIN & BROWN, L.L.P.
330 East Kilbourne Avenue, Suite 1170
Milwaukee, Wisconsin 53202
414-271-1440

CERTIFICATION AS TO FORM/LENGTH

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 5,150 words.

Dated this 13th day of December of 2023.

Signed:



NICOLE M. MASNICA
State Bar No. 1079819

CERTIFICATION AS TO APPENDIX

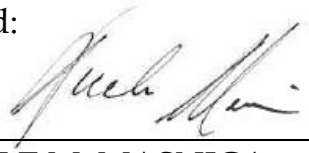
I hereby certify that filed with this brief is an appendix that complies with Wis. Stat. § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under Wis. Stat. § 809.23(3)(a) or (b); and (4) 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.

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.

Dated this 13th day of December of 2023.

Signed:



NICOLE M. MASNICA
State Bar No. 1079819