

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 23, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP2897-FT

Cir. Ct. No. 2007JV23

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN THE INTEREST OF AARYN C., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

AARYN C.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Fond du Lac County:
STEVEN W. WEINKE, Judge. *Affirmed.*

¶1 BROWN, C.J.¹ Aaryn C. appeals the amount of the restitution order in regard to his theft from an apartment complex. In particular, he argues that the petition alleged the taking of two fire extinguishers and he admitted to that. But, after a restitution hearing, the juvenile court ordered him to pay for three. His argument is simply that he cannot be ordered to pay restitution for a crime for which he was never charged or adjudicated delinquent. This court disagrees. Aaryn was charged with theft of items under \$2500. He admitted to the theft and that he took items under \$2500. Whether it was two fire extinguishers or three, it was still under \$2500 and he did admit to theft of movable property under \$2500. The actual amount of damages due to that theft under \$2500 was the issue to be decided at the restitution hearing. Aaryn was represented at that hearing and had the full resources of our justice system to cross-examine and test the credibility of the complaining victim. The juvenile court found that three fire extinguishers were taken. This loss is causally connected to the offense for which he was adjudicated delinquent and bears a significant relationship to the offense. This court affirms.

¶2 The petitioner was a captain of the Fond du Lac Police Department. He alleged that another officer spoke with an apartment manager who stated that two fire extinguishers had been removed from their locations in the apartment complex. According to the officer, the manager said that the two extinguishers had been removed from their storage sheds after the protective glass had been damaged. The manager explained that she had talked with a person who had come in contact with Aaryn and that Aaryn had informed this person that he had taken a

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2005-06). All references to the Wisconsin statutes are to the 2005-06 version.

fire extinguisher. A second juvenile accompanying Aaryn told the person that Aaryn had taken an extinguisher and discharged it. The manager indicated that this was done without permission. Based on this petition, Aaryn was charged with misdemeanor theft and criminal damage to property.

¶3 It was apparent that the fire extinguishers had been taken in concert with this other juvenile, with Aaryn taking at least one and the accomplice one. But the apartment manager claimed that three fire extinguishers, rather than two, were taken. So, there was a contested restitution hearing. At this hearing, the manager testified that three extinguishers were taken. The manager could not recall if she had originally reported only two. She said that the fire extinguishers were attached to the outsides of the apartment garages and had been taken out of their boxes after the Plexiglas was broken. The cost of the Plexiglas in each instance was \$25 and the cost of the extinguishers was \$47 each.

¶4 On cross-examination, the manager was asked about the discrepancy between the two extinguishers discussed in the petition and the three she now claimed to have been taken. She stated that she believed she told the officer that three were missing because she took the officer around to all of the garages and showed where each one was missing. She said that one of the residents had actually caught the two juveniles in the act of trying to remove a fourth extinguisher and recalls telling the officer about that.

¶5 Aaryn testified in his own defense. He admitted taking one and he said that his accomplice took one, but that's all.

¶6 The trial court found that three were missing, that the total damages amounted to \$226.80 and that the two juveniles were "jointly and severally liable for that amount so each is going to go \$113.40 in restitution." Based on these

facts, this appeal is about whether Aaryn should be responsible for one-half the amount of one fire extinguisher and repaired Plexiglas. In other words, since the cost of one fire extinguisher and repaired Plexiglas is \$72, this appeal is about whether Aaryn should pay \$36 more than he feels responsible for paying.

¶7 Aaryn, as we said at the outset of this opinion, notes that our criminal law does not allow restitution for a crime that was not admitted, not charged and not read in. We agree that this is the law and do not need to cite the cases and statutes that Aaryn brings to our attention to support his view of the law.

¶8 But Aaryn's argument begs the question. The question is: What crime was Aaryn charged with having committed? The answer is theft under \$2500 from the apartment complex. *See* WIS. STAT. § 943.20(3)(a). The next question is: Did Aaryn admit to this charged crime? The answer is "yes." It is our view that he was charged with misdemeanor theft, he admitted to the misdemeanor theft and he is responsible for restitution as to all damage causally connected to the misdemeanor theft.

¶9 This is unlike the situation, for example, where a drunk driver slams into another car, is charged and convicted of operating while intoxicated and the owner of the other car seeks restitution based on the OWI conviction. In that instance, a court could not award restitution because it is not based on a crime considered at sentencing—which means, any crime of which the defendant was convicted or which was read in. *See* WIS. STAT. §§ 973.20(5)(a); 973.20(1g)(a). Only if the drunk driver had also been charged with anything having to do with damage to the other vehicle, and only if either a conviction or a read-in resulted from that charge, would the owner of the other car be entitled to restitution.

¶10 In contrast to our hypothetical, Aaryn *was* charged with theft under \$2500 and the third fire extinguisher was connected with that crime. The fact that the petition listed two rather than three extinguishers is of no consequence. Aaryn admitted to theft under \$2500, and his penal exposure was not affected at all by whether it was theft of two or three fire extinguishers. Only the amount of restitution could change and as to that, he was entitled to and did have a full and complete hearing as required by the law. He lost at his restitution hearing because the trial court obviously considered the manager to be more credible than he. Thus, he owes another \$36.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

