

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 26, 2013

Diane M. Fremgen
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. 2013AP682-CR

Cir. Ct. No. 2011CF2386

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

DERIS D. HULEY,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
ELLEN K. BERZ, Judge. *Affirmed.*

¶1 SHERMAN, J.¹ The State appeals an order of the circuit court denying its motion for reconsideration of the court's denial of restitution to the victim of a hit and run accident. I affirm.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f)(2011-12). All references to the Wisconsin Statutes are to the 2011-11 version unless otherwise noted.

BACKGROUND

¶2 On November 14, 2011, Deris D. Huley and Crystal Seefeldt were involved in a motor vehicle accident. Huley left the scene of the accident and was later charged with felony hit and run resulting in injury, contrary to WIS. STAT. § 346.67(1). Pursuant to a plea agreement, Huley pled no contest to an amended charge of misdemeanor hit and run of an attended vehicle, as a repeater. *See* WIS. STAT. § 346.74(5)(a). Huley was sentenced to thirty days in jail and two years' probation, and the State was given an opportunity to prepare and submit a restitution order to the court.

¶3 The State requested restitution in the amount of \$4,064.83, for personal injuries Seefeldt allegedly suffered in the accident.² Huley objected to restitution on the basis that the State failed to demonstrate that the injuries for which restitution was sought were factually caused by Huley's crime.

¶4 The circuit court denied restitution, reasoning that Seefeldt's injuries were not causally connected to Huley's crime, which was leaving the scene of the accident. The State moved the court for reconsideration, which the court denied. The State appeals.

DISCUSSION

¶5 The State challenges the circuit court's denial of restitution. The State argues that taking into account the entirety of Huley's course of conduct,

² The restitution order submitted to the court is not in the record before this court on appeal.

Huley's criminal conduct was a "substantial factor" of the victim's damages, and therefore, restitution should have been ordered.

¶6 Requests for restitution are addressed to the discretion of the circuit court. See *State v. Haase*, 2006 WI App 86, ¶5, 293 Wis. 2d 322, 716 N.W.2d 526. We will disturb discretionary decisions only when there has been an erroneous exercise of discretion. *Id.* A circuit court "erroneously exercises its discretion when its decision is based on an error of law." *Id.*

¶7 WISCONSIN STAT. § 973.20 authorizes a circuit court to order restitution. Subsection (1r) provides 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 ... unless the court finds substantial reason not to do so and states the reason on the record." Section 973.20(1r). "Crime considered at sentencing" is defined as "any crime for which the defendant was convicted and any read-in crime." Section 973.20(1g)(a). "[I]n order to allow victims to recover their losses as a result of a defendant's criminal conduct," our interpretation of the restitution statute is broad and liberal. *State v. Anderson*, 215 Wis. 2d 673, 682, 573 N.W.2d 872 (Ct. App. 1997). We have thus "read the statute and [] case law to say that restitution is the rule and not the exception and that restitution should be ordered whenever warranted." *State v. Madlock*, 230 Wis. 2d 324, 333, 602 N.W.2d 104.

¶8 We have explained that for purposes of restitution, a nexus must exist between the crime committed and the damage to be compensated through restitution. *Id.* at 333. We explained that nexus as follows—"[t]he victim need only show that 'the defendant's actions were the precipitating cause of the injury' and that it was 'the natural consequence of the actions.'" *Id.* (quoted source

omitted). Taking into account Huley's entire course of conduct, I cannot agree with the State's contention that the evidence sufficiently linked Huley's conduct to the victim's claimed damages.

¶9 In *Madlock*, the defendant pled no contest to operating a motor vehicle without the owner's consent and, based upon a presentence report requesting restitution for damages sustained to the victim's vehicle, the circuit court ordered restitution. *Id.* at 326-27. We reversed the restitution order on appeal because the "requisite evidentiary basis for restitution" was lacking. *Id.* at 336. We observed that "in most cases the facts in support of the criminal conviction, coupled with the statutory presumption of restitution, will allow for a restitution order." *Id.* at 334. However, the "skeletal" record as to the actual fact of damage and the record's failure to sufficiently show the necessary nexus between the defendant's criminal conduct and the claimed damages resulted in the "rare" situation in which that result did not automatically follow. *Id.* at 334, 336.

¶10 As in *Madlock*, the record in the present case is factually insufficient as to the victim's damages. The record is also insufficient to show the necessary nexus between Huley's criminal conduct—leaving the scene of an accident—and the claimed damage. In particular, the evidence is insufficient to show that Huley's actions caused the accident and that his actions were thus the precipitating cause of the victim's injury. Accordingly, I affirm the circuit court's denial of the State's request for restitution.

By the Court.—Order affirmed.

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

