

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 10, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-3427-FT

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

IN THE INTEREST OF TORREY Y., A PERSON UNDER
THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

TORREY Y.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Fond du Lac County:
DALE L. ENGLISH, Judge. *Affirmed.*

NETTESHEIM, J. Torrey Y. appeals from the restitution provisions of a supplemental dispositional order finding him delinquent. The juvenile court ordered restitution pursuant to § 938.34(5)(a), STATS., which permits the court to order restitution “if the juvenile is found to have committed a delinquent act which has resulted in damage to the property of another.” Torrey

contends that his conduct did not result in damage under the facts of this case. We disagree. We affirm the restitution order.

FACTS AND PROCEDURAL HISTORY

Because this case was resolved by Torrey's admissions to two of the three charges alleged in the petition for determination of status, we recite the relevant facts from that document. On January 28, 1998, Sergeant Burroughs of the Fond du Lac police department was on patrol in his squad car when he observed a 1987 Dodge van pass through an intersection against a red stoplight. Burroughs followed the van and activated the red emergency lights and the flashing headlights on his squad car. The van did not stop, but instead sped up to a speed of fifty miles per hour in a thirty mile per hour speed zone. Burroughs continued to follow the van and activated the siren on the squad car. Still the van did not stop. The van then entered a dead-end street which was barricaded. Beyond the barricade was a drainage ditch.

As the van approached the barricade and while still moving, Burroughs saw both the driver and a passenger exit the vehicle. The van then ran into a snowbank and struck a city sand box. By this time, several other officers were arriving at the scene. The driver of the vehicle was apprehended. Another officer encountered a person later identified as Torrey running towards him. The officer told Torrey to stop and to "get on the ground." Torrey did not obey and instead tried to get around the officer. After a physical struggle, the officer subdued Torrey and he was taken into custody. A later search of Torrey's person revealed a pipe barrel that smelled of marijuana. Later testing established that the substance was marijuana. Further investigation revealed that the van belonged to a third party who had not given the driver permission to operate the vehicle. The vehicle was damaged in the incident.

In a statement to the police, Torrey said that he and the driver were walking when the driver “veered off and returned with a mini van.” He and the driver then went for a “joyride” during which the driver went through a red light and the police began following them.

The petition charged three offenses against Torrey: (1) intentionally accompanying, as a passenger in a vehicle, a person who operates a vehicle without the owner’s consent, knowing that the owner does not consent to such operation pursuant to § 943.23(4m), STATS.; (2) obstructing an officer pursuant to § 946.41, STATS.; and (3) possession of marijuana pursuant to § 961.41(3g)(e), STATS. Thereafter, Torrey admitted to the “intentional passenger” charge and the possession of marijuana charge. The obstructing charge was dismissed.

At the plea hearing, the State asked the court to order restitution on a joint and several basis with the driver for the damage to the vehicle. Torrey’s counsel did not contest the amount of the restitution requested, but reserved the right to be heard as to whether Torrey could be held responsible for the restitution. As a result, the original dispositional order provided that “restitution is to be determined.”

At the later restitution hearing, Torrey argued that his conduct had not “resulted in damage to the property of another” pursuant to § 938.34(5)(a), STATS. The juvenile court rejected this argument. As a result, a supplemental dispositional order fixed restitution in the amount of \$2000.

DISCUSSION

Torrey argues that the driver of the vehicle, not he, engaged in the conduct which “resulted in damage to the property of another” pursuant to § 938.34(5)(a), STATS. He contends that the statute is clear and unambiguous. He reasons that the phrase “resulted in” requires a causal link between the delinquent act and the damage.

Torrey borrows from the adult criminal law and cites to *State v. Rodriguez*, 205 Wis.2d 620, 556 N.W.2d 140 (Ct. App. 1996), where the court of appeals said “a defendant is responsible for restitution when his or her criminal acts *cause* harm to the victim, even when the acts of others contributed to the victim’s harm as well.” *Id.* at 630, 556 N.W.2d at 144 (emphasis added). Torrey also borrows from the civil law which holds that a defendant’s conduct need only be a substantial factor in *causing* the injury. See *Pfeifer v. Standard Gateway Theater, Inc.*, 262 Wis. 229, 237, 55 N.W.2d 29, 33 (1952). Torrey contends that the legislature’s use of the phrase “resulted in” in § 938.34(5)(a), STATS., is a more rigid test than the concept of “cause” as used in the criminal and civil law.

We, however, like the juvenile court, find the court of appeals decision in *I.V. v. State*, 109 Wis.2d 407, 326 N.W.2d 127 (Ct. App. 1982), to be more pertinent to this case. There, the court construed § 48.34(5), STATS., the predecessor statute to the present § 938.34(5)(a), STATS. Like the present statute, § 48.34(5) permitted the juvenile court to order restitution if the delinquent act “resulted in damage to the property of another.” Although the court in *I.V.* was concerned with the meaning of “damage,” whereas here we are concerned with the meaning of “resulted in,” the court nonetheless made some significant statements about the restitution statute.

Having concluded that the statute was ambiguous as to whether the damages claimed were covered by the statute, the *I.V.* court examined the context, subject matter, scope, history and legislative objective of the statute. In the course of this discussion, the court noted the statute was remedial. *See I.V.*, 109 Wis.2d at 411, 326 N.W.2d at 129. As such, the statute was to be given a liberal interpretation. *See id.* The court also noted, “Restitution is most often characterized as rehabilitative: Properly used, restitution emphasizes accountability for the natural and reasonable consequences of one’s acts.... Restitution has been viewed as necessary where a comprehensive case study showed it to be a ‘therapeutic’ means of helping [a juvenile].” *Id.* at 412-13, 326 N.W.2d at 130 (quoted sources omitted). Finally, the court noted that restitution is redress to victims. “[R]estitution for juvenile offenders ... symbolizes increased concern for the ‘rights’ of victims.” *Id.* at 413, 326 N.W.2d at 130 (quoted source omitted).

Relying on these principles from *I.V.*, the juvenile court in this case concluded that the statute covered Torrey’s conduct. We agree. Torrey admitted that he entered the vehicle knowing that it was stolen. He also admitted that he and his cohort exited the vehicle while it was still moving and as they were being pursued by Burroughs. Drivers and passengers who are complicit in the operation of stolen vehicles can reasonably anticipate that they may be pursued by the police. If that occurs, the prospect of an attempted escape, with concomitant risk to life and property, is also present. In summary, Torrey’s conduct, in concert with his cohort, resulted in the damage to the vehicle. While the driver of the vehicle was clearly more directly responsible for the damage, the liberal interpretation which we are required to give to the restitution statute convinces us that Torrey’s conduct at least contributed to the damage to the vehicle.

We affirm the juvenile court's restitution order.

By the Court.—Order affirmed.

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

