

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 23, 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. 99-1451

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

BRANNON J. PRISK,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: SARAH B. O'BRIEN, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Deininger, JJ.

¶1 PER CURIAM. Brannon J. Prisk appeals from a judgment convicting him of burglary. He also appeals from an order denying postconviction relief. The trial court sentenced Prisk to prison and ordered him to pay restitution to the victim and its insurer. The issue is whether the insurer is entitled to restitution. We affirm.

¶2 Prisk broke into Urso Motors, stole money and damaged the premises. At a restitution hearing, an officer of the company testified and presented documentary evidence of losses from the burglary totaling \$11,823.94. She also produced evidence that Urso's insurer, General Casualty, compensated it for all but \$345.00 of the total loss. The trial court found the evidence and testimony credible and ordered Prisk to pay General Casualty \$11,478.00 and Urso \$345.00.

¶3 The trial court later denied postconviction relief from the restitution order, and Prisk appeals. He argues that because General Casualty did not appear at the restitution hearing and prove its loss, it was not entitled to restitution.

¶4 Section 973.20(1r), STATS., authorizes the trial court to order a convicted defendant to make restitution to any victim of a crime considered at sentencing. Section 973.20(14)(a) requires the victim to prove the amount of the loss. Section 973.20(5)(d) provides that the court may order the defendant to reimburse any insurer that has compensated a victim for a loss compensable under § 973.20 "[i]f justice so requires."

¶5 Prisk acknowledges that § 973.20(5)(d), STATS., does not expressly require that the insurer prove its losses. However, he contends that this court must read into § 973.20(5)(d) a proof requirement comparable to the victim's to protect defendants from excessive or fraudulent insurance claims.¹

¹ He states: "If the legislature put a burden in [§ 973.20(14)(a), STATS.] to protect the Defendant from a victim asking for the stars and the moon from the court in restitution, should the insurance company be given *carte blanche* preference by never having to request or prove their losses?"

¶6 Prisk's argument is beside the point. The issue here is not whether the insurer must prove its loss, because General Casualty conclusively did so through the evidence Urso presented. Instead, Prisk would have this court disregard that evidence and hold that only the insurer itself can offer proof of compensation paid to a victim. Nothing in § 973.20(5)(d), STATS., expressly or implicitly limits the means by which the insurer's loss is proved, if such proof is necessary.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

