

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

July 18, 2000

Cornelia G. Clark  
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 WIS. STAT. § 808.10 and RULE 809.62.

**No. 00-0616**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**IN THE INTEREST OF MATTHEW D.B.,  
A CHILD UNDER THE AGE OF 18:**

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MATTHEW D.B.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
KAREN E. CHRISTENSON, Judge. *Affirmed in part and reversed in part.*

¶1 WEDEMEYER, P.J.<sup>1</sup> Matthew D.B. appeals from an order requiring him to pay \$3,200 to the Whitefish Bay School District and the

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

Whitefish Bay Police Department as restitution after he was adjudged delinquent for the commission of a bomb scare, party to a crime, and obstructing an officer as party to a crime, contrary to WIS. STAT. §§ 947.015, 946.41(1) and 939.05 (1997-98).<sup>2</sup> Matthew argues that WIS. STAT. § 938.34(5)(a) does not provide the trial court with the authority to order him to pay restitution in this case because his actions did not result in any damage to property. He also contends that even if the financial resources expended by the school district fall into the definition of “damage to property,” the trial court still cannot order restitution to the police department because the police department was not a victim of his delinquent acts. Because § 938.34(5)(a), when read liberally as required by WIS. STAT. § 938.01(1), permits the restitution ordered paid to the school district, this court affirms that part of the order. However, because the police department was not a victim, the trial court erred when it ordered restitution be paid to the police department. Accordingly, this court reverses that part of the trial court’s order requiring Matthew to pay restitution to the police department.

## I. BACKGROUND

¶2 On May 2, 1999, Matthew called Whitefish Bay High School and left a message on the answering machine stating that a bomb would go off inside the school at 10:00 a.m. on May 3, 1999. The message was received at 7:45 a.m. on May 3, 1999, and the school immediately reported the bomb scare to the police department. The police department sent officers to the school, which was evacuated and searched. Classes were cancelled for the day. No bomb was located. The police kept officers at the school through May 7, 1999. In addition,

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<sup>2</sup> All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

the school brought in extra substitute teachers for part of the week to search backpacks and provide additional security.

¶3 Matthew was interviewed by the police on May 6 and admitted that he had called in the bomb scare. A juvenile court delinquency petition was filed on May 28, 1999, and Matthew admitted the allegations in the petition at his dispositional hearing on July 28, 1999. The court placed him on supervision and ordered him to perform 100 hours of community service and write a letter of apology to the school. In addition, the State asked the court to order restitution to the Whitefish Bay School District and the Whitefish Bay Police Department. Matthew objected to the restitution request on the grounds that the personnel costs sought for the school district did not constitute “damage to the property of another,” which is the language used by WIS. STAT. § 938.34(5). The court scheduled a restitution hearing for September 2, 1999.

¶4 At the hearing, the trial court was presented with evidence that the school district hired thirty-three substitute teachers on May 4, 1999, for the sole purpose of providing security. The teachers were paid \$70 each for a total of \$2,310. The school district also paid an additional \$630 to substitute teachers for the same purpose before Matthew admitted he was responsible for the bomb scare. The police department provided documentation of specific overtime costs that were related to the evacuation of the high school and the extra security provided to the high school in response to the bomb scare. The amount was in excess of \$10,000.

¶5 The trial court found that the extra money the school district expended was “financial resources,” which constitutes “property” and ordered that the \$2,940 be paid back to the school district as restitution. The trial court also

determined that the overtime costs directly associated with the bomb scare should be paid in restitution to the police department. The trial court found, however, that Matthew was only capable of paying a total of \$5,000 in restitution and, therefore, the police department would be paid \$2,060. An order was entered reflecting the trial court's decision.

¶6 Subsequently, Matthew's mother filed a motion seeking reconsideration of the trial court's decision relative to the total amount that Matthew was capable of paying. The trial court amended the restitution order, requiring the total restitution amount to be \$3,200. Matthew now appeals from the restitution order.

## II. DISCUSSION

¶7 This case presents two issues: (1) whether the statute permits the trial court to order restitution for repayment of substitute teachers' salaries expended as a result of the bomb scare; and (2) whether the statute permits the trial court to order restitution to the police department for specific overtime monies expended in responding to the bomb scare. Both issues involve an interpretation of a statute, which presents a question of law. *See State v. B.S.*, 133 Wis. 2d 136, 138, 394 N.W.2d 750 (Ct. App. 1986). This court's review, therefore, is done independently. We address each in turn.

### *A. School District.*

¶8 Matthew contends that the juvenile restitution statute does not authorize the restitution that the trial court ordered paid to the school district. He suggests that the financial resources expended by the school district to pay

substitute teachers called in for security checks cannot be construed to be “property damage.” This court disagrees.

¶9 WISCONSIN STAT. § 938.34(5), permits the court to order the delinquent juvenile to “repair the damage to property or to make reasonable restitution for the damage ... if the court ... considers it beneficial to the well-being and behavior of the juvenile.” We addressed the purpose behind the juvenile restitution statute in *I.V. v. State*, 109 Wis. 2d 407, 326 N.W.2d 127 (Ct. App. 1982):

Restitution is most often characterized as rehabilitative: “Properly used, restitution emphasizes accountability for the natural and reasonable consequences of one’s acts ....” Advisory Council of Judges of the National Probation and Parole Association, *Guides for Juvenile Court Judges* 81 (1957). *See also* Susmann, *Practitioner’s Guide to Changes in Juvenile Law and Procedure*, 14 *Crim. L. Bull.* 311, 329 (1978). “Restitution has been viewed as necessary where a comprehensive case study showed it to be a ‘therapeutic’ means of helping a boy.” Thimm, *The Juvenile Court and Restitution*, 6 *Crime & Delinq.* 279, 283 (1960).

A second frequently discussed object of restitution is redress to victims. “[R]estitution for juvenile offenders ... symbolizes increased concern for the ‘rights’ of victims ....” Rubin, *Retain the Juvenile Court?*, 25 *Crime & Delinq.* 281, 287 (1979). Other possible purposes of restitution include less severe sanction for the offender, reduction of demands on the juvenile court system, and reduction of the need for vengeance in a society. *See* Galaway, *Use of Restitution*, 23 *Crime & Delinq.* 57, 64-65 (1977).

*Id.* at 412-13. In addition, WIS. STAT. § 938.01(1) requires that the provisions of the juvenile code be applied “liberally” to accomplish its objectives. Consistent with the liberal application, we previously concluded that the language “damage to property” shall be construed to mean property that is totally lost and no longer available to the owner. *See I.V.*, 109 Wis. 2d at 410-11.

¶10 This case presents a similar construction question. Can the term “property” be construed to include financial resources expended by the school district. The trial court likened the damage to stolen money or a stolen checkbook. In a theft case, the thief should be required to repay to the victim the money that was stolen. Thus, property can include money. The trial court extended that example in applying the facts presented here. The school district was forced to expend financial resources, in the form of payment to substitute teachers, in order to ensure the safety of the students following the bomb scare. This was a financial resource that the school district would *not* have used if Matthew had not called in the bomb scare. It was directly linked to Matthew’s delinquent act. It follows then, that the school district was damaged by the amount it had to pay the substitute teachers to provide security. Under the liberal application requirement, this court agrees with the trial court’s decision. This case presents a unique set of circumstances. The effect of what Matthew believed to be “a simple prank to get an extra school day off” forced the school district to spend \$2,940 that it otherwise would not have spent.

¶11 The restitution award fulfills the objectives of the juvenile code, to “hold each juvenile offender directly accountable for his or her acts.” WIS. STAT. § 938.01(2)(b). The restitution order also provides redress to the school district, who acted responsibly in attempting to keep its students safe. Under the unique circumstances presented here, this court concludes that the financial resources expended by the school district may be liberally construed to constitute “property damage,” and, therefore, the juvenile restitution statute provided the trial court with the authority to order Matthew to pay \$2,940 to the school district.

*B. Police Department.*

¶12 The next issue is whether the juvenile restitution statute authorizes the restitution awarded to the police department for the overtime it had to pay officers who were responding to the bomb scare. Without conceding that the trial court's award to the police department was improper, the State admits that whether the statute authorizes the restitution awarded to the police is "a more difficult issue to decide." This court concludes that the juvenile restitution statute does not authorize such an award.

¶13 WISCONSIN STAT. § 938.34(5)(a) provides in pertinent part:

[I]f the juvenile is found to have committed a delinquent act which has resulted in damage to the property of another ... [the trial court may] order the juvenile to ... make reasonable restitution for the damage ... either in the form of cash payments or, if the victim agrees, the performance of services for the victim ....

The State seizes on the language "property of another" in making an argument that the restitution statute does not require that restitution may only be paid to a *victim*. In reading the statute as a whole, together with the stated purposes of restitution in general, this court rejects the State's contention. The statute clearly implies that restitution ordered shall be to the victim. The statute specifically proscribes the manner in which the juvenile makes restitution to the *victim*. To read the statute otherwise would lead to absurd results, which is disfavored in statutory construction. See *Jankowski v. Milwaukee Co.*, 104 Wis. 2d 431, 438, 312 N.W.2d 45 (1981).

¶14 Further, we have previously held that restitution may be ordered only for a victim of a crime, and that the public, as represented by a police department or other governmental agency, is not a “victim” for purpose of restitution in adult criminal cases. *See State v. Schmaling*, 198 Wis. 2d 756, 543 N.W.2d 555 (Ct. App. 1995). In *Schmaling*, we concluded that the Racine Fire Department could not receive restitution for costs incurred when it responded to an automobile accident scene. *See id.* at 761.

¶15 This concept carries over to the overtime costs incurred by the police department in responding to the bomb scare at Whitefish Bay High School. The police serve the public interest and protect the public from criminal activity. Their job is to respond to and investigate criminal activity. The police were not the actual victims of Matthew’s bomb scare. The statute, as currently written, permits restitution only to a victim of the delinquent act. Costs related to the investigation of the act by the police, or prosecution of the act by the State, have not been authorized by our legislature. Accordingly, the trial court erred when it awarded restitution to the police department for overtime costs related to the investigation of the bomb scare. This court reverses that part of the trial court’s order.

¶16 In sum, this court affirms that part of the trial court’s order requiring Matthew to pay the school district \$2,940, but this court reverses that part of the trial court’s order requiring Matthew to pay restitution to the police department.

*By the Court.*—Order affirmed in part and reversed in part.

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



