COURT OF APPEALS
DECISION
DATED AND FILED

May 19, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP1848-CR **Cir. Ct. No. 2013CF865**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHAZ L. BROWN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: MITCHELL J. METROPULOS, Judge. *Affirmed*.

¶1 STARK, J.[1] Chaz Brown appeals a judgment convicting him of one count of disorderly conduct. Brown argues the circuit court erred by ordering

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Brown to pay restitution because the victim was not required to present evidence that Brown's disorderly conduct caused his injuries. We disagree, and affirm.

BACKGROUND

¶2 After a midsummer night's attempt at self-help debt collection, Brown was charged with one count of substantial battery, one count of disorderly conduct, and one count of misdemeanor battery. Brown pleaded not guilty on all counts. According to testimony elicited at Brown's jury trial, two of Brown's acquaintances went to a residence around 10:30 p.m. demanding repayment of an alleged debt. Brown's friends left, only to return a short time later with Brown and his wife. There was testimony that Brown and his party created a disturbance by knocking on the front door, yelling, ringing the doorbell, and demanding money. One occupant testified that when she answered the door, Brown pulled at her, trying to get into the house. A fight subsequently broke out in the front yard between multiple members of the residence and the four members of Brown's party.

¶3 R.A. was the victim named in the amended Information on the substantial battery count; his son, T.A., was the named victim in the misdemeanor battery count. Brown testified he was knocked to the ground by three members of R.A.'s household. When he "got up, [R.A.] was standing there with his hands up, so, I did, I hit him. … In the face, in the mouth." With respect to T.A., Brown testified he heard T.A. shouting about retrieving a baseball bat, and when T.A. swung at him, they began "wrestling around on the ground." He testified he hit T.A.

¶4 R.A. testified regarding the aftermath of being punched. He stated he suffered a bloody lip, a swollen eye, and is now missing one tooth, with "two dead teeth next to [the missing tooth] that cannot bite food anymore …."

¶5 Brown argued he had acted in self-defense, and the jury ultimately found Brown not guilty of both battery charges, but guilty of disorderly conduct. At the sentencing hearing on Brown's disorderly conduct conviction, the State requested restitution for injuries suffered by R.A. The court granted the State's request, explaining:

> [W]hen I look at this series of facts here what we have is an individual, Mr. Brown, who for whatever reason decided to join the other subject in going to the victim's residence late at night to extort money out of an individual, and they instigated a very violent episode by doing so. The older victim, [R.A.], suffered significant damage, and whether it's a battery charge or disorderly conduct charge, that still is a fact. And Mr. Brown was present for it. I think there needs to be some accountability.

¶6 A restitution hearing was conducted at which R.A. presented evidence of his medical bills relating to the incident. Brown attempted to introduce affidavits supporting his self-defense argument, arguing the affidavits bore on whether Brown's acts of disorderly conduct caused R.A.'s injuries. The court ruled the affidavits were irrelevant, stating, "The jury has already made a finding that Mr. Brown is guilty of disorderly conduct, and they specifically denied his self-defense argument on that issue, so we're simply here on the issue of whether or not the restitution that's being sought is reasonable …." The court also observed it had "heard the testimony and makes a finding based on that testimony at trial that Mr. Brown's actions were a cause of the victim's injuries, so I don't need to hear further testimony on that." The court listed the bills that

would comprise the restitution order, ultimately ordering Brown to pay R.A. restitution in the amount of $6,6401.11, plus a surcharge.

¶7 Brown now appeals the restitution order.

DISCUSSION

¶8 We independently review whether a circuit court has authority to order restitution pursuant to WIS. STAT. § 973.20[2] under a particular set of facts. ***State v. Storlie***, 2002 WI App 163, ¶6, 256 Wis. 2d 500, 647 N.W.2d 926. WISCONSIN STAT. § 973.20(1r) creates a presumption in criminal cases that restitution will be ordered. The restitution statute should be interpreted broadly to allow victims of crime to recover their losses. ***State v. Johnson***, 2002 WI App 166, ¶16, 256 Wis. 2d 871, 649 N.W.2d 284.

¶9 WISCONSIN STAT. § 973.20(3)(a) provides that "[i]f a crime considered at sentencing resulted in bodily injury, the restitution order may require that the defendant … [p]ay an amount equal to the cost of necessary medical and related professional services …." WIS. STAT. § 973.20(3)(a). A "crime considered at sentencing" is defined broadly, and "encompasses 'all facts and reasonable inferences concerning the defendant's activity *related to* the 'crime' for which the defendant was convicted, not just those facts *necessary* to support the

[2] WISCONSIN STAT. § 973.20(1r) provides, in relevant part:

> When imposing sentence or ordering probation for any crime … for which the defendant was convicted, the court, in addition to any other penalty authorized by law, 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.

elements of the specific charge of which the defendant was convicted.'" ***State v. Canady***, 2000 WI App 87, ¶10, 234 Wis. 2d 261, 610 N.W.2d 147 (citation omitted). The sentencing court is to consider the defendant's "entire course of conduct." ***Id.***

¶10 The propriety of a restitution order depends on whether the claimant is a direct victim of a crime considered at sentencing—whether there is a "causal connection between the defendant's conduct and harm suffered by the claimant." ***State v. Hoseman***, 2011 WI App 88, ¶16, 334 Wis. 2d 415, 799 N.W.2d 479. We defer to the circuit court's discretion in determining whether a causal connection exists. ***Johnson***, 256 Wis. 2d 871, ¶16. A causal connection "for restitution purposes is established when 'the defendant's criminal action set into motion events that resulted in the damage or injury.'" ***State v. Longmire***, 2004 WI App 90, ¶13, 272 Wis. 2d 759, 681 N.W.2d 534 (quoted source omitted). In other words, "[t]he defendant's actions must be the 'precipitating cause of the injury' and the harm must have resulted from 'the natural consequence[s] of the actions.'" ***Canady***, 234 Wis. 2d 261, ¶9 (quoted source omitted).

¶11 The sole issue on appeal relates to the causal connection between Brown's disorderly conduct and R.A.'s injuries.[3] Brown argues the circuit court did not require the victim to prove Brown's disorderly conduct caused the victim's

[3] The court instructed the jury that it could determine Brown acted lawfully in self defense as to all three charges. The verdict can be construed as showing the jury found that Brown acted lawfully in self defense with respect to the substantial battery and the misdemeanor battery charges, but not the disorderly conduct charge. However, Brown does not argue that determination precludes a finding that the disorderly conduct was a substantial factor in causing R.A.'s injuries. "[W]e will not abandon our neutrality to develop arguments" for parties. *See* ***Industrial Risk Insurers v. American Eng'g Testing, Inc***., 2009 WI App 62, ¶25, 318 Wis. 2d 148, 769 N.W.2d 82. Accordingly, we decline to address this issue.

injuries. Brown asserts it is the victim's burden to prove cause, and the victim must show that the defendant's criminal activity was a substantial factor in causing damage. ***State v. Behnke***, 203 Wis. 2d 43, 59, 553 N.W.2d 265 (Ct. App. 1996), ***Canady***, 234 Wis. 2d 261, ¶9. Brown protests that the circuit court failed to "hold [R.A.] to this burden of proof … [or] require the victim to show that Chaz Brown's disorderly conduct caused his injuries. Rather, the court ordered restitution once [R.A.] had simply established the *amount* of restitution owed." Brown claims the court erred in finding the evidence produced at trial proved the causal connection, and he argues there was no testimony at trial that Brown's disorderly conduct caused R.A.'s injuries.

¶12 The State properly notes that in making this argument, Brown ignores the evidence produced at trial as well as the circuit court's comments at sentencing and the restitution hearing. The Honorable Mitchell J. Metropulos presided at all three proceedings and was therefore in a position to refer back to the testimony from trial at the restitution hearing. As previously described, the court did so, properly noting Brown's conduct during the entirety of the incident leading up to and causing injury to R.A. *See* ***id.***, ¶10 (court to consider entire course of conduct). Indeed, the evidence at trial showed Brown created a disturbance by going to R.A.'s residence late at night. Brown banged on the door, rang the doorbell, yelled, tried to pull an occupant from the residence, and punched R.A. in the face in self-defense, causing the damages for which restitution was ordered. Brown fails to respond to the State's arguments in this or any regard, and accordingly, concedes them. ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 108-09, 279 N.W.2d 493 (Ct. App. 1979) (Arguments not refuted are deemed conceded.).

¶13 Brown's disorderly conduct set in motion the events that resulted in injuries to R.A. But for Brown's actions in going to R.A.'s house and creating a disturbance, R.A. would not have been injured. Brown's disorderly conduct was "the precipitating cause" of R.A.'s injuries, and the harm R.A. sustained resulted from "the natural consequence[s] of [Brown's] actions." *See* ***Canady***, 234 Wis. 2d 261, ¶9. The circuit court properly found a causal connection between that conduct and R.A.'s damages. Accordingly, the court properly exercised its discretion in ordering restitution.

By the Court.—Judgment affirmed.

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