

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 11, 2001

Cornelia G. Clark
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.

No. 01-0752-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

CRAIG CHENAL,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Polk County:
JAMES R. ERICKSON, Judge. *Affirmed.*

¶1 HOOVER, P.J.¹ Craig Chenal was involved in a break-in of an abandoned house owned by the estate of Morris White. The State appeals an order that Chenal owed no restitution as a result of his conviction for misdemeanor theft,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

party to a crime, contrary to WIS. STAT. §§ 943.20(1)(a) and 939.05(2)(b). The State sought restitution on behalf of Roxanne White, Morris' niece. It claims that White is entitled to restitution for (1) items that were damaged or missing from the house, (2) wages lost due to her attendance in court, (3) property clean-up expenses and (4) replacement of a door to the house. We disagree and affirm the trial court's ruling that no restitution is due to White. The State failed to prove that Chenal was responsible for any of the damage to the property.

¶2 The State also argues that the trial court considered inadmissible testimony concerning the home's condition. Because the State fails to develop its argument, this court declines to address whether the court considered inadmissible testimony.

BACKGROUND

¶3 On the evening of March 26, 2000, Chenal accompanied Nick Stadler to an abandoned house in Frederic, Wisconsin. They emerged from the house fifteen to twenty minutes later to find the police waiting for them. Stadler was carrying a table when apprehended, and other items from the house were found in his car. Chenal, however, carried nothing from the house, and no property was found in the car he was driving. Chenal was charged with felony theft, party to a crime.

¶4 Chenal pled guilty to misdemeanor theft, party to a crime. The trial court accepted Chenal's guilty plea and sentenced him to two years' probation, with 120 days jail as a condition of probation. The court ordered Chenal to pay restitution in an amount to be determined.

¶5 The abandoned house belonged to Morris. He lived elsewhere, and the house stood vacant for ten years before he died in July 1999. White considered herself the representative of her uncle's estate, even though no legal determination regarding control of the estate had been made at the time of the restitution hearing.

¶6 White filed a restitution claim. She asserted that she was entitled to restitution for lost property from the estate, lost wages for her attendance in court, clean-up costs and a new door for the house. White worked in the house to clean it up in the fall of 1999. However, she did not visit the property from November 1999 until the night Chenal was arrested at the end of March 2000.

¶7 At a restitution hearing, the trial court heard conflicting evidence. White testified that she could not specifically identify Chenal as causing any of the damage. Other testimony presented by Chenal and on his behalf exonerated him of any damage to the property or theft. The court found that Chenal was only in the house for fifteen or twenty minutes, he was not in possession of any property from the home and that the evidence showed the items missing and damage done to the house preceded his visit. The court further concluded that the State failed to give it a legal basis for holding Chenal liable for the damage to the property and found that Chenal owed no restitution.

DISCUSSION

¶8 There are two problems with the State's appeal. The first is that the trial court made a finding of fact, based upon the evidence, that Chenal did not commit any damage to the premises, nor did he steal any property. The court believed Arnold and his witnesses. This was a credibility determination that is left to the trier of fact. Findings of fact will not be upset on appeal unless they are

clearly erroneous. WIS. STAT. § 805.17(2). The findings are not clearly erroneous because they are based upon evidence Chenal presented. The trial court is the arbiter of the witnesses' credibility, and its findings will not be overturned on appeal unless they are patently incredible, or in conflict with the uniform course of nature or with fully established or conceded facts. *See Chapman v. State*, 69 Wis. 2d 581, 583, 230 N.W.2d 824 (1975).

¶9 The State failed to present its argument under the appropriate standard of review, or to even recite it. While an appellate challenge to factual findings and credibility determinations may on rare occasion be appropriate, in the vast majority of cases, this one included, such determinations are unassailable. In fact, such a challenge can be frivolous. *See Lessor v. Wangelin*, 221 Wis. 2d 659, 669, 586 N.W.2d 1 (Ct. App. 1998).

¶10 The second problem is that, although the trial court assumed that White was a "victim" in the case and denied her restitution claim on different grounds, we conclude that she is not a victim. The property belonged to her deceased uncle. There is no evidence that she had any ownership interest in it at the time of the crime. The State concedes in its brief that even at the time of the restitution hearing, White had no legal responsibility for or to her uncle's estate. We therefore need not decide whether White's claim for lost wages because of court appearances was for "special" or "general" damages, because the State provides no facts or legal authority to support its characterization of White as a victim. The State's pronouncement that White was "an actual victim" is inconsistent with the facts and common sense. White, neither at the time of the damage or the restitution hearing, had any legal claim to or control over the damaged property.

¶11 In response to the State’s argument that the court considered inadmissible testimony, we note that its argument is based upon its unadorned characterization of the evidence as inadmissible. It offers no legal analysis supported by citation or authority to support its characterization. Once again, the State does not acknowledge the applicable standard of review, nor offer an argument susceptible of appellate evaluation by which it attempts to explain why the trial court erroneously exercised its discretion by admitting the evidence. This court declines to consider arguments that are unexplained, undeveloped or unsupported by citation to authority. *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).²

By the Court.—Order affirmed.

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

² In light of the State’s utter failure to identify any trial court error, this court finds it dismaying that the State’s brief castigates the manner in which the trial court discharged its duties. For example, characterizations such as “grievous mistakes,” “swishy aplomb,” “the outcome of his illogic,” and “[the judge’s] decision shocks the conscience” and reference to the trial court’s pontification are aspersions unsupported by the record. Demonstrating disrespect for the trial court does nothing to advance an appellant’s cause.

