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**DISTRICT II**

September 25, 2024

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Tyrone Anthony Austin  
1734 North 10th Street  
Sheboygan, WI 53081

You are hereby notified that the Court has entered the following opinion and order:

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2023AP1090-CR

Cities and Villages Mutual Insurance v. Tyrone Anthony Austin  
(L.C. #2022CF266)

Before Neubauer, Grogan and Lazar, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Cities and Villages Mutual Insurance Company (the insurer), a worker's compensation insurer, appeals from a circuit court order denying its restitution request for payments made on behalf of a law enforcement officer who was injured on the job while responding to a disturbance involving defendant Tyrone Anthony Austin (Austin). Based upon our review of the briefs and

Record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).<sup>1</sup> We summarily affirm.

The relevant background facts are not disputed. Law enforcement officers were dispatched to a duplex for a report of a disturbance involving neighbors. While police were interviewing witnesses about the disturbance, Austin came out on the balcony of his upper-level duplex and was yelling loudly. Sergeant Alexander Jaeger instructed Austin to quiet down or he would be arrested. Austin then stated that he had a gun and threatened to shoot Jaeger if Jaeger approached Austin's unit. Based on Austin's threat to shoot Jaeger, additional officers were called to the scene to set up a perimeter, including Officer Jeremy Kegler. While Kegler was preparing to set up a perimeter, he became aware that there was a minor child in the lower-level duplex. When climbing over a railing to gain access to the lower level and secure the child safely, Kegler injured his elbow.

Austin ultimately pleaded no contest to threatening a law enforcement officer based on his threat to shoot Jaeger. *See* WIS. STAT. § 940.203(2). Three other offenses, including disorderly conduct and two counts of bail jumping, were dismissed and read in. The insurer filed a request for restitution seeking reimbursement from Austin for medical payments related to Kegler's elbow injury while on the job. The circuit court held a hearing, after which it denied the insurer's restitution request. The court held that Kegler was not a direct victim of the crime for which Austin was convicted, and, therefore, the insurer was not entitled to restitution. The insurer appeals.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

The only issue on appeal is the propriety of the circuit court’s order denying the insurer’s restitution request. The insurer argues that it is entitled to restitution, as the worker’s compensation insurer that made medical payments for treating the elbow injury Kegler sustained when responding to the disturbance call. More specifically, it asserts that the court erred in concluding that Kegler was not a direct victim of the crimes considered by the court in sentencing Austin.

This court reviews restitution orders under the erroneous exercise of discretion standard of review. *State v. Haase*, 2006 WI App 86, ¶5, 293 Wis. 2d 322, 716 N.W.2d 526. “A circuit court erroneously exercises its discretion when its decision is based on an error of law.” *Id.* (citation omitted). Whether the court is authorized to order restitution pursuant to WIS. STAT. § 973.20 under a certain set of facts presents a question of law that we review de novo. *Haase*, 293 Wis. 2d 322, ¶5. Our interpretation of § 973.20 and the related WIS. STAT. § 950.02 is guided by the general rules of statutory construction and presents a question of law subject to de novo review. *See State v. Johnson*, 2007 WI 107, ¶27, 304 Wis. 2d 318, 735 N.W.2d 505.

WISCONSIN STAT. § 973.20(1r) requires a court to order full or partial restitution “to any victim of a crime considered at sentencing” unless it “finds substantial reason not to do so and states the reason on the record.” As relevant to this discussion, “[v]ictim” is defined in the Wisconsin statutes as “[a] person against whom a crime has been committed.” WIS. STAT. § 950.02(4)(a)1. The phrase “[c]rime considered at sentencing” is defined as “any crime for which the defendant was convicted and any read-in crime.” Sec. 973.20(1g)(a). Additionally, the circuit court may order reimbursement to an insurer “[i]f justice so requires.” *See* § 973.20(5)(d).

A governmental entity may be a crime victim in some circumstances. *State v. Ortiz*, 2001 WI App 215, ¶20, 247 Wis. 2d 836, 634 N.W.2d 860. “[T]he government is entitled to restitution for losses incurred when it is a victim as a direct result of criminal conduct, but not for collateral expenses incurred in the normal course of law enforcement.” *State v. Storlie*, 2002 WI App 163, ¶10, 256 Wis. 2d 500, 647 N.W.2d 926. So, for example, the government may not recover the cost of stop sticks used in a high-speed chase or overtime expenses resulting from a police standoff. See *id.*, ¶15 (stop sticks); *State v. Ortiz*, 247 Wis. 2d 836, ¶¶21–23 (overtime). However, the government may recover damages caused by vandalism to government property. *State v. Howard–Hastings*, 218 Wis. 2d 152, 154, 579 N.W.2d 290 (Ct. App. 1998). Where an officer is the direct victim of a crime considered at sentencing, he or she is entitled to restitution for injuries substantially caused by the defendant’s actions. Cf. *State v. Lee*, 2008 WI App 185, ¶¶11, 14, 314 Wis. 2d 764, 762 N.W.2d 431 (an officer is not entitled to restitution for injuries suffered during a chase of a suspect where he was not a direct victim of the armed robbery crime considered at sentencing). Thus, in this case, if we conclude that Kegler was a direct victim of Austin’s crimes, restitution is warranted; but if Kegler’s elbow injury was a collateral consequence of normal law enforcement activities, then restitution is not appropriate.

The cases set forth above present various scenarios considering whether and when law enforcement officers may be crime victims entitled to restitution. We conclude that we need not reach many of the issues raised in the cases exploring restitution to a law enforcement officer, because the resolution of this case is dictated by the definition of the phrase “[c]rime considered at sentencing” provided in WIS. STAT. § 973.20(1g)(a) and the definition of “[v]ictim” in WIS. STAT. § 950.02(4)(a)1. As the insurer here notes, the key to this case is determining whether

Kegler was, in fact, a victim of any of the crimes considered by the circuit court when sentencing Austin.

The sole crime Austin pleaded to was threatening to shoot Jaeger. Based on the plain language of the governing statutes, Kegler was not a victim of this crime because Jaeger, not Kegler, was the “person against whom [that] crime [was] committed.” *See* WIS. STAT. § 950.02(4)(a)1.; *see also Ortiz*, 247 Wis. 2d 836, ¶¶4-6, 21 (concluding that where a defendant was convicted of numerous crimes related to his refusal to leave his residence and his threats to harm police officers with his pitbull and a weapon, the police officers who were threatened at the scene were direct victims).

Turning next to the read-in offenses, disorderly conduct and bail jumping, the insurer argues that Kegler was a direct victim of Austin’s disorderly conduct. We disagree, as we explain below.

“[W]hile the crime of disorderly conduct does not require a victim, when the defendant’s actions are directed against a person, that person is a victim of the crime of disorderly conduct.” *State v. Vinje*, 201 Wis. 2d 98, 100, 548 N.W.2d 118 (Ct. App. 1996). Based on the Record before us, we cannot conclude that Kegler was a victim of Austin’s conduct. As with our conclusion that the threats Austin made were not directed against Kegler, there is also no evidence that Austin’s disorderly conduct was directed against Kegler. To the contrary, the criminal complaint and the police reports on which they were based, which formed the factual basis for Austin’s plea and the restitution request, clearly establish that VICTIM 1 and Sgt. Jaeger were the only ones who could be considered victims of the crime of Austin’s disorderly conduct. The complaint states that when officers arrived, they could hear Austin shouting

profanities at a female who is identified as VICTIM 1. It further states that Austin had threatened to beat up VICTIM 1 and her mother, and had shouted profanities at them before police arrived. Finally, the complaint details that the only conduct Austin directed against law enforcement was his threat aimed at Jaeger, with Austin reportedly saying “If you going to bring yo Officer Jaeger ass to my house you gonna get shot. I got a gun. Come kill me.”

Kegler’s name is not mentioned anywhere in the criminal complaint. Kegler was not a direct victim of any threats by Austin. Kegler was not a direct victim of any disorderly conduct by Austin. The injury to Kegler’s elbow was sustained during the course of investigating the disturbance and trying to keep a child safe in the process. These activities are normal activities police officers perform every day on the job, and Kegler’s injuries, though unfortunate, were collateral consequences “incurred in the normal course of law enforcement.” *See Storlie*, 256 Wis. 2d 500, ¶10. As such, Kegler was not a direct victim of any of Austin’s unlawful conduct. Thus, he is not entitled to restitution, and the insurer is not entitled to reimbursement.

For the foregoing reasons, we conclude that the circuit court did not erroneously exercise its discretion in denying the insurer’s request for restitution based on the injuries sustained by Kegler in connection with the crimes considered at Austin’s sentencing. Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*