

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 09, 2006**

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.

**Appeal No. 2005AP2426-CR**

**Cir. Ct. No. 2004CT516**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JAMES E. GOODMAN,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: JOHN SIEFERT, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

¶1 KESSLER, J.<sup>1</sup> James E. Goodman appeals from a judgment of conviction for operating after revocation. He seeks reversal of a restitution order

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

for \$1,387.94 for Cassandra McClinton, a woman whose car was involved in an accident with Goodman's at the time he was operating after revocation. Goodman argues: (1) McClinton was not a "victim" of Goodman's crime of operating after revocation; and (2) if she was an indirect victim, the State failed to prove a causal connection between Goodman's illegal conduct and the cause of the accident. We conclude the State has failed to prove a causal connection between Goodman's illegal conduct and the cause of the accident. Therefore, we reverse that portion of the judgment ordering restitution for McClinton and remand with directions to issue an amended judgment that does not include the restitution order. We affirm the judgment in all other respects.

### **BACKGROUND**

¶2 On November 23, 2003, Goodman was involved in a car accident with McClinton. No details of the accident are in the record, but Goodman was charged with operating after revocation for driving on that day.

¶3 Goodman pled guilty to operating after revocation, sixth offense, and was sentenced to five days in the House of Correction, which he had already served at the time of the sentencing.<sup>2</sup> The State requested restitution for McClinton and a restitution hearing was ordered.

¶4 The parties provided the trial court with written arguments with respect to whether restitution should be permitted in this case. After reviewing the briefs, the trial court concluded:

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<sup>2</sup> The Hon. Russell Stamper, reserve judge, presided over the plea hearing, while the Hon. John P. Buckley, reserve judge, imposed sentence. The Hon. John Siefert presided over the restitution hearing and imposed the restitution at issue in this case.

There is no question that there's a causal link between the two, his criminal act in driving after revocation, which was being on the road, and the damages suffered by the victim. Therefore restitution is appropriate if the State proves it.

Defense counsel objected, arguing that McClinton did not meet the definition of "victim." He explained:

The statute is very clear that a crime victim is a person against whom a crime is committed. Although driving a car after revocation is a crime, it is not a crime to have an accident.... Mr. Goodman did not commit a crime by the mere fact that he had an accident on the day that he drove.

The trial court rejected this argument, concluding that McClinton was a victim of Goodman's criminal act.

¶5 The State called McClinton to the stand. She testified that her vehicle was involved in an accident with Goodman's vehicle, and that it cost \$1387.94 to repair her vehicle. She did not offer any testimony whatsoever about how the accident occurred or what caused the accident. The trial court ordered restitution for repairs to McClinton's vehicle, but denied her additional claim for gasoline. The trial court ordered Goodman to pay the restitution within sixty days. This appeal followed.

## DISCUSSION

¶6 At issue is the trial court's determination that Goodman must pay restitution to McClinton. "The determination of the *amount* of restitution to be ordered (and thus whether a victim's claim should be offset or reduced for any reason) is reviewed under the erroneous exercise of discretion standard." *State v. Longmire*, 2004 WI App 90, ¶16, 272 Wis. 2d 759, 681 N.W.2d 534. On review, "we examine the record to determine whether the [trial] court logically interpreted

the facts, applied the proper legal standard and used a demonstrated, rational process to reach a conclusion that a reasonable judge could reach.” *Id.* However, we interpret statutes without deference to the trial court. *State v. Campbell*, 2002 WI App 20, ¶4, 250 Wis. 2d 238, 642 N.W.2d 230.

¶7 Restitution in criminal cases is governed by WIS. STAT. § 973.20. A trial court can require the defendant to “[p]ay all special damages, but not general damages, substantiated by evidence in the record, which could be recovered in a civil action against the defendant for his or her conduct in the commission of a crime considered at sentencing.” Sec. 973.20(5)(a). However, restitution is limited in that:

before a trial court may order restitution there must be a showing that the defendant’s criminal activity was a substantial factor in causing pecuniary injury to the victim. In making its determination, however, a trial court may take a defendant’s entire course of conduct into consideration including all facts and reasonable inferences concerning the defendant’s activity related to the crime for which he was convicted, not just those facts necessary to support the elements of the specific charge. Put another way, we have said that a causal link for restitution purposes is established when the defendant’s criminal act set into motion events that resulted in the damage or injury.

*Longmire*, 272 Wis. 2d 759, ¶13 (citations, bracketing, emphasis and internal quotation marks omitted). The burden is on the State or victim “to establish the amount of the pecuniary injury a victim has sustained on account of a crime....” *Id.*, ¶16 (footnote omitted).

¶8 Goodman argues first that McClinton is not a “victim” under WIS. STAT. § 973.20 because his crime was operating after revocation. The parties debate whether McClinton was a “direct victim” or an “indirect victim” and whether she can legally receive restitution. We need not decide whether one who

is involved in an accident with a person who is operating after revocation can, under any fact situation, recover restitution, because even if we assume it is possible, the State in this case has failed to prove a causal connection between Goodman's illegal conduct and the accident. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issue need be addressed); *State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (cases should be decided on the "narrowest possible ground").

¶9 The State or McClinton was required to show that Goodman's criminal activity—operating after revocation—was a "substantial factor" in causing McClinton's damages. See *Longmire*, 272 Wis. 2d 759, ¶13. Although a restitution hearing is an admittedly informal proceeding where the normal rules of evidence, practice, procedure and pleading are waived, *State v. Madlock*, 230 Wis. 2d 324, 335, 602 N.W.2d 104 (Ct. App. 1999), the State or the victim is still required to produce some affirmative evidence that the criminal act was a cause of the damages. Here, neither the State nor McClinton offered any evidence concerning the accident itself. The record does not tell us whether McClinton rear-ended Goodman while he was stopped at a light, or vice versa, or whether they collided in the center of an intersection.

¶10 Nonetheless, the State argues that Goodman's crime "was a substantial factor in causing the accident in this case" essentially because Goodman was there. If we were to accept that proposition, we would be holding that being in an accident while one is operating after revocation makes one strictly liable to pay restitution to the other driver, regardless of which driver actually caused the accident. The State cites no authority for such a broad proposition, and we are not prepared to accept such sweeping liability. Indeed, our supreme court rejected that proposition in a personal injury case, holding that a driver was not

automatically negligent just because he was operating a vehicle without a license at the time of the accident. *See Westfall v. Kottke*, 110 Wis. 2d 86, 105, 328 N.W.2d 481 (1983) (“The fact plaintiff ... was unlicensed did not constitute a cause of the accident. It was erroneous to instruct the jury that either the age of the operator or that he was unlicensed were factors to be considered in determining whether he was negligent.”).

¶11 There is insufficient evidence to sustain a finding that Goodman’s operating after revocation was a “substantial factor” in causing McClinton’s damages. *See Longmire*, 272 Wis. 2d 759, ¶13. We conclude that the trial court erroneously exercised its discretion because it applied the wrong legal standard when it concluded that Goodman’s mere presence without a valid driver’s license was sufficient “cause” to award restitution. Therefore, we reverse that portion of the judgment ordering restitution for McClinton and remand with directions to issue an amended judgment that does not include the restitution order. We affirm the judgment in all other respects.

*By the Court.*—Judgment affirmed in part, reversed in part, and cause remanded with directions.

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

