**COURT OF APPEALS DECISION DATED AND FILED**

**January 19, 2011**

**A. John Voelker**
**Acting 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. 2010AP2352**

**Cir. Ct. No. 2010JV94**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS**
**DISTRICT II**

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**IN THE INTEREST OF MICHAEL S. L., A PERSON UNDER THE AGE OF 17:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**V.**

**MICHAEL S. L.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Sheboygan County: JAMES J. BOLGERT, Judge. *Affirmed.*

¶1 BROWN, C.J.[1] Michael S.L. appeals from a restitution order requiring him to perform 200 hours of community service after he was adjudicated delinquent for disorderly conduct. The charge stemmed from a series of events culminating in a bomb threat called in by one of Michael's friends in Michael's presence. Michael contends that the facts to which he admitted did not include involvement in the bomb scare, so restitution cannot be ordered for damage stemming from the bomb threat. We disagree. It is clear that his inappropriate and disorderly behavior, in combination with the behavior of his friends, led to the bomb scare. The trial court was within its discretion based on the facts of the petition to order restitution to the school.

¶2 The parties agree that the facts of this case are undisputed as stated in the petition. On March 11, 2010, Michael was given in-school suspension in the same room as two other juveniles. During their time in suspension, several "prank" phone calls were made, including two calls to school staff claiming that a bomb was in the school. Michael admitted to police that he made a call to his social worker and that he knew who had made the bomb-related calls. He did not admit to actively participating in the bomb-related calls.

¶3 Michael was initially charged with causing a bomb scare, contrary to WIS. STAT. § 947.015, as party to a crime. He eventually pled no contest to a reduced charge of disorderly conduct, contrary to WIS. STAT. § 947.01. As restitution, the trial court ordered him to do 200 hours of community service for the school district. The restitution order was based on the school's estimate of

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

economic loss due to evacuating students and staff for the bomb scare. Michael appeals the restitution order.

¶4 A trial court has discretion in determining the amount of a restitution order. ***State v. Rash***, 2003 WI App 32, ¶5, 260 Wis. 2d 369, 659 N.W.2d 189. However, whether the order complies with the restitution statute is reviewed de novo. ***Id.*** (citing ***State v. Canady***, 2000 WI App 87, ¶6, 234 Wis. 2d 261, 610 N.W.2d 147). The restitution statute applicable to Michael allows courts to order a juvenile to "make reasonable restitution for the damage or injury, either in the form of cash payments or … the performance of services for the victim" if the juvenile "is found to have committed a delinquent act that resulted in damage to the property of another." WIS. STAT. § 938.34(5)(a). As we explained above, Michael complains that the restitution order is improper because it is not based on the delinquent act for which he was adjudicated.[2]

¶5 Michael was adjudicated delinquent based on the disorderly conduct statute, which reads:

> Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor.

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[2] Michael raised an additional argument at the trial level that ***State v. B.S.***, 133 Wis. 2d 136, 394 N.W.2d 750 (Ct. App. 1986), precludes restitution for lost wages under the juvenile restitution statute. The State distinguished the case, arguing that it only applies to lost wages of victims who miss work to appear at a restitution hearing. Michael explicitly declined to raise that issue on appeal, stating that he is "aware of but is not asserting on appeal his earlier argument that lost wages by the school district in responding to a bomb scare was not 'damage to property' and therefore could no[t] be an item of restitution." We therefore do not address the applicability of ***B.S.*** to this case.

WIS. STAT. § 947.01. We have previously concluded that courts may look to the acts underlying a disorderly conduct charge to determine whether there is a "victim" within the statutory definition. ***State v. Vinje***, 201 Wis. 2d 98, 104-05, 548 N.W.2d 118 (Ct. App. 1996). We have also concluded that a trial court had the authority to order payment to a "victim" as a condition of probation even when the crime of conviction did not require a victim. ***State v. Connelly***, 143 Wis. 2d 500, 504-05, 421 N.W.2d 859 (Ct. App. 1988). In other words, we already know that courts may consider acts underlying an offense when deciding who is a "victim" deserving of compensation. Using that logic, the school district was unquestionably a victim of Michael's disorderly conduct—he and his friends made prank calls to school staff during school hours.

¶6 We still must decide whether the relationship between Michael's adjudication and the school's losses from the bomb scare is such that restitution for those losses was proper. We believe that it is. A trial court is able to consider a defendant's "entire course of conduct" when ordering restitution, but the defendant's activity must be a "substantial factor"[3] in causing the damage for which restitution is ordered. ***Canady***, 234 Wis. 2d 261, ¶¶9-10. 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." ***State v. Longmire***, 2004 WI App 90, ¶13, 272 Wis. 2d 759, 681 N.W.2d 584 (citation omitted). The State

[3] Though Michael does not make this argument, we acknowledge that the juvenile restitution statute is worded differently than its adult equivalent. *Compare* WIS. STAT. § 938.34(5)(a), *with* WIS. STAT. § 973.20. However, Michael concedes in his reply brief that the substantial factor analysis used in adult restitution cases "is the correct legal test." Because of that concession, we assume without deciding that the test is appropriate in juvenile cases.

argues that the restitution order is proper because the undisputed facts are sufficient to show that Michael's conduct was a substantial factor in the injuries from the bomb threat.

¶7 When deciding whether there is a sufficient nexus between the criminal behavior and the restitution order, the trial court has discretion. *See* ***Canady***, 234 Wis. 2d 261, ¶12. Michael conceded in his brief that "[t]he facts regarding the allegations in the delinquency petition and Michael's admission at the plea hearing were not in dispute." In other words, Michael agrees that he engaged in some sort of conduct that tended to cause or provoke a disturbance. *See* WIS. STAT. § 947.01. Specifically, he agrees that he discussed making some prank calls to school staff around the time of the bomb threats. He agrees that he made at least one call using the same phone that was used minutes later to make the bomb threats. He admits to being present when his friend called in the bomb threats, and he admits he did not come forward before the police called him. As the State points out, Michael's undisputed actions were part of a chain of events that led to the bomb scare. *See* ***Longmire***, 272 Wis. 2d 759, ¶13. The trial court was within its discretion to order restitution to the school based on the disruption caused by a series of prank calls to the staff.

*By the Court.*—Order affirmed.

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