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**DISTRICT II/IV**

December 19, 2018

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

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2018AP310-CR

State of Wisconsin v. Craig D. Walker (L.C. # 2016CF105)

Before Sherman, Kloppenburg and Fitzpatrick, 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).**

Craig Walker appeals an amended judgment of conviction for operating a motor vehicle without the owner's consent, as a repeater. Walker argues that the circuit court erred by requiring him to pay restitution to the vehicle's insurer. 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 (2015-16).<sup>1</sup> We reject Walker’s arguments and affirm.

According to the criminal complaint, Walker broke into an automobile dealership and drove away in a 2004 GMC Yukon Denali. The vehicle was recovered almost a month later. Walker eventually pled guilty to operating a motor vehicle without the owner’s consent, as a repeater. Walker was sentenced to two years of probation and ordered to pay restitution to Pekin Insurance Company in the amount of \$5,408.53 as a condition of his probation. Walker subsequently requested an evidentiary hearing on the amount of restitution. After a hearing, the circuit court entered an amended judgment of conviction which reduced the amount of restitution to \$4,665.53. Walker appeals.

Walker argues that the circuit court erred in awarding restitution for the vehicle because, in his view, Pekin did not suffer a loss that is compensable under Wisconsin’s restitution statute, WIS. STAT. § 973.20. We disagree. The restitution statute provides that “[i]f justice so requires,” a court may order a defendant to “reimburse any insurer, surety or other person who has compensated a victim for a loss otherwise compensable under this section.” Sec. 973.20(5)(d). As the insurance company for the automobile dealer, Pekin paid the dealer \$4,258.53 for the loss of the vehicle, which reflected the vehicle’s value of \$4,758.53, minus the dealer’s \$500

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

deductible.<sup>2</sup> Pekin subsequently sold the vehicle at auction and recovered \$743 after costs. Accordingly, the court determined that Pekin's compensable loss for the vehicle was \$4,015.53.

Walker does not argue that the circuit court erred in calculating the amount of the restitution award. Instead, Walker argues that the court should have ordered Pekin to return the vehicle to the dealer rather than ordering Walker to pay restitution. Specifically, WIS. STAT. § 973.20(2)(a) authorizes the court to order a defendant to return property to its owner. However, under § 973.20(2)(b), the court may order the defendant to pay the value of the property if return is "impossible, impractical or inadequate." Walker contends that the record fails to demonstrate that return of the vehicle was impossible, impractical, or inadequate. Specifically, the record does not indicate that there was any damage to the vehicle, so Walker argues that the court could have simply ordered that the vehicle be returned to the dealer.

We addressed a similar argument in *State v. Gibson*, 2012 WI App 103, 344 Wis. 2d 220, 822 N.W.2d 500. Like the present case, *Gibson* involves a vehicle that was stolen and later recovered. *Id.*, ¶2. The vehicle's insurer paid the claim before the vehicle was recovered and then sold the vehicle at auction before the defendant's sentencing. *Id.*, ¶¶2-3. The defendant argued that, because the insurer could have returned the vehicle to the victim, the insurer did not have a compensable loss under WIS. STAT. § 973.20. *Id.*, ¶7. We disagreed, explaining that return of the vehicle was "impossible, impractical, or inadequate" because the insurer had already sold the vehicle by the time sentencing took place. *Id.*, ¶13. In addition, the fact that the

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<sup>2</sup> Pekin intends to reimburse the dealer for the \$500 deductible after Walker pays restitution. Pekin also paid the dealer \$650 for the damage Walker caused to the front door of the dealership. Walker does not challenge this aspect of the restitution order.

victim had already been compensated for the loss made return “impractical.” *Id.* We further explained that § 973.20 gives the circuit court discretion “to fashion restitution to fit the crime and make the victim whole.” *Id.* We therefore declined to impose the “after-the-fact return requirement” argued by the defendant. *Id.*

Walker asks us to distinguish *Gibson* on the ground that the victim in *Gibson* received payment from the insurer before the vehicle was recovered. In contrast, Walker contends that his victim did not receive payment from Pekin until after the vehicle was recovered. Walker’s argument conveniently ignores the fact that this was a reissued payment, and that testimony at the restitution hearing established that Pekin paid the claim before the vehicle was recovered. Pekin reissued the check several weeks later, after the vehicle had been recovered. Walker did not file a reply brief to explain why the timing of the dealer’s receipt of payment should affect whether the insurer is entitled to restitution, nor do we see any basis for distinguishing *Gibson* on these facts. Accordingly, we affirm the amended judgment of conviction requiring Walker to pay Pekin restitution in the amount of \$4,665.53.

Upon the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*