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**DISTRICT I**

May 17, 2022

To:

Hon. David L. Borowski  
Circuit Court Judge  
Electronic Notice

John D. Flynn  
Electronic Notice

George Christenson  
Clerk of Circuit Court  
Milwaukee County  
Electronic Notice

Anne Christenson Murphy  
Electronic Notice

Sara Heinemann Roemaat  
Electronic Notice

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

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2020AP1140-CR

State of Wisconsin v. Perry Oliver Cooley (L.C. # 2018CF4028)

Before Brash, C.J., Donald, P.J., and White, J.

**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).**

Perry Oliver Cooley appeals a judgment of conviction for robbery with use of force, burglary, and aggravated battery of a person sixty-two years of age or older. Cooley also appeals the order denying his postconviction motion. Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2019-20).<sup>1</sup> We summarily affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

After removing his monitoring bracelet, Cooley committed a robbery and burglary of a men's clothing store, during which he punched, choked, and threatened to kill the store's elderly owner, who is the victim in this matter. The victim suffered bruising to her face, left eye, and both ears, in addition to an abrasion to her nasal bridge. Cooley pled guilty to robbery, burglary, and aggravated battery, and the circuit court sentenced him to consecutive sentences totaling seventeen years of initial confinement and nine years of extended supervision.

At the restitution hearing, Cooley stipulated to \$328.88 for crime victim compensation and a \$50 medical bill. The victim submitted a request for lost business revenue of \$2,552.65 supported by an accounting service's itemization of the store's average daily sales and estimated financial loss, which Cooley contested. The itemization indicated that the victim's store was closed for five days during her recovery.

The State explained why the victim sought lost business revenue:

The reason ... the victim[] is asking for lost wages is this incident occurred at her business that she owns. She's a sole proprietor of a business downtown here on Wisconsin Avenue and the robbery that occurred, occurred while she was working in her store alone. The business was closed for a period of time through her recovery. She sustained a number of injuries due to Mr. Cooley's conduct.

So that is what the accounting service information that was provided to the court goes through[—]her average, daily sales and the estimated financial loss that she had in regards to lost wages, so on [the victim]'s behalf, we'd be making that request.

The victim did not testify nor did any other witnesses. The court granted the victim's requested restitution.<sup>2</sup>

In his postconviction motion, Cooley challenged the restitution award for lost business revenue. The circuit court denied the motion and this appeal follows.

The sole issue on appeal is whether the circuit court properly exercised its discretion when it ordered Cooley to pay the victim's lost business revenue. The purpose of restitution "is to return victims of a crime to the position they were in before the defendant injured them." *See State v. Johnson*, 2005 WI App 201, ¶14, 287 Wis. 2d 381, 704 N.W.2d 625. Accordingly, if restitution is disputed, the victim must meet a relatively low burden to be compensated: he or she must show that the defendant's criminal activity was a substantial factor causing pecuniary injury and must prove the amount of loss by a preponderance of the evidence. WIS. STAT. § 973.20(14)(a); *Johnson*, 287 Wis. 2d 381, ¶13. Proof by a preponderance of the evidence means that the victim must show that it is "more likely than not" that the victim incurred the amount of restitution requested. *See State v. Rodriguez*, 2007 WI App 252, ¶18, 306 Wis. 2d 129, 743 N.W.2d 460.

The restitution hearing is not treated as a formal trial: "strict adherence to the rules of evidence and burden of proof" is not required. *Johnson*, 287 Wis. 2d 381, ¶14. We review the restitution award for an erroneous exercise of discretion. *Id.*, ¶10. Thus, we will uphold the award where the circuit court "logically interpreted the facts, applied the proper legal standard

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<sup>2</sup> The Honorable Pedro Colon presided over Cooley's plea and sentencing. The Honorable David Borowski presided over the restitution hearing and entered the order denying Cooley's postconviction motion.

and used a demonstrated, rational process to reach a conclusion that a reasonable judge could reach.” *Id.* In cases where the circuit court inadequately sets forth its reasoning, or fails to fully explain its ruling, we “independently review the record to determine whether it provides a basis for the [circuit] court’s exercise of discretion.” *State v. Pharr*, 115 Wis. 2d 334, 343, 340 N.W.2d 498 (1983).

Cooley challenges only the circuit court’s conclusion that the victim met her burden of demonstrating her lost business revenue. He contends that the circuit court erred by accepting a vague financial calculation as fact. While acknowledging that there is no requirement that the victim testify at the restitution hearing, Cooley nevertheless contends “that in this case, the victim needed to testify to prove her loss by a preponderance of the evidence because the information that the court reviewed was vague.” We disagree.

During the restitution hearing, as additional support for the victim’s restitution request for lost business revenue, the State referenced the remarks made on the victim’s behalf at sentencing. In those sentencing remarks, the victim’s attorney discussed the effect that the crime had on the victim, detailing that Cooley beat the victim and choked her until she passed out. During sentencing, the victim’s attorney additionally relayed that she made the statement on her client’s behalf because the victim was too “terrified” to speak herself. The circuit court also heard Cooley stipulate to \$328.88 for crime victim compensation and a \$50 medical bill.

The record reflects that the circuit court and the parties were aware of the requisite burden of proof and when making its determination as to restitution, the circuit court explained:

The burden has been met. Looking at the appropriate burden, there’s an accounting of sales, average sales, days the store is normally open, days that this particular location was not open,

average daily sales all from an accounting service and from someone named Arthur Lee who is a CPA at Alliance Tax & Accounting Services.

....

... I'm still ordering the restitution. This is a very serious offense. You had a person who owns her own business victimized, injured, kept off of work for at least a week. It appears to be five days.

We conclude that there is sufficient support in the record for the circuit court's award. The circuit court did not erroneously exercise its discretion in concluding that restitution should be awarded by the victim's lost business revenues.

Therefore,

IT IS ORDERED that the judgment and order are 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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*Sheila T. Reiff*  
*Clerk of Court of Appeals*