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DISTRICT III

January 24, 2023

To:

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Electronic Notice

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Clerk of Circuit Court
Florence County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2021AP593-CR State of Wisconsin v. Ashley Rose DeGroot
(L. C. No. 2019CF21)

Before Stark, P.J., Hruz and Gill, 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).

Ashley DeGroot appeals from a judgment convicting her of concealing stolen property. She argues that the circuit court erroneously exercised its discretion by ordering her to pay restitution. 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 (2019-20).[1] We reject DeGroot's argument that the court erred by ordering her to pay restitution, and we summarily affirm.

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

The State charged DeGroot with one count of concealing stolen property in an amount greater than $5,000 but not exceeding $10,000 and one count of obstructing an officer. According to the criminal complaint, in September 2019, the Brown County Sheriff's Office advised the Florence County Sheriff's Office that DeGroot and Pierce Folkerts were traveling in a stolen Chevrolet Trailblazer and might be on their way to Florence County, where DeGroot had friends and relatives. The Brown County Sheriff's Office also informed dispatch that Folkerts had been involved in four other vehicle thefts and three pursuits in Brown County during the prior week and that a Brown County squad car was totaled during one of those pursuits.

A relative of DeGroot subsequently called 911 to report that DeGroot had come to the relative's Florence County residence to ask for a jug of water. Florence County deputies patrolled the area around the residence but were unable to locate DeGroot, Folkerts, or the stolen vehicle. The next day, the same relative again called 911 and reported that DeGroot and Folkerts were parked on the west end of her property. Two deputies responded to that location and found the stolen vehicle, with DeGroot and Folkerts inside. The deputies parked their squad cars about four feet from the vehicle in an attempt to prevent it from moving. They approached the vehicle with their weapons drawn. DeGroot was sleeping in the vehicle's back seat. One of the deputies hit the vehicle's window, announced "Sheriff's Office," and ordered DeGroot to show her hands. DeGroot sat up but did not show her hands. The deputy attempted to open one of the vehicle's doors, but it was locked.

The deputy then saw Folkerts move from the back seat of the vehicle into the front seat. The deputy directed Folkerts to stop and to show his hands, but Folkerts did not comply. Folkerts put the vehicle into gear and "continued to back up and pull forward" until he was able to drive around the squad cars. Folkerts then drove away, and the deputies pursued him. The

vehicle that Folkerts was driving eventually left the road and crashed into some trees. Folkerts then fled the vehicle on foot. Deputies found DeGroot in the vehicle's front passenger seat with injuries to her face and neck.

DeGroot agreed to plead no contest to an amended charge of concealing stolen property in an amount greater than $2,500 but not exceeding $5,000. In exchange for her plea, the obstructing charge was dismissed and read in. The parties jointly recommended a time-served sentence of fifty-two days in jail. The circuit court departed from the joint recommendation, withheld sentence, and placed DeGroot on probation for two years.

During DeGroot's plea and sentencing hearing, the State requested that the circuit court order DeGroot to pay $1,573.57 in restitution to the owner of the stolen vehicle, jointly and severally with Folkerts, for damage that the vehicle sustained during the pursuit. DeGroot opposed the State's request for restitution, arguing that she "had nothing to do with this vehicle crashing," "had nothing to do with the high speed chase," and "had nothing to do with the vehicle being operated without consent of the victim." The court ordered DeGroot to pay restitution in the amount requested by the State, jointly and severally with Folkerts. The court reasoned that it was appropriate for DeGroot to pay restitution because she was "clearly" aware that the vehicle was stolen and she was therefore "culpable of that."

Restitution is governed by WIS. STAT. § 973.20. We construe the restitution statute "broadly and liberally in order to allow victims to recover their losses as a result of a defendant's criminal conduct." ***State v. Anderson***, 215 Wis. 2d 673, 682, 573 N.W.2d 872 (Ct. App. 1997). As relevant here, the statute provides that when imposing sentence or ordering probation, a court "shall order the defendant to make full or partial restitution under this section to any victim of a

crime considered at sentencing." Sec. 973.20(1r). A "[c]rime considered at sentencing" includes "any crime for which the defendant was convicted and any read-in crime." Sec. 973.20(1g)(a).

Before a court may order restitution, a "causal nexus" must be established between a "crime considered at sentencing" and the victim's alleged damage. ***State v. Canady***, 2000 WI App 87, ¶9, 234 Wis. 2d 261, 610 N.W.2d 147. To prove causation, a victim must show that the defendant's criminal activity was a substantial factor in causing the claimed damage. ***Id.*** "The defendant's actions must be the 'precipitating cause of the injury' and the harm must have resulted from 'the natural consequence[s] of the actions.'" ***Id.*** (citation omitted). Stated differently, "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 534 (citation omitted), *abrogated on other grounds by* ***State v. Harbor***, 2011 WI 28, ¶48, 333 Wis. 2d 53, 797 N.W.2d 828. When assessing whether the requisite causal nexus exists, a court must "take[] a defendant's entire course of conduct into consideration." ***State v. Rodriguez***, 205 Wis. 2d 620, 627, 556 N.W.2d 140 (Ct. App. 1996). Thus, a court must consider all facts and reasonable inferences concerning the defendant's criminal activity, not just those facts necessary to support the elements of the crime for which the defendant was convicted. ***State v. Madlock***, 230 Wis. 2d 324, 333, 602 N.W.2d 104 (Ct. App. 1999).

A circuit court exercises its discretion when determining whether a causal nexus exists between a crime considered at sentencing and the victim's alleged damage. ***State v. Johnson***, 2005 WI App 201, ¶10, 287 Wis. 2d 381, 704 N.W.2d 625. When reviewing a circuit court's exercise of discretion, we examine the record to determine whether the court logically interpreted the facts, applied the proper legal standard, and used a rational process to reach a reasonable

conclusion. ***Id.*** "Although the proper exercise of discretion contemplates that the circuit court explain its reasoning, when the court does not do so, we may search the record to determine if it supports the court's discretionary decision." ***Randall v. Randall***, 2000 WI App 98, ¶7, 235 Wis. 2d 1, 612 N.W.2d 737.

In this case, our review of the record shows that the circuit court did not erroneously exercise its discretion by ordering DeGroot to pay restitution to the owner of the stolen vehicle. DeGroot pled no contest to concealing stolen property, and she conceded that the record contained an adequate factual basis for her plea. A person commits the crime of concealing stolen property when he or she intentionally conceals property that he or she knows is stolen. WIS JI—CRIMINAL 1481 (2012). To "conceal" means "to hide the property or to do something else which prevents or makes more difficult the discovery of the property." ***Id.***

Here, the complaint alleged that DeGroot and Folkerts were located sleeping in the stolen vehicle on property located in Florence County and owned by DeGroot's relative. These facts give rise to a reasonable inference that DeGroot knew the vehicle was stolen because, if the vehicle were not stolen, there would have been no need to bring the vehicle to private property in a remote area and sleep in the vehicle. These facts also support a reasonable inference that DeGroot intentionally concealed the stolen vehicle on her relative's property. Furthermore, DeGroot could have advised her relative of the situation involving the vehicle when she asked the relative for a jug of water, but she did not do so. This fact further suggests that DeGroot was intentionally concealing the stolen vehicle.

In addition, when sheriff's deputies located the stolen vehicle and woke DeGroot, she did not comply with their command to show her hands. Moreover, DeGroot did not unlock the

vehicle's doors—which would have allowed the deputies to enter the vehicle and stop Folkerts from driving away—or attempt to exit the vehicle. These facts are relevant to the read-in obstructing charge, which was a "[c]rime considered at sentencing" for purposes of the restitution statute. *See* WIS. STAT. § 973.20(1g)(a).

Thus, the facts show that DeGroot intentionally concealed the vehicle, which she knew to be stolen, and then obstructed law enforcement's efforts to recover the vehicle. Considering DeGroot's entire course of conduct, *see* ***Rodriguez***, 205 Wis. 2d at 627, the circuit court could reasonably determine that DeGroot's criminal conduct was a substantial factor in causing the damage to the stolen vehicle, *see* ***Canady***, 234 Wis. 2d 261, ¶9. DeGroot's actions in concealing the stolen vehicle and obstructing law enforcement's efforts to recover it gave rise to the circumstances that resulted in Folkerts fleeing law enforcement in the vehicle, which in turn caused the vehicle to be damaged. DeGroot's criminal conduct therefore "set into motion" the events that resulted in the damage. *See* ***Longmire***, 272 Wis. 2d 759, ¶13 (citation omitted).

In arguing to the contrary, DeGroot asserts that in order to prove causation for purposes of the restitution statute, a victim must prove that the defendant's criminal conduct was a "but for" cause of the victim's damage—in other words, that the damage would not have occurred "but for" the defendant's criminal conduct. *See* ***Canady***, 234 Wis. 2d 261, ¶12 (concluding that the defendant's actions "were a substantial factor in causing the resultant damage because, 'but for' his burglary and resisting arrest, the property damage would not have occurred"). Assuming without deciding that "but for" causation is required, the above facts permit a reasonable conclusion that DeGroot's criminal conduct was a "but for" cause of the damage to the stolen vehicle. The circuit court could reasonably conclude that but for DeGroot's actions of concealing the vehicle on her relative's property and obstructing law enforcement's efforts to

recover it, the vehicle would not have been involved in a chase with the Florence County deputies and, therefore, would not have been damaged.

DeGroot emphasizes that she was not charged with or convicted of either stealing the vehicle or fleeing. She asserts that it was Folkerts' decision alone "to lead the police on a high-speed chase" and that his decision was "the precipitating cause of the damage." She then contends that the law "requires a victim to prove that he or she suffered a loss attributed to that particular defendant's criminal conduct, not a co-defendant's criminal conduct." Be that as it may, we have already concluded that the record permits a reasonable conclusion that DeGroot's criminal conduct *was* a substantial factor in causing the damage to the vehicle. As explained above, DeGroot acted to conceal the vehicle's whereabouts and obstructed law enforcement's efforts to recover the vehicle. That criminal conduct was a substantial factor in causing the chase with Florence County deputies, during which the vehicle was damaged.[2]

DeGroot also suggests that she should not be required to pay restitution because the circuit court found that she was a "victim" of Folkerts' fleeing. The court acknowledged that DeGroot "may be a victim of" Folkerts' fleeing due to the injuries that she sustained when the stolen vehicle crashed. As the State correctly notes, however, it is not unusual for a person to be both a victim and a perpetrator of criminal conduct. *See, e.g.*, ***State v. Oimen***, 184 Wis. 2d 423, 434-35, 516 N.W.2d 399 (1994) (holding that a defendant may be charged with felony murder

[2] To the extent DeGroot argues, based on Folkerts' previous conduct in Brown County, that a chase would have necessarily ensued even without her involvement, that argument is entirely speculative. The circuit court could reasonably determine that DeGroot's conduct "set into motion" the chase with Florence County deputies, which caused the damage that the vehicle sustained. *See* ***State v. Longmire***, 2004 WI App 90, ¶13, 272 Wis. 2d 759, 681 N.W.2d 534 (citation omitted), *abrogated on other grounds by* ***State v. Harbor***, 2011 WI 28, ¶48, 333 Wis. 2d 53, 797 N.W.2d 828.

when the defendant's co-felon is killed by the intended victim of the underlying felony). We agree with the State that DeGroot's status as a victim is irrelevant to the question of whether her criminal conduct was a substantial factor in causing the damage to the stolen vehicle. The fact that DeGroot may, in some sense, have been a victim of Folkerts' criminal conduct did not preclude the court from ordering DeGroot to pay restitution for damage caused by her own criminal conduct.

Upon the foregoing,

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

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

Sheila T. Reiff
Clerk of Court of Appeals