COURT OF APPEALS
DECISION
DATED AND FILED

April 2, 2013

Diane M. Fremgen
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. 2012AP1670-CR **Cir. Ct. No. 2011CF4017**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DEVANTE J. LUMPKINS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed*.

Before Curley, P.J., Fine and Kessler, JJ.

¶1 CURLEY, P.J. Devante J. Lumpkins appeals the judgment convicting him of armed robbery with the use of force, contrary to WIS. STAT.

§ 943.32(2) (2011-12).[1] Lumpkins argues that the trial court erred in awarding restitution to a claimant whose van was stolen and used by Lumpkins and his co-defendants to rob people. For the reasons that follow, we affirm.

BACKGROUND

¶2 Lumpkins and two co-defendants were charged with two counts of armed robbery with the use of force as parties to a crime. According to the criminal complaint, Lumpkins, a self-described "robber in training," admitted to driving around with a duo known as "The Jack Boys"[2] "looking for victims to rob." During the first robbery, which occurred on or about August 12, 2011, Lumpkins and The Jack Boys robbed a man at gunpoint. The complaint states that a van pulled up to the victim as he was walking down the street, a gun was pointed out the passenger-side window, and the driver said, "don't move or I'll kill [you] … what do you have in your pockets?" After the victim responded that he didn't have anything, the driver of the van struck him in the face with the gun, then patted his pockets down and took his wallet and cell phone. While this was happening, the passenger of the van was behind him and continued to point a gun at him. During the second robbery, which occurred on or about August 14, 2011, Lumpkins and The Jack Boys pulled up to a man standing at a bus stop, the driver and front passenger got out of the van, and demanded—again at gun point—that

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

[2] We note that in street slang, "jack" means "[t]o steal, or take from an unsuspecting person or store." *See The Urban Dictionary*, http://www.urbandictionary.com/define.php?term=jack (last visited March 7, 2013).

the victim "give it up." The victim gave the robbers his iPod touch, a speaker tube, and a baseball hat. According to Lumpkins, in both robberies The Jack Boys threatened the victims and took their belongings while he remained in the van.

¶3 The van that Lumpkins and The Jack Boys used to commit the robberies, a 2007 Hyundai Entourage, belonged to none of them. It had been reported stolen a couple of weeks before the robberies, and by the time police recovered it, it was trashed.[3] The damages to the stolen van included, among other things, bald tires, burns on the seat covers, a destroyed vanity mirror, and "destroyed and damaged CD and DVD players."

¶4 Lumpkins pled guilty to one count of armed robbery, the second count was dismissed and read-in for purposes of sentencing and restitution, and Lumpkins was sentenced. As pertinent to this appeal, his sentence included approximately $1700 in restitution to the owner of the stolen van—an amount to which the parties had stipulated.[4] The trial court, over Lumpkins' objection, concluded that, by participating in the robberies using a stolen van, Lumpkins engaged in a course of conduct that made the van owner a victim for restitution purposes. This appeal follows.

ANALYSIS

¶5 On appeal, Lumpkins argues that the trial court erroneously ordered him to pay restitution to the van owner. "Restitution is governed by WIS. STAT. § 973.20." ***State v. Hoseman***, 2011 WI App 88, ¶14, 334 Wis. 2d 415, 799

[3] Police found fingerprints from Lumpkins and The Jack Boys on the stolen van.

[4] Restitution was joint and several with Lumpkins' co-defendants.

N.W.2d 479. Section 973.20(1r) provides that the trial court "shall order the defendant to make full or partial restitution … to any victim of a crime considered at sentencing." The phrase "a crime considered at sentencing" is defined as "any crime for which the defendant was convicted and any read-in crime." Section 973.20(1g)(a). "[T]he restitution statute does not define the term 'victim,'" *see* ***Hoseman***, 334 Wis. 2d 415, ¶15; however, WIS. STAT. § 950.02(4)(a)1., a related statute, provides that "victim" means "[a] person against whom a crime has been committed," *see also* ***Hoseman***, 334 Wis. 2d 415, ¶15.

¶6 Whether the trial court had the authority to order restitution given the facts before it is a question of law we review *de novo*. ***State v. Kayon***, 2002 WI App 178, ¶5, 256 Wis. 2d 577, 649 N.W.2d 334. On the other hand, "[w]hen there is no dispute whether the sentencing court had authority to order restitution in the first instance, we review the restitution order's terms for an erroneous exercise of discretion." ***Id.*** Because Lumpkins does not challenge the terms of the restitution order, but instead challenges whether the trial court had the authority to order restitution to the van owner, we review its decision *de novo*. *See* ***id.***

¶7 In determining whether the trial court had the authority to order restitution given the facts before it, we apply a two-part test. *See* ***Hoseman***, 334 Wis. 2d 415, ¶16. Under the first part of the test, the restitution claimant must be a "direct victim" of the crime. ***Id.*** Under the second part, there must be a causal connection or nexus between the defendant's conduct and the harm suffered by the victim. *See* ***id.*** In proving causation, the defendant's actions must be "'the precipitating cause of the injury'" and the harm must have resulted from "'the natural consequences'" of the defendant's actions. ***State v. Madlock***, 230 Wis. 2d 324, 333, 602 N.W.2d 104 (Ct. App. 1999) (citation omitted).

¶8 In applying the two-part test, we keep in mind that the primary purpose of restitution is to compensate the victim, not to punish the defendant. *See* ***id.*** at 332. We therefore 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.'" ***Id.*** (citation omitted). We further note that restitution "is the rule and not the exception," *see* ***id.*** at 333, and that it is the rare occasion that the facts and statutory presumption of restitution do not require that restitution should be ordered, *see* ***id.*** at 334.

¶9 Lumpkins argues that the trial court erred in ordering restitution, first, because the van owner was not a "direct victim" of the armed robberies for which he was charged. *See* ***Hoseman***, 334 Wis. 2d 415, ¶16. He argues that the van owner was not a "direct victim" because the owner was neither a victim of the robbery for which he was convicted, nor the victim of the read-in robbery charge. In support, he cites ***State v. Lee***, 2008 WI App 185, ¶¶1, 12-14, 314 Wis. 2d 764, 762 N.W.2d 431, where we reversed an order awarding restitution to a police officer for injuries suffered while apprehending a criminal. He also cites ***State v. Torpen***, 2001 WI App 273, ¶¶2, 5, 19, 248 Wis. 2d 951, 637 N.W.2d 481, where we reversed part of a restitution order that "set[] forth as a condition of probation the payment of outstanding restitution obligations from unrelated cases." *See* ***id.***, ¶11.

¶10 We disagree. The case before us is different from both ***Lee*** and ***Torpen***. First, it is different from ***Lee*** because the victim in the case before us was the owner of an instrumentality of the crime, not a police officer enforcing the law. *See* ***id.***, 314 Wis. 2d 764, ¶2. As we stated in ***Hoseman***, ***Lee*** "stand[s] for the proposition that governmental entities are not entitled to restitution for collateral expenses incurred in the normal course of law enforcement." *See* ***Hoseman***, 334

Wis. 2d 415, ¶23. The damages suffered by the van owner, in contrast, were not collateral to the enforcement of the law. Nor were they collateral to the robberies themselves, because the van owner suffered loss of use and other damages to the vehicle because Lumpkins and The Jack Boys were using it to rob people. Second, Lumpkins' case is different from ***Torpen*** because the use of the van was inextricably related to the robberies, and did not involve a completely separate incident having no connection whatsoever to the events alleged in the criminal complaint. *See* ***id.***, 248 Wis. 2d 951, ¶¶1-5 (trial court improperly ordered restitution for previous forgery and "worthless check" convictions while sentencing defendant for an unrelated robbery conviction).

¶11 We think this case is analogous to ***Hoseman***, in which we determined that homeowners whose house was damaged by the defendant's marijuana growing operation were "direct victims" for restitution purposes. *See* ***id.***, 334 Wis. 2d 415, ¶23. In ***Hoseman***, the defendants rented an old house from a husband and wife to use as a "weekend retreat"; however, unbeknownst to the couple, the defendant and his co-conspirators installed a hydroponic growing system to grow nearly $500,000 worth of marijuana. ***Id.***, ¶¶4-5. The defendant's operation caused in excess of $100,000 of damage to the house, including humidity damage, stains from acidic chemicals, and damage from THC resin. *See* ***id.***, ¶7. The defendant was charged with conspiracy to manufacture marijuana. *See* ***id.***, ¶2. At sentencing the defendant objected to the court's authority to hear the homeowner's claim for restitution, arguing that the homeowners were not "victims" for restitution purposes. *See* ***id.***, ¶8. The trial court, however, awarded restitution, and we affirmed the award on appeal. ***Id.***, ¶¶10, 28. As to whether the homeowners were "direct victims" for restitution purposes, we explained:

> What distinguishes this case from those relied upon by [the defendant] is the Burbeys, as owners of the residence, were the direct targets of the conspiracy to manufacture marijuana; it was their residence that was altered and made uninhabitable to further the goal of the conspiracy. If the alterations to the Burbeys' residence had not been made, [the defendant] and his co-conspirators could not have manufactured marijuana. The alterations are not collateral to the manufacture of marijuana, they are integral. As the Burbeys' attorney so eloquently argued, the house "was not rented to operate a marijuana greenhouse. It was operated as a residential rental. It was a home. They used my clients' house, water, electricity, heat, all of the equipment, the fixtures, everything in my clients' house for that enterprise. That makes my client[s][ ] victim[s]."

Id., ¶23 (brackets in ***Hoseman***).

¶12 We think that the difference between using a house to procure an illegal substance and using a car to rob people is insignificant, and that ***Hoseman*** is directly on point. During the robberies considered at sentencing, Lumpkins and The Jack Boys used the van to find victims, take them by surprise, rob them at gunpoint, and make a quick getaway. While Lumpkins attempts to distinguish ***Hoseman*** by pointing out that he could have robbed these individuals without the van, the fact of the matter is that the van was integral to the commission of the crimes. Nor are we persuaded that the fact that the van in this case was stolen two weeks prior to the robberies, and was used for other purposes—such as obtaining fast food—should affect our analysis. Lumpkins and The Jack Boys used the van to rob people at gunpoint, and we therefore conclude that the van owner was in fact a "direct victim" for restitution purposes. *See* ***id.***, ¶16.

¶13 We also disagree with Lumpkins' second argument on appeal, which is that there was no causal connection between the van owner and the crime for which he was convicted. *See* ***id.*** As we explained above, there absolutely was a connection between the use of the van and the crimes committed; Lumpkins and

The Jack Boys used the van to rob people. Moreover, while Lumpkins contends that there is no direct evidence linking him to the damage the van incurred, that is not the basis of our inquiry. Rather, as noted above, we inquire whether the defendant's actions were the "'precipitating cause of the injury,'" and whether the harm resulted from "'the natural consequences'" of the defendant's actions. *See* ***Madlock***, 230 Wis. 2d at 333 (citation omitted). In this case, Lumpkins' actions were [a] precipitating cause of the damages to the van because, had the van not been stolen and used to commit robberies, it would have been in the care of its owner, and not damaged. Additionally, we conclude that the damage is a "natural consequence" of the van's being stolen. While it certainly does not automatically follow that property damage is a consequence of an item's being stolen, we need not determine that it is the *only* conceivable consequence; we instead determine whether it is a "natural" consequence. We conclude that the property damage to the van was in fact a natural consequence of its being stolen. Therefore, construing the restitution statute "'broadly and liberally in order to allow victims to recover their losses as a result of a defendant's criminal conduct,'" *see* ***id.*** at 332 (citation omitted), we determine that there was a causal connection between Lumpkins' use of the van and the damages suffered by the victim.

¶14 In sum, we conclude that because the van owner was a "direct victim" for restitution purposes under ***Hoseman***, and because there was a causal connection between the robberies and the stolen van, the trial court did have the authority to award restitution to compensate the van owner.

By the Court.—Judgment and order affirmed.

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