

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

---

STATE OF WASHINGTON,  
Plaintiff/Respondent,

and

NATHAN ELDRED,  
Defendant/Appellant

---

APPEAL FROM THE SUPERIOR COURT

OF LINCOLN COUNTY

HONORABLE JOHN F. STROHMAIER

---

RESPONDENT ANSWER TO PETITION FOR REVIEW

---

Jeffrey S. Barkdull  
Prosecuting Attorney  
Lincoln County  
P.O. Box 874  
Davenport, WA 99122  
(509) 725-4040

## TABLE OF CONTENTS

**Page**

I.	TABLE OF AUTHORITIES .....	2
II.	ISSUES PRESENTED FOR REVIEW.....	3
III.	ARGUMENT .....	3
IV.	CONCLUSION.....	8

**TABLE OF AUTHORITIES**

<u><b>Cases</b></u>	<u><b>Page</b></u>
<u>State v. Eldred</u> , No. 33418-0-III, 9, 2016 WL 6301606 (Wash. Ct. App. Oct. 27, 2016). .....	4
<u>State v. Griffith</u> , 164 Wash.2d 960, 195 P.3d 506 (2008). .....	5
<u>State v. Rogers</u> , 30 Wn.App 653, 638 P.2d 89 (1981).....	4
<u><b>Statutes and Codes</b></u>	<u><b>Page</b></u>
RCW 9.94A.753.....	4-5

**I**  
**ISSUES PRESENTED FOR REVIEW**

A. Whether inferences of an uncharged general scheme to dispose of property may be used to establish the causal connection between Mr. Abbott's total loss and Eldred's possession of some of the stolen property for purposes of imposing restitution.

B. Whether restitution may be imposed for damages that occurred before the act constituting the offense of rendering criminal assistance.

**II**  
**ARGUMENT**

The trial court did not abuse its discretion or otherwise err in entering their Order of Restitution dated May 6, 2015. The trial court correctly imposed restitution grounded in a causal relationship between the crimes to which Mr. Eldred pleaded guilty and the victim's damages. The losses for which Mr. Eldred was ordered to pay restitution were a result of both of the precise offenses to which he pleaded guilty.

A. No conflict exists between the Division III decision to affirm and the opinions of this Court and other Court of Appeals decisions regarding the restitution ordered in relation to Eldred's conviction for possession of stolen property.

Under RAP 13.1(b)(1) and (2), this Court may review a decision of the Court of Appeals if it is in conflict with a decision of this Court or a published decision of the Court of Appeals. Eldred argues in his petition

the Court of Appeals is in conflict with several published Court of Appeals cases holding restitution cannot be imposed based on the defendant's "general scheme" or acts "connected with" the crime charged, when those acts are not part of the charged offense and where the defendant has not otherwise agreed to repay restitution for crimes for which he was not convicted. *Eldred Pet. For Rev. at 8*. Eldred's argument seems to suggest that he should only be responsible for the stolen property that was found in his possession *at the time he was arrested* (emphasis added) and that the Court should ignore the other stolen property connected to the crime. The Court of Appeals addressed that very matter in their decision and agreed with Eldred's argument in theory. *State v. Eldred*, No. 33418-0-III, 9, 2016 WL 6301606 (Wash. Ct. App. Oct. 27, 2016). However, the affirmed restitution award was not based on a "general scheme" or acts "connected with" the crime of possession of stolen property but rather the facts of the case and the charge itself. *Id.* According to Murphy, a codefendant, Eldred was driving the truck that had stolen property within it after the burglary was completed and Eldred knew the items were stolen. *Id at 3 and 12*. Eldred knew his truck was necessary to assist in the burglary prior to act itself. *Id.* Murphy also stated they disposed of the stolen tires and wheels to a drug dealer in Spokane. *Slip Opinion at 3*. It is these facts that led the Court of Appeals to rely on *State v. Rogers*, 30 Wn.App 653, 638 P.2d 89

(1981). *Rogers* is a published Court of Appeals case, to make their decision in regards to the restitution award for the possession of stolen property charge.

Eldred's arguments hinge on a restitution award that was overturned in *State v. Griffith*. However, the facts of that case differ greatly from the facts in the present case. In *Griffith*, the defendant Joan Griffith was charged with trafficking in stolen property due to evidence that showed her selling stolen property to various pawn stores and resale stores. *State v. Griffith*, 164 Wash.2d 960, 963, 195 P.3d 506, 507 (2008). There was no direct evidence linking Griffith to the burglaries that resulted in the property being stolen in the first place. *Id.* Griffith would later plead guilty to possession of stolen property and a restitution hearing was conducted where the victims of the burglary claimed they were still missing approximately \$11,000 in jewelry. *Id. at 964*. The court ruled Griffith was responsible for the missing amount and ordered \$11,500 in restitution that was appealed and eventually overturned by this Court. *Id.* It would seem the primary reason this Court overturned that award was because of vague witness testimony by the employees of the pawn shops and resale stores as to what exactly Griffith brought to their store. *Id. at 966-67*. That is not the case here. It is clear from the facts on appeal that the exact items missing were described in detail by the victim and

supported with receipts at the restitution hearing. *Slip Opinion at 5*. Further, statements in the police reports made by codefendant Murphy make it clear that all of the good stolen from Abbot's property were placed in Eldred's truck after being removed from Abbot's property. *Id at 3 and 12*. To suggest that Eldred is not in any way connected to the initial burglary and the remaining stolen property alleged in the restitution hearing directly contradicts the facts of this case.

Eldred also contends that the Court of Appeals reliance on *State v. Rogers* is misplaced. *Eldred Pet. At 13*. The primary argument by Eldred is that there are no facts that directly tie Eldred to the burglary and that he was never charged with burglary. *Id at 14*. As stated before, there is direct evidence from the statements of Murphy in the police reports that contradict that statement. Further, Eldred was originally charged with residential burglary and burglary in the second degree due to his involvement in the theft of Abbot's goods from his property, a fact conceded in the footnote of the Petition for Review at footnote 5. *Slip Opinion at 4, see also Eldred Pet. At 14*.

The Petition seems to suggest that Eldred should not be held responsible for the stolen property that he was directly tied to stealing because he was ultimately never found guilty of the burglary for which he was originally charged. The reason Eldred was never found guilty of the

burglaries is he took advantage of a plea agreement to resolve all of his charges at once. Had the case gone to trial, the State believes there would have been enough evidence to convict Eldred and clearly felt that way at the time of charging otherwise they would not have charged Eldred with the two burglary counts. Eldred's argument that because he was not convicted of the burglaries and therefore should not be held responsible for the total loss incurred by Abbot amounts to a "having your cake and eating it too" scenario. On the one hand, Eldred wants to take advantage of a plea agreement to lessen his charges and ultimately the penalties related to his convictions. On the other, he does not want to be held responsible for the property he was directly involved in stealing as evidenced by the police reports to which he stipulated to in order to support his plea. Simply said, Eldred cannot have it both ways. The restitution is causally connected to his acts that contributed to the property's disappearance and is reflected by his entry of a plea to possession of stolen property.

For those reasons, the State argues that the Court of Appeals properly relied on *Rogers* and Eldred's reliance on *Griffith* is factually insufficient. *Rogers* is a published Court of Appeals opinion that is good law and does not contradict any opinions from this Court. Therefore, this Court has no basis to hear this review under RAP 13.1(b)(1) or (2).



B. The Court of Appeals did not rule on the trial court's award of restitution based on rendering criminal assistance and thus should not be addressed by this Court as requested in the Petition for Review

Eldred argues in his Petition for Review that this Court review the restitution award as it pertains to the charge of rendering criminal assistance which he pleaded guilty to. As stated before, RAP 13.4(b) lists the available grounds for this Court to grant review as:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or**
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or**
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or**
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.**

Eldred does not contend that the issue of restitution tied to his conviction for rendering criminal assistance is a significant question of law under the Constitution of the State of Washington or of the United States. Instead, he contends that the decision of the Court of Appeals is in conflict with a decision of this Court, of a published decision of the Court of Appeals, and the issue is one of substantial public interest. The Court of Appeals did not rule on the issue of restitution as it applied to Eldred's conviction for rendering criminal assistance. *Slip Opinion at 10*. Eldred argues that sections of the Court of Appeals opinion on page 12 "indirectly

adopted this conclusion.” *Eldred Pet. For Rev. at 15*. However, the commentary on page 12 of the Court of Appeals Opinion merely recounts the facts relevant to restitution award for the conviction of possession of stolen property in the second degree. The State finds it difficult to believe the Court of Appeals would indirectly reach a conclusion to base its opinion after previously stating they would not be ruling on the issue and further argues that Eldred is placing too much weight on the section cited.

In addition, nothing in Eldred’s petition gives any credence to the idea that the trial court’s award of restitution on the rendering criminal assistance charge is of the public interest. Restitution is derived entirely from statute, RCW 9.94A.753, and has been interpreted carefully by this Court and the Court of Appeals on numerous occasions. Nothing about this particular case dramatically changes that interpretation nor would be considered of “substantial public interest.” For those reasons, this Court should deny review on the grounds that the Court of Appeals never made a decision on the issue of restitution for the charge of rendering criminal assistance and that there is no issue of substantial public interest.

### **III CONCLUSION**

It is therefore respectfully requested that the Washington State Supreme Court deny review of this matter.

Respectfully Submitted on December 22, 2016,



---

Paul Dec, WSBA #47090  
Special Deputy Prosecuting Attorney  
For Jeffrey S. Barkdull  
Prosecuting Attorney  
Lincoln County