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Oct 26, 2015
Court of Appeals
Division I
State of Washington

NO. 73025-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

BRUNO MOLINA,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JOHN P. ERLICK

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

To impose restitution, a “but for” causal link must exist between the alleged criminal conduct and a victim’s damages. Molina was ordered to pay restitution after he eluded officers in a stolen car and collided with several cars including patrol vehicles. The trial court, using a “but for” analysis, found that the respondent’s criminal conduct caused the damages. Did the trial court properly order restitution for the damage Molina caused?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Molina was charged by information with one count of attempting to elude a pursuing police vehicle and one count of hit and run. CP 1. Pursuant to negotiations Molina pled guilty to attempting to elude a pursuing police vehicle and the State agreed to dismiss the hit and run. CP 65-70, 73. At Molina’s restitution hearing the State sought restitution for the damages caused during the police pursuit. 1RP 29-33.¹ Molina objected to the imposition of restitution arguing that he was not the direct cause of the injuries claimed. CP 74-82; 1RP 40-63. The trial court imposed restitution

¹ Verbatim report of proceedings dated September 9, 2014, and January 9, 2015, consisting of a single volume as “1RP”.

totaling \$74,948.55 for damages to three patrol cars, the stolen car Molina was driving, and three parked cars struck by Molina. CP 98-99. Molina's motion for reconsideration was denied. CP 113-21. He now timely appeals.

2. SUBSTANTIVE FACTS.

On July 2, 2014, victim Graham parked his Mercedes Benz SUV in the driveway of his home and left the keys in the center console. CP 8. Overnight a neighbor's surveillance camera caught a man breaking into Graham's Mercedes. The next morning Graham discovered his car had been stolen and notified police.

On July 5, 2014, an anonymous caller reported that a male resident at an apartment complex had been bragging about having stolen a Mercedes SUV. Renton Police Officer Mercado responded but was unable to locate the SUV. CP 8. On July 6, 2014, while on patrol, Mercado observed Graham's Mercedes SUV being driven by Molina. CP 3. Mercado activated his emergency lights and siren in an attempt stop Molina, but Molina sped away. CP 3, 8.

While eluding officers Molina drove the wrong way on a one way street, ran through multiple stop signs and traffic lights at a high rate of speed, and drove on the shoulder to avoid stopped traffic. CP 4, 9. When Officer Mercado caught up to Molina, he

tried to disable Molina's car by striking it with his patrol vehicle. CP 9. A second officer also struck Molina's SUV with her patrol vehicle causing Molina to hit a parked car and two other cars nearby. CP 9. Their efforts were unsuccessful.

Molina continued to elude officers driving northbound in the southbound lanes of State Route (SR) -167. CP 9. Officer Mercado collided with Molina's SUV twice but Molina did not stop. CP 10. Molina then drove southbound in the northbound lanes of SR-167 forcing oncoming cars to stop and avoid a Molina's SUV. Molina ultimately came to a stop after officers rammed Molina's SUV with their patrol vehicles. CP 10.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION AND STATUTORY AUTHORITY WHEN IT IMPOSED RESTITUTION.

Molina contends the trial court abused its discretion and lacked statutory authority to impose restitution under the theory that he was not the legal or proximate cause of the damages and thus a causal link is unsupported. Br. of App. at 6-7; CP 77. This claim should be rejected. The trial court properly exercised its discretion when it concluded that the damages were reasonably foreseeable and but for Molina's conduct of eluding officers the damages would

not have occurred. 1RP 48; CP 121. Because there was a supported causal connection between Molina's conduct, the crime, and the damages, the trial court properly imposed restitution.

A sentencing court's authority to order restitution is statutory. State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008).

Appellate review of an order for restitution under the Juvenile Justice Act is limited to whether the trial court abused its discretion and whether statutory authority exists for the imposed restitution.

State v. Horner, 53 Wn. App. 806, 807, 770 P.3d 1056 (1989).

RCW 13.40.190(1) authorizes the juvenile court to impose restitution for any loss or damage caused by a crime:

"...the court shall require the respondent to make any restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent. In addition, restitution may be ordered for loss or damage if the offender pleads guilty to a lesser offense or fewer offenses."

The restitution statute was intended to be widely available to victims of crimes, including injuries that are a foreseeable result of the defendant's conduct. State v. Hiett, 154 Wn.2d 560, 564, 115 P.3d 274 (2005).

Where there is a casual link between damage and the defendant's criminal conduct, restitution is proper. Id. at 564. If the

injury is a reasonably foreseeable consequence of the underlying facts of a crime, then the crime is reasonably related to the injury. Id. at 565. If but for the criminal acts of the defendant, a victim would not have suffered damages, a sufficient causal connection exists. State v. Blair, 56 Wn. App. 209, 783 P.2d 102 (1989).

In Hiett, the Washington State Supreme Court affirmed a trial court's order for restitution where damages were reasonably foreseeable and would not have occurred but for the crime committed. Id. (citing State v. Landrum, 66 Wn. App. 791, 799, 832 P.2d 1359 (1992) (restitution for counseling expenses upheld)). Two juvenile defendants were charged with taking a motor vehicle after riding as passengers in a stolen car. Both defendants were ordered to pay restitution after the car later crashed into a Les Schwab storefront and company truck.

Like Molina, the respondents in Hiett asserted that restitution was only recoverable where the damage is causally connected to the juvenile's individual conduct and offense; they argued that the superseding cause of damages was the driver who eluded police. Id. at 56. The Court in Hiett was not persuaded and concluded that but for the taking of an automobile, without permission, the resulting crash of the stolen car and damage to property would not have

occurred. *Id.* at 565. “While there might be some set of factual circumstances which would break the causal chain, we cannot say that it was unforeseeable that a person guilty of taking a motor vehicle would steal personal property in the vehicle, attempt to elude the police or cause an accident.” *Id.* at 566.

Similar reasoning was applied by this Court in State v. S.T., 139 Wn. App. 915, 918-19, 163 P.3d 796 (2007) (upholding restitution for damages where personal items were missing from the victim’s car after it was stolen) and has been applied in prior cases. E.g. State v. Harrington, 56 Wn. App. 176, 782 P.2d 1101 (1989) and State v. Blair, 56 Wn. App. 209, 215-16, 783 P.2d 102 (1989) (upholding restitution for damages caused to stolen car that was driven into a ditch and abandoned); State v. Steward, 52 Wn. App. 413, 416, 832 P.2d 1359 (1992) (upholding restitution for damages to a stolen car that was abandoned and subsequently stripped).

In Steward, a juvenile defendant was convicted of taking a motor vehicle without permission. Steward later abandoned the car with the key left in the ignition. When the car was later located it had been partially stripped and items had been taken from the trunk. *Id.* at 414. The trial court concluded that it was foreseeable

to a reasonable person that the car would be subject to stripping and theft under these circumstances. Id. at 415. This Court affirmed the order of restitution, stating that any theft occurred as a result of the offense for which Steward was convicted. Id.

Molina admitted to driving in a reckless manner in an attempt to elude the police and does not deny damages occurred. CP 70. The trial court, properly exercising its discretion, found it undisputed that Molina drove away from officers in a stolen Mercedes, erratically and recklessly thereby placing "...law enforcement in the position of taking defensive action to protect the public." CP 121. "The damage to the parked cars – and the police vehicles and the [victim] Graham's car..." were the direct result of Molina's offense and a foreseeable consequence. CP 121.

However Molina contends that it was the independent actions of officers which led to damages. Def. Br. at 4-7. The trial court properly rejected this claim. Much like Steward and Hiett, the trial court here found the damages reasonably foreseeable and that "but for" Molina eluding officers, damage would not have occurred. 1RP 48-50, 58-60. It is foreseeable that when one drives recklessly in flight from pursuing police, and endangers the public, officers will rely on their training to do what is necessary to stop the car. The

damage was a direct result of Molina's conduct and offense. 1RP 58, CP 121. Damage to the stolen car driven by Molina, patrol cars and three parked cars were not only a direct result of Molina's conduct but reasonably foreseeable. 1RP 58-60; CP 121.

Molina relies on State v. Bauer² for his contention that "...restitution is not appropriate where the act was incapable of 'causing injury directly.'" Def. Br. at 7. However, Bauer is inapposite. Bauer did not address the issue of restitution but whether *criminal liability* requires more than a "proximate cause" inquiry.

Bauer was charged with assault in the third degree under a negligence prong. Bauer's girlfriend's son brought one of Bauer's loaded guns to school which later caused injury to another child when it discharged. Bauer moved to dismiss under Knapstad³ contending that the undisputed facts did not establish a prima facie case of guilt as a matter of law. Id. at 934. The Court held Bauer's negligent conduct did not rise to a level of criminal liability because he did not actively participate in the immediate physical impetus of the harm done. Id. at 938-40.

² State v. Bauer, 180 Wn.2d 929, 329 P.3d 67 (2014).

³ State v. Knapstad, 107 Wn.2d 346, 729 P.2d 48 (1986).

The analysis of Bauer is irrelevant to the statutory authority to impose restitution on a defendant who already has been convicted of a crime that resulted in personal injury or property damage. The trial court properly exercised its discretion when it ordered restitution. Because the trial court applied the correct legal standard and its decision is supported by undisputed facts, the court's finding of causation and order of restitution was proper.


D. CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to affirm the trial court's order for restitution.

DATED this 26th day of October, 2015.

Respectfully submitted,


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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorneys for the appellant, Kathleen A. Shea, containing a copy of the Respondent's Brief, in STATE V. BRUNO MOLINA, Cause No. 73025-8-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.



Name
Done in Seattle, Washington

0-26-15

Date