

63473-9

63473-9

**NO. 63473-9-I**

IN THE COURT OF APPEALS – STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON  
Respondent,

v.

**KEVIN DEAN,**  
Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON, FOR SKAGIT COUNTY

The Honorable John M. Meyer, Judge

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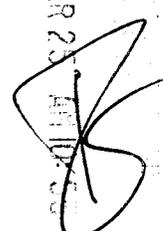
**RESPONDENT'S BRIEF**

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## **I. SUMMARY OF ARGUMENT**

Kevin Dean was convicted of Theft in the First Degree and Conspiracy to Commit Theft in the First Degree occurring between June of 1996 and July of 2002. He was tried before a jury with the co-defendant bookkeeper, Lisa Mullen, for a theft from Frontier Ford in Anacortes, and the owner Ron Rennebohm. The theft was based upon manipulation of accounting records at the business and use of business accounts to purchase items. Dean appeals from a restitution order based by the court upon acts found by the jury to have been committed by Lisa Mullen during the conspiracy.

Since the thefts occurred during the period of the conspiracy and Dean was an accomplice to Lisa Mullen, the trial court had a sufficient basis to find that the loss was causally connected to the crimes of convictions. Therefore, the trial court did not abuse its discretion in entering the restitution order.

## **II. ISSUES**

Can a defendant be ordered to pay restitution for thefts occurring during the period of the conspiracy to commit theft for which the defendant was convicted?

Does the dismissal by the trial court of a charge of Acquiring an Interest in Real Property Through a Pattern of Criminal Profiteering preclude the court ordering restitution for thefts found by the jury to have been committed during the period of the conspiracy?

### **III. STATEMENT OF THE CASE**

On December 20, 2002, Kevin Dean was charged with three counts of Theft in the First Degree and three counts of Money Laundering relating to thefts from Frontier Ford and Ron Rennebohm. CP 1-3. Discovery and pretrial proceedings were extensive.

On November 10, 2004, the charges were amended to Theft in the First Degree, Conspiracy to Commit Theft in the First Degree, and Acquiring an Interest in Real Property Through a Pattern of Criminal Profiteering. CP 31-41.

On January 3, 2006, a little over three years after charges were filed, the case came to trial. 1/3/2006 RP 3.<sup>1</sup> During trial the State filed the fourth amended information that removed some of the findings relating to the criminal profiteering charge on Dean as well as part of the exceptional sentence factors. CP 42-52.

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<sup>1</sup> The State will refer to the verbatim report of proceedings by using the date followed by "RP" and the page number. There are transcripts of 38 pretrial hearings, 23 days of trial, and 5 post trial hearings which were part of the initial

At trial the trial court found that there was insufficient evidence for a jury to convict Dean upon the Acquiring an Interest in Real Property Through a Pattern of Criminal Profiteering charge and dismissed the charge. 1/31/06 RP 54.

The jury returned a verdict finding Dean guilty of Theft in the First Degree and Conspiracy to Commit Theft in the First Degree. 2/7/06 RP 3. Dean stipulated that crimes for which he was convicted were major economic offenses. 2/7/06 RP 4-7. The co-defendant, Lisa Mullen, was found guilty by the jury of Theft in the First Degree and Conspiracy to Commit Theft in the First Degree plus Use of Proceeds of Criminal Profiteering with all predicate acts alleged. 2/7/06 RP 2-3. Regarding Mullen's conviction for Use of Proceeds of Criminal Profiteering to Establish and Operate an Enterprise charge the jury found predicate acts of theft as follows:

1.	January 27, 2001	\$19,900
2.	January 30, 2001	\$ 9,400
3.	March 19, 2001	\$10,000
4.	March 27, 2001	\$12,725
6.	April 17, 2001	\$ 6,000
7.	April 27, 2001	\$ 5,000
8.	July 11, 2001	\$ 5,000
10.	October 19, 2001	\$ 5,450
11.	October 31, 2001	\$10,050
12.	November 13, 2001	\$ 5,951
13.	November 28, 2001	\$15,000

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appeal of the conviction. There are three additional transcripts prepared for the appeal of the restitution order.

14.	November 30, 2001	\$10,290
15.	November 30, 2001	\$11,921.58
16.	December 12, 2001	\$ 9,690
17.	December 18, 2001	\$10,575
18.	January 22, 2002	\$ 3,000
19.	February 5, 2002	\$11,450
20.	February 13, 2002	\$14,960
21.	February 20, 2002	\$13,500
22.	February 21, 2002	\$15,000
23.	April 22, 2002	\$17,000
24.	May 6, 2002	\$10,203.70
25.	May 6, 2002	\$ 9,391.99

CP 115-6, 2/7/06 RP 2-3.

The totals of the theft based upon the predicate acts charged in count III by themselves total \$241,458.27. These thefts were within the time frame of both the Theft in the First Degree and the Conspiracy to Commit Theft in the First Degree for which Dean was convicted. CP 42-52.

On December 11, 2006, Dean was sentenced by the trial court to an exceptional sentence of 30 months. CP 1283-94. Restitution was not set by the trial court at sentencing and was set for a separate hearing on February 20, 2007. CP 83, 86.

On January 2, 2007, Dean timely filed a notice of appeal of the conviction. CP 1295-1307.<sup>2</sup>

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<sup>2</sup> Dean's conviction and sentence was upheld on direct review in Court of Appeals Case number 59389-7-I. A petition for review from that decision was filed and is pending in Washington State Supreme Court case number 84283-3.

The restitution hearing was repeatedly continued at the request of the Dean and the co-defendant. 10/10/08 RP 4, 5, 7, 9, 12.

On April 6, 2009, and April 7, 2009, the trial court conducted the restitution hearing. 4/6/09 RP 2-202, 4/7/09 RP 2-53.

The State relied upon the testimony from trial to seek restitution in the amount of \$1,271,130 plus investigative costs of \$86,838. 4/6/09 RP 2-5.

At trial Ron Rennebohm had testified he purchased Frontier Ford in Anacortes in 1990. 1/18/06 RP 130. Rennebohm was essentially financially illiterate. 1/18/06 RP 162, 1/19/06 RP 155. So, Rennebohm relied on the skills of others to run Frontier Ford and the accountant to monitor the business. 1/18/06 RP 163-4, 217.

When Rennebohm purchased Frontier Ford, Lisa Mullen was a bookkeeper at the dealership and Rennebohm made her the comptroller. 1/18/06 RP 132. Kevin Dean was hired as the dealership's general manager in August of 1996. 1/18/06 RP 152. Clothier and Head was Frontier Ford's accountant in the early 1990's. 1/18/06 RP 217. Richard Rekdahl is an accountant who was employed by Clothier and Head. 1/18/06 RP 217.

Employees at Frontier Ford had accounts receivable which allowed draws on their salaries or loans from the dealership. 1/9/06 RP 91; 1/18/06 RP 172. The account balances were then deducted from subsequent salary. 1/21/06 RP 91.

Rennebohm hired a person to review the financial records at Frontier Ford. 1/19/06 RP 61-2. Rennebohm eventually replaced Kevin Dean with that person. 1/19/06 RP 66-7. A few days later, Rennebohm was given a package of information that he provided to his accountants that suggested inappropriate financial dealings. 1/19/06 RP 72. Shortly after, Mullen contacted Rennebohm upset. 1/19/06 CP 73-6. They met at a park in Mount Vernon where Mullen admitted to Rennebohm that she had stolen from him and that if he fired her, she could never pay him back. 1/19/06 RP 75-6. Mullen also told Rennebohm that in addition to \$60,000 that Dean owed them on the books there was an additional \$200,000 that Dean owed. 1/19/06 RP 76-7. After attending a meeting with his accountants including Rekdal, Rennebohm reported the theft to Anacortes Police in June of 2002. 1/5/06 RP 71, 1/19/06 RP 78-9.

Mullen called Rekdal and told him that she had lost her integrity. 1/24/06 RP 56. Mullen told Rekdal that if she didn't have a job, she couldn't pay it back. 1/24/06 RP 56. Rekdal traced activity in

receivable accounts of Dean, Rennebohm and Mullen at Frontier Ford. 1/25/06 RP 40. Rekdal described the different accounts and transactions in the accounts totaling the loss under the accounts. 1/25/06 RP 60-183. Much of the embezzlement involved Mullen using draws from accounts receivable of current and former employees, including her own, to purchase personal property. Most of the transactions were done by Ms. Mullen personally but some were done by the bookkeeping staff she supervised. 1/27/06 RP 77. By accounting machinations, Mullen removed debts reflected in accounts receivable by transferring funds from other accounts within Frontier Ford and then aging or writing off the receivables.

Frontier Ford's annual sales were about \$80 million dollars, so the transactions went unnoticed for years. Rekdal testified the total discrepancies he located in the accounts at Frontier Ford totaled \$1,271,130. 1/25/06 RP 181-2.

Witnesses testified that Dean and Mullen were romantically involved for some of the time while both were employed at Frontier Ford. 1/6/06 RP 151; 1/13/06 RP 47. Dean and Mullen also lived together for about two or three months in the summer of 1998. 1/13/06 RP 47-8. Two accounts receivable clerks testified that they gave the statements to Dean and Mullen every month. 1/6/06 RP

145, 1/12/06 RP 56-7. Two of the receivable accounts were in Dean's name. 1/6/06 RP 145. Shari Fry testified that every month Dean carefully looked at the accounts receivable like a credit card statement. 1/12/06 RP 56-7.

At trial Mullen claimed the transactions were done with Rennebohm's approval. 1/31/06 RP 120; 2/1/06 RP 42. Mullen claimed the intent was to "hide the profits" of Frontier Ford from Mr. Rennebohm's business partner. 1/31/06 RP 160. Kevin Dean did not testify at trial.

At the restitution hearing, defense counsel for Dean relied upon their brief of February 20, 2007, for their position regarding restitution. 4/6/09 RP 7, CP 97-114.

At the restitution hearing, defense for co-defendant Lisa Mullen continued to suggest that there was no embezzlement and that the restitution should be "slight, if any." 4/6/09 RP 17, 22. Co-defendant Lisa Mullen testified again on her own behalf at the restitution hearing claiming the actions were authorized by Rennebohm. 4/6/09 RP 23-202, 4/7/09 RP 2-7.

During closing argument regarding the restitution hearing, Dean's trial counsel based his argument on the position that there was no proof that Dean received any of the proceeds of the thefts.

4/7/09 RP 27, 32. The trial court directly questioned Dean's trial counsel who acknowledged that the trial court had the authority to order restitution for the losses caused by Lisa Mullen during the conspiracy. 4/7/09 RP 34.

THE COURT: Can I -- two questions. Number one: Because of the conspiracy, do I have to prescribe the same amount of restitution to your client as I do to Lisa Mullen?

MR. HOWSON: No, you do not. But because the conspiracy you can. Because they found the conspiracy, therefore. But the question of what restitution is owed is still a different thing. Just because there are two people, and even if they are involved in a conspiracy -- and, you know my position on that -- but if they are involved in a conspiracy, that doesn't mean they're involved in the same way or the same extent or received the same amount. The Court has that power. But I ask the Court to exercise it's discretion very, very carefully.

4/7/09 RP 34.

On April 14, 2009, the trial court entered an order establishing restitution based upon the findings from the jury about the acts of criminal profiteering totaling \$241,458. CP 146. The ruling reads in pertinent part:

THIS COURT FINDS that in the case of Ms. Mullen, the jury found her guilty of certain predicate acts on Count 3. In the case of Mr. Dean, the jury found him guilty of Conspiracy on Count 2. Per State v. Israel, 113 Wn. App. 243 (2002), Mr. Dean as a co-conspirator is liable for all damages caused by the conspiracy, regardless of his knowledge or complicity in

the particular injury. The only easily ascertainable damages causally connected to the crimes for which the defendants were convicted are those proven to the jury under Count 3 against Ms. Mullen in the amount of \$241,458.

CP 146. The trial court authorized a portion of the investigative costs.

CP 146.

On April 30, 2009, Dean timely filed a notice of appeal from the entry of the restitution order. CP 152.

On May 22, 2009, following a motion for reconsideration, the trial court included investigative costs of \$25,000. CP 153.

#### IV. ARGUMENT

1. **Where the jury found predicate acts of theft by a co-conspirator, the trial court did not abuse its discretion in ordering restitution in the amount of those thefts.**

Restitution may be order pursuant to statute for easily ascertainable losses.

#### **RCW 9.94A.753. Restitution - - Application dates:**

...

(3) Except as provided in subsection (6) of this section, **restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property**, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury....

...

**(5) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record...**

RCW 9.94A.753 (pertinent excerpts with emphasis added).

Case law further clarifies what the trial court must consider in determining restitution.

The statute precludes restitution for speculative and intangible losses. However, while **restitution must be based on “ ‘easily ascertainable damages,’ ”** the **“amount of harm or loss ‘need not be established with specific accuracy.’ ”** Hughes, 154 Wn.2d at 154, ¶¶ 77, 110 P.3d 192 (*quoting State v. Fleming*, 75 Wn. App. 270, 274, 877 P.2d 243 (1994)). **“Evidence supporting restitution is sufficient if it affords a reasonable basis for estimating loss and does not subject the trier of fact to mere speculation or conjecture.”** *Id.* (*quoting Fleming*, 75 Wn. App. at 274-75, 877 P.2d 243).

State v. Kinneman, 155 Wn.2d 272, 285, 119 P.3d 350 (2005)

(emphasis added).

The court's have adopted the “but for” test inquiry in determining whether there is causation that link's a defendant's conduct to the restitution amount.

When interpreting Washington's restitution statutes, we recognize that they were intended to require the defendant to face the consequences of his or her criminal conduct. State v. Davison, 116 Wn.2d

917, 922, 809 P.2d 1374 (1991). We do not engage in overly technical construction that would permit the defendant to escape from just punishment. *Id.* **The legislature intended “to grant broad powers of restitution” to the trial court.** *Id.* at 920, 809 P.2d 1374.

Absent agreement from the defendant as to the amount of restitution, the State must prove the amount by a preponderance of the evidence. State v. Hughes, 154 Wn.2d 118, 154, 110 P.3d 192 (2005), *overruled on other grounds by*, Washington v. Recuenco, 548 U.S. 212, 126 S.Ct. 2546, 165 L.Ed.2d 466 (2006). Restitution is allowed only for losses that are “causally connected” to the crimes charged. Kinneman, 155 Wn.2d at 286, 119 P.3d 350. Yet, we have held that foreseeability is not required. Enstone, 137 Wn.2d at 682-83, 974 P.2d 828. **In Kinneman, we approved the Court of Appeals' application of a “but for” inquiry to determine causation.** Kinneman, 155 Wn.2d at 287-88, 119 P.3d 350; *see also* State v. Hiatt, 154 Wn.2d 560, 566, 115 P.3d 274 (2005) (employing a “but for” analysis).

State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007)

(emphasis added).

A trial court’s decision to impose restitution is subject to the abuse of discretion standard upon review.

We review a challenge to the amount of a restitution order for abuse of discretion. State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). “An abuse of discretion occurs only when the decision or order of the court is ‘manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.’ ” State v. Enstone, 137 Wn.2d 675, 679-80, 974 P.2d 828 (1999) (internal quotation marks omitted) (*quoting* State v. Cunningham, 96 Wn.2d 31, 34, 633 P.2d 886 (1981)).

State v. We, 138 Wn. App. 716, 727-8, 158 P.3d 1238 (2007).

In the present case, the trial court determined that restitution could be easily ascertained based upon the jury's findings that the co-defendant had committed numerous acts of theft totaling \$241,458 during the period of the conspiracy. CP 146. The trial court determined that as a convicted co-conspirator to Ms. Mullen, Mr. Dean was liable for damages caused by the conspiracy. CP 146.

Case law provides that a person who becomes involved in a conspiracy is responsible for the restitution that is causally connected to the conspiracy.

In State v. Israel, the trial court had refused to order restitution for a robbery that occurred before defendant Israel became involved in the conspiracy. The Court of Appeals reversed the trial court finding and necessarily found that there was an abuse of the trial court's discretion. The Court of Appeals determined that the restitution statute sweeps more broadly than accomplice liability and requires a causal relationship. The Court of Appeals held.

And although under Stein, Israel could not be convicted of substantive crimes committed before he joined the conspiracy, the scope his liability for the conspiracy itself is broader: **one who joins an existing conspiracy is generally held to adopt the prior statements and actions of his coconspirators for purposes of conspiracy liability.** See 4 Charles E.

Torcia, *Wharton's Criminal Law* § 685, at 563 (15th ed.1996). Likewise, the restitution statute sweeps far more broadly than the accomplice liability statute, requiring neither knowledge nor foreseeability of the injury, but merely a causal relationship. Enstone, 137 Wn. 2d at 682, 974 P.2d 828. **Accordingly, we hold that one convicted of a conspiracy should be ordered to pay restitution for any injuries caused by the conspiracy, regardless of the defendant's knowledge or complicity in the particular injury. The trial court's decision to deny restitution to Beverly Rhoades therefore rests on an untenable basis and must be reversed.**

State v. Israel, 113 Wn. App. 243, 298-300, 54 P.3d 1218 (2002), rev. denied 149 Wn.2d 1013, 69 P.3d 874 (2003) (emphasis added).

Here the State charged Dean with a conspiracy occurring between June of 1996 to July of 2002. The losses attributed to the conduct of Dean and Mullen occurred between 1996 and 2002. Thus, the jury necessarily found that Dean was involved in the conspiracy in the time frame when the full amount of the theft and loss by Frontier Ford occurred.<sup>3</sup>

But for Dean's actions as the general manager and his actions with Mullen, Mullen would not have been able to manipulate the

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<sup>3</sup> Although the evidence of the transactions pertaining to Mr. Dean is not as significant in 1996 or 1997, there is evidence that Mr. Dean and Ms. Mullen are operating jointly when it comes to company records. In May of 1997, Lisa Mullen falsified a letter regarding the fact that Frontier Ford owed Kevin Dean \$198,000 in a letter sent to Washington Mutual. See Exhibit 7, 2/1/2006 127-9. With the letter, Dean was able to get a mortgage and buy a home. Lisa Mullen did stay in the home. Additionally connections are explained in the argument section below.

accounts and commit the thefts from Frontier Ford. Thus, restitution was properly ordered.

**2. The trial court's decision to dismiss the charge of Acquiring an Interest in Real Property Through a Pattern of Criminal Profiteering, does not preclude ordering restitution for actions which were also covered by the theft for which the defendant was convicted.**

The State contends that dismissal of the charge of Acquiring an Interest in Real Property Through a Pattern of Criminal Profiteering does not preclude the imposition of restitution. The charge is unique. The statute reads:

It is unlawful for a person knowingly to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property through a pattern of criminal profiteering activity.

RCW 9A.82.080(2)(a).

"Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

....

(e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, 9A.56.080, and 9A.56.083;

...

(r) Trafficking in stolen property, as defined in RCW 9A.82.050;

RCW 9A.82.010(4). The charging language in the present case regarding of Acquiring an Interest in Real Property Through Criminal Profiteering reads in pertinent part:

On or about March 1997 to July 2002 you did knowingly acquire, directly or indirectly, an interesting real property, specifically 17756 Ervine Lane, Mount Vernon, Washington, through a pattern of criminal profiteering activity, said pattern of criminal profiteering having included, at least, the following predicate acts as defined in RCW 9A.82.010(4):

CP 44. The charge went on to list 23 predicate acts of theft as a part of the charge. CP 44-51.

When the trial court dismissed the Acquiring an Interest in Real Property charge, it made a general finding and did not find that any of the predicate acts were not proven. 1/31/06 RP 54. Although there was testimony that Dean did purchase the property at 17756 Ervine Lane described as the real property that he was alleged to have acquired, there was no direct evidence that any of the proceeds from the theft activities were used to acquire the property. 1/12/06 RP 140-57 (testimony from bank employee regarding loan to obtain Ervine Lane property), 1/23/06 RP 85-8 (testimony from Deputy Assessor regarding Dean purchasing property on May 7, 1999).

Thus, although there may not have been enough evidence that Dean acquired an interest in the real property by the criminal profiteering, there evidence still remained that there were thefts from Frontier Ford using Dean's accounts at the business.

Dean contends on appeal that since Dean was not convicted of the count related to Acquiring an Interest in Real Property, the trial court erred in ordering restitution based upon thefts determined by the jury to have been committed by the co-defendant. Appellant's Opening Brief at page 10. This claim is based upon the claim that the "acts underlying Ms. Mullen's additional conviction were not part of the conspiracy to commit theft..." Appellant's Opening Brief at page 10. The State contends that is not true.

Restitution was not set based upon the charge that the trial court dismissed, but was instead was based upon the activity done by Lisa Mullen and Kevin Dean when the two were the persons in control of the financial helm of Frontier Ford.

Accountant Richard Rekdal traced activity in receivable accounts of Dean, Rennebohm and Mullen at Frontier Ford. 1/25/06 RP 40. Rekdal located two accounts for Dean numbered 285 and 998. 1/25/06 RP 40, 66. Rekdal traced activity back to 1996. 1/25/06 RP 55. In Dean's 285 account, there were numerous charges

against the account for various apparent non-business purposes. 1/25/06 RP 62-3. A school where Kevin Dean's children attended even received money from the transactions. 1/25/06 RP 62. Transfers were made from the funds owed reflected in Dean's 285 account to Dean's 998 account as well as the cash account at Frontier Ford which reduced Dean's obligation in the 285 account. 1/25/06 RP 78-81, 92. Transactions were also conducted by Lisa Mullen on the receivable account numbered 1810 assigned to owner Rennebohm. The total that left the company via this method was more than \$210,000. 1/25/06 RP 162.

Mullen testified she did the draws for Dean against his accrued pay. 2/1/06 RP 19-20, 36. The paycheck was supposed to wash out on a monthly basis, although Dean's never did. 1/6/06 RP 153, 1/18/06 RP 143.

Tonya Kniest, the account's receivable clerk, testified that employees had accounts receivable accounts to track debts including draw checks. 1/6/06 RP 141. Kneist gave accounts receiveable statements to Dean and Mullen every month. 1/6/06 RP 145. Two of the receivable accounts were in Dean's name. 1/6/06 RP 145. Kneist described that Dean spent a lot of time in Mullen's office. 1/6/06 RP 146-7. It was open knowledge in the dealership that

Mullen and Dean had a dating relationship. 1/6/06 RP 151. Dean and Lisa Mullen also lived together for about two or three months in the summer of 1998. 1/13/06 RP 47-8.

Shari Fry testified that she became aware of a large receivable account balance for Dean. 1/12/06 RP 55. Shari Fry testified that Dean looked at the accounts receivable like a credit card statement when it was opened up and looked at every month. 1/12/06 RP 56-7.

An employee of Washington Mutual Bank testified that Lisa Mullen signed a letter from Frontier Ford indicating that Dean had accrued payroll of over \$60,000 and \$198,000 in unpaid bonuses in May of 1999. 1/12/06 RP 148, 152, 156.

And while Dean and Mullen were in charge of the financial side of the business, the theft of funds occurred. Hundreds of thousands of dollars of purchases were traced directly to Ms. Mullen by receipts, checks, and even pictures. 1/8/06 RP 180 (testimony regarding Ms. Mullen writing checks to herself and debiting amount to Mr. Dean's account receivable); 1/9/06 RP 15-23 (detailing Ms. Mullen's purchase of more than \$33,000 in jewelry in a 20 month period); 1/11/06 RP 169-75 (detailing Ms. Mullen's purchases of Doncaster clothing totaling nearly \$32,000 in a seven month period); 1/11/06 RP 181-84 (detailing Ms. Mullen's purchases of stuffed toy

rabbits from Bunnies by the Bay totaling \$19,622); 1/13/06 RP 140-50 (detailing Ms. Mullen's purchases at St John Boutique totaling nearly \$75,000 over four months), 1/17/06 RP 34 (detailing a single purchase of jewelry by Ms. Mullen totaling \$17,500). The predicate acts of theft were listed in the exhibit 109 from trial which was referenced by the State at the restitution hearing. 1/25/06 RP 58, 4/6/09 RP 5-6, 4/7/09 10-11, 20-1, Exhibit #1 (Filed 4/6/2009 at restitution hearing and was Exhibit 109 at trial, Supplemental Designation of Clerk's Papers pending).

The trial court determined that the damages were easily ascertainable.

The only easily ascertainable damages causally connected to the crimes for which the defendants were convicted are those proven to the jury under Count 3 against Ms. Mullen in the amount of \$241,458.

CP 146. It also found the damages were connected to the conspiracy charge for which Dean was convicted. CP 146.

And, at the trial court, Dean's counsel acknowledged the trial court to order restitution not based upon the charge which was dismissed but upon the conspiracy with Mullen.

THE COURT: Can I -- two questions. Number one: Because of the conspiracy, do I have to prescribe the same amount of restitution to your client as I do to Lisa Mullen?

MR. HOWSON: No, you do not. But because the conspiracy you can. Because they found the conspiracy, therefore. But the question of what restitution is owed is still a different thing. Just because there are two people, and even if they are involved in a conspiracy -- and, you know my position on that -- but if they are involved in a conspiracy, that doesn't mean they're involved in the same way or the same extent or received the same amount. The Court has that power. But I ask the Court to exercise its discretion very, very carefully.

4/7/09 RP 34.

There was a theft from Frontier Ford by co-conspirators Kevin Dean and Lisa Mullen upon which restitution could be based.

#### V. CONCLUSION

For the foregoing reasons, this Court should find that the trial court did not abuse its discretion in imposing restitution and affirm the restitution orders.

DATED this 24<sup>th</sup> day of March, 2010.

SKAGIT COUNTY PROSECUTING ATTORNEY

By:   
ERIK PEDERSEN, WSBA#20015  
Deputy Prosecuting Attorney  
Skagit County Prosecutor's Office #91059

DECLARATION OF DELIVERY

I, Karen R. Wallace, declare as follows:

I sent for delivery by;  United States Postal Service;  ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: Gregory C. Link, addressed as Washington Appellate Project, 1511 Third Avenue, Suite 701, Seattle, WA 98101. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 24<sup>th</sup> day of March, 2010.

  
KAREN R. WALLACE, DECLARANT