

No. 66759-9-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

ANTHONY RUSSELL,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR KING COUNTY

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BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

In the absence of sufficient proof to establish either an actual loss by the victim or a causal connection between such loss and the crime, the trial court erred in entering the restitution order in this case.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Restitution is limited to damages which are causally related to the crime of conviction. The State bears the burden of proving the causal relationship by a preponderance of the evidence. Did the trial court err in imposing restitution where the State failed to prove the claimed damage was causally related to Anthony Russell's crime?

C. STATEMENT OF CASE

Mr. Russell pleaded guilty to one count of residential burglary involving his entry into William Kain's home for purposes of committing a theft. CP 18. In his plea agreement, Mr. Russell agreed that the court could consider the facts in the certificate of probable cause for purposes of sentencing and the restitution hearing. CP 27. The certificate provided that Mr. Kain had been away from his home for a period of time. CP 22. When he returned to his house he discovered someone had broken a

window and had attempted to open a large safe inside the house.

Id. Mr. Kain did not notice anything else missing. Id.

Mr. Kain returned again the following day and found his back door open, but undamaged. CP 22-23. When he entered the house and attempted to open the door to the room containing the safe, he found the door blocked by someone standing behind it. CP 23. The person eventually fled the house. Police arrested Mr. Russell a short distance from the home based on a description provided by Mr. Kain. CP 23-24.

D. ARGUMENT

THE STATE DID NOT PROVE THE CLAIMED  
AMOUNT OF RESTITUTION WAS CAUSED BY MR.  
RUSSELL'S CRIMINAL ACT

Following Mr. Russell's conviction, the State sought restitution of \$2,905.28 -- \$900 to Mr. Kain and the remainder to his insurer. CP 39. Included in the \$2,005.28 awarded the insurance company was \$751.03 for replacement of a door. CP 50. But the evidence offered by the State to support its restitution request does not specify which door in Mr. Kain's house was replaced or even whether any door was damaged by Mr. Russell. Similarly, Mr. Kain's testimony at the restitution hearing did not mention any

damage to a door or otherwise shed any light on how such damage occurred.

Defense counsel objected to the inclusion of the costs of replacing the door, noting the complete lack of any evidence of damage to the door and/or evidence establishing this damage was caused by Mr. Russell's offense. RP 29. The court nonetheless imposed restitution for the full amount requested by the State. CP 39.

1. Restitution is a strictly statutory remedy authorized only for damages causally connected to the crime of conviction. "The authority to impose restitution is not an inherent power of the court, but is derived from statutes." State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). A restitution order is void when the trial court deviates from the parameters of the restitution statute. State v. Dauenhauer, 103 Wn.App. 373, 378, 12 P.3d 661 (2000); State v. Hefa, 73 Wn.App. 865, 866-67, 871 P.2d 1093 (1994).

RCW 9.94A.753(3) provides, in pertinent part, restitution:

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. Restitution shall not include reimbursement for damages due to mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling related to the offense. . . . .

Additionally, 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. . . .

RCW 9.94A.753(5).

Restitution is permitted only for loss that is causally connected to the offense of conviction. State v. Kinneman, 155 Wn.2d 272, 286, 119 P.3d 350 (2005). The prosecution bears the burden of establishing a sufficient causal connection by a preponderance of the evidence. State v. DeDonado, 99 Wn.App. 251, 256, 991 P.2d 1219 (2000). The State does not meet this burden merely because an insurer or victim submits a list of expenditures. Id. at 257.

2. The State did not prove the amount of claimed loss was due to damage caused by Ms. Russell. RCW 9.94.A.753(3) limits restitution to “easily ascertainable damages.” There are no facts in the record of the restitution hearing establishing damage to any door in Mr. Kain’s home. Indeed, the certificate of probable cause attached to Mr. Russell’s guilty plea provides that on June 17, 2010, Mr. Kain found his rear door and screen door open. CP 22-

23. The certificate provides “there did not appear to be any damage to these doors.” Id.

The State responded to Mr. Russell’s objection, saying he had agreed in his guilty plea to pay for property damage resulting from his crime. RP 29. The State continued saying the insurance company had provided an estimate of \$751 to replace a door. RP 29. Plainly Mr. Russell’s agreement was not to pay to repair any and all damage to Mr. Kain’s home regardless of the cause, but simply an agreement to pay for damage caused by his crime. Thus, the first part of the State’s response begs the question: was the door damaged as a result of Mr. Russell’s crime. The second part of the State’s response fails to answer that question. Missing from the insurance documents are any facts establishing the damage paid for was caused by or even related to Mr. Russell’s crime. DeDonado, makes clear that the mere fact that an insurer has paid an amount to a crime victim does not establish the defendant’s restitution obligation. 99 Wn.App. at 257. Plainly, the State did not meet its burden by showing that the insurance company paid for repairs to Mr. Kain’s home. Instead, the State was required to prove those repairs were of damage caused by Mr. Russell. The State did not meet its burden.

In the absence of proof of easily ascertainable damages, the trial court erred in ordering restitution in this case.

E. CONCLUSION

For the reasons above this Court must reverse the restitution order in this case.

Respectfully submitted this 21<sup>st</sup> day of September, 2011.



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Respondent,	)	
	)	NO. 66759-9-I
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	)	
ANTHONY RUSSELL,	)	
	)	
Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 21<sup>ST</sup> DAY OF SEPTEMBER, 2011, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] ANTHONY RUSSELL 4815 DAYTON AVE N SEATTLE, WA 98103	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2011.

X \_\_\_\_\_ 

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