

NO. 66959-1-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

RONNIE SEYMOUR, JR.,

Appellant.

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

REPLY BRIEF

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A. ARGUMENT.

WHERE THERE WAS INSUFFICIENT
EVIDENCE OF CAUSATION, THE
RESTITUTION AWARD SHOULD BE
REVERSED.

1. Restitution is allowed only for losses that are
“causally connected” to the crimes charged. RCW 9.94A.753(5)
permits a sentencing judge to order restitution in a case involving
injury or “damage to or loss of property.” Losses are causally
connected if, but for the charged crime, the victim would not have
incurred the loss. State v. Acevedo, 159 Wn. App. 221, 229-30,
248 P.3d 526 (2011); State v. Griffith, 164 Wn.2d 960, 965-66, 195
P.3d 506 (2008), citing State v. Tobin, 161 Wn.2d 517, 524, 166
P.3d 1167 (2007) (internal citations omitted).

“The trial court cannot impose restitution based on a
defendant’s ‘general scheme’ or acts ‘connected with’ the crime
charged, when those acts are not part of the charge.” State v.
Oakley, 158 Wn. App. 544, 552, 242 P.3d 886 (2010) (internal
citations omitted). Restitution, instead, may only be ordered “for
losses incurred as a result of the precise offense charged.” State
v. Woods, 90 Wn. App. 904, 907, 953 P.2d 834 (1998). If the “loss
or damage occurred before the act constituting the crime, there is

no causal connection between the two.” Id. at 909; Acevedo, 159 Wn. App. at 230.

2. Mr. Seymour never agreed to pay restitution for all of the alleged burglaries, particularly those which he did not commit. The trial court erred in ordering over \$13,000 in restitution, where a large portion of the restitution amount was due to conduct not causally connected to Mr. Seymour’s own crimes.

Under the terms of Mr. Seymour’s plea agreement, he agreed to pay restitution for “all losses for all charged cts. [sic], inc. VII & IX & all conduct in cert. [sic]” CP 19 (emphasis added). Mr. Seymour specifically agreed to pay restitution for all counts charged in the information, including Counts 7 and 9, and for all conduct alleged in the certification for determination of probable cause. CP 65. The State is correct in noting that the certification listed not only the trafficking counts to which Mr. Seymour had pled guilty, as well as counts 7 and 9, which the State had dismissed, but it alleged several residential burglaries. CP 11-22. In exchange for a favorable plea, Mr. Seymour agreed to pay restitution related to all of the trafficking and possession of stolen property counts, including the dismissed counts, and the conduct alleged in the certification of probable cause.

Mr. Seymour had not, however, been charged with the burglaries themselves, and thus had not agreed to compensate the complaining witnesses for losses sustained from the burglaries. CP 56-61. Mr. Seymour's agreement to pay restitution for charged and dismissed counts did not empower the court to disregard the statutory requirement that there be an evidentiary nexus between Seymour's acts and the loss incurred. He had not been charged with the burglaries, and therefore had not agreed to compensate the burglary victims.

The State argues that under RCW 9.94A.753(5), a trial court may order restitution to compensate "a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement." Resp. Brief at 8 (citing 9.94A.753(5)). This would be accurate if, however, the trial court's restitution award did not result in an abuse of discretion. See, e.g., Oakley, 158 Wn. App. at 552; State v. Pollard, 66 Wn. App. 779, 785, 834 P.2d 51 (1992).

Here, the trial court committed legal error by finding Mr. Seymour liable for the losses and property damage caused by the burglaries, even though there was an insufficient nexus between the burglaries and the crimes with which Mr. Seymour was charged and pled guilty, and, most importantly -- for which he specifically

agreed to pay restitution in the plea agreement . CP 19; 3/22/11
RP 8-13.

3. The restitution order must be vacated. Because there was an insufficient nexus, and because Mr. Seymour did not specifically agree, the restitution order must be vacated. See Woods, 90 Wn. App. at 907-08.

B. CONCLUSION.

For the foregoing reasons, as well as those stated in the Opening Brief, Mr. Seymour respectfully requests this Court reverse the restitution order and remand the case for a new restitution hearing.

DATED this 14th day of March, 2012.

Respectfully submitted,



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

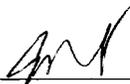
STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 66959-1-I
v.)	
)	
RONNIE SEYMOUR, JR.,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

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