

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

OPENING BRIEF OF APPELLANT

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COMMUNICATIONS SECTION
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A. ASSIGNMENT OF ERROR.

The trial court erred in imposing restitution where there was insufficient evidence linking Mr. Seymour to the crimes charged.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.

Restitution is allowed only for losses that are “causally connected to the crimes charged.” Where the restitution award is not sufficiently causally connected to the convictions, did the trial court err in imposing its restitution award?

C. STATEMENT OF THE CASE.

Ronnie Seymour pled guilty to three counts of trafficking in stolen property in the first degree and one count of possession of stolen property in the third degree. CP 11-22; 10/27/10 RP 2-18. As part of a plea agreement, two additional counts of trafficking in stolen property in the first degree were dismissed. CP 19; 10/27/10 RP 2. Mr. Seymour entered into a plea agreement in which he agreed to pay restitution for “all losses for all charged cts. [sic],” including those in the dismissed counts, and “all conduct in cert. [sic]” CP 19.

On March 17, 2011, Mr. Seymour appeared for a restitution hearing. 3/17/11 RP 2-8. The defense presented specific objections to the State’s restitution claim, arguing that it was not sufficiently causally related to Mr. Seymour’s criminal conduct, and

that specific items of trafficked property had been recovered. CP 56-61; 3/17/11 RP 2-8. At a continued hearing on March 22, 2011, the State partially reduced the restitution amount in light of defense arguments concerning the recovered property. CP 62-64, 65-67; 3/22/11 RP 2-20. Mr. Seymour challenges the remaining error in the restitution award. CP 68-72.

D. ARGUMENT.

THE RESTITUTION AWARD SHOULD BE REVERSED BECAUSE THERE WAS INSUFFICIENT EVIDENCE OF CAUSATION FOR THE AMOUNT OF RESTITUTION AWARDED.

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.

In Griffith, the Supreme Court noted that the defendant had not pled guilty to a crime of theft, but only to the crime of possession of stolen property. 164 Wn.2d at 967. Rather than assessing restitution based on the value of the property she had admitted to possessing, the lower court had imposed a restitution order for the total amount of property stolen from the complainant. Id. at 962-63. The Griffith court held that the evidence supporting the restitution order was not only “skimpy,” as the State had conceded, but legally insufficient. Id. at 967. “Culpability for possession of stolen property does not necessarily include culpability for the stealing of the property. The actual thief is guilty of a different crime.” Id. (quoting Griffith, 136 Wn. App. 885, 894, 151 P.3d 230 (2007) (Schultheis, J., dissenting) (internal citations omitted).

Whether restitution is causally related to the crimes for which a defendant was convicted is reviewed de novo. Acevedo, 159 Wn. App. at 229-30.

2. There was insufficient evidence causally linking Mr. Seymour to the burglaries, and it was error to impose restitution for the losses incurred by the those crimes. The trial court erred in ordering over \$13,000 in restitution,¹ where a large portion of the restitution amount was due to conduct not causally connected to Mr. Seymour's 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 19.² The State argued at the restitution hearing that this should be interpreted as Mr. Seymour's agreement 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 certification, however, listed not only the trafficking counts to which Mr. Seymour had pled guilty, as well as counts 7 and 9, which the

¹ The Order Setting Restitution does not indicate a final amount, following the revisions made by the State after Mr. Seymour's objections at the restitution hearing; however, the final total appears to be \$13,689.11. CP 62-64.

² This notation is hand-written in the margin of the felony plea agreement, which is signed by Mr. Seymour and defense counsel. Appendix A.

State had dismissed, but it alleged several residential burglaries. CP 11-22. The defense argued that Mr. Seymour had 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. He 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.

Here, the trial court ordered that restitution be paid to John Rodie and Farmers Insurance for \$500 and \$1,706.59, respectively. CP 62-64. Although the conduct that Mr. Seymour pled guilty to was related to Count 2 in the information, this claim also refers to losses and damages resulting from a burglary. There is no causal connection between the crimes charged and this loss. Mr. Seymour pled guilty to Count 2, which alleged that he had trafficked in stolen goods belonging to Mr. Rodie; however, he was not charged with burglary and did not agree to pay restitution for losses connected to a burglary. That he was convicted of trafficking stolen goods

belonging to Mr. Rodie is an insufficient nexus to establish that his conduct was causally related to the burglary, which was likely committed by another.

Likewise, Mr. Seymour was ordered to pay \$340 restitution to the Elams, for conduct alleged in Count 5. CP 62-64. As discussed above, there is no nexus between the trafficking crimes charged and the burglary of which the Elams complain in the certification of probable cause. CP 19.

The trial court also ordered Mr. Seymour to pay restitution of \$1000 and \$2305.11 to Charles Klyn and Pemco, respectively. CP 62-64. This related to Counts 6 and 7, trafficking in the first degree and possession of stolen property in the third degree. CP 1-10. However, since the loss also relates to damage to the residence of Mr. Klyn, this claim also refers to losses and damages resulting from a burglary. There is no causal connection between the crimes charged and this loss.

In addition, the court ordered Mr. Seymour to pay restitution of \$2850.23 to Alison Morton, relating to Count 8. CP 62-64. However, as discussed above, since the restitution relates to the losses resulting from a burglary, the State failed to show a causal connection between the crimes charged and this loss.

Lastly, the court ordered Mr. Seymour to pay restitution of \$1000 and \$1446.18 to the Rohweders and The Hartford, respectively. CP 62-64. This portion of the restitution order, related to Count 9, also referenced a reported burglary. CP 11-22. This claim is problematic for similar reasons: the items the Rohweders claimed to be missing were taken in a burglary, and Mr. Seymour was not named as a suspect in the certification of probable cause. That he was convicted of trafficking stolen goods belonging to the Rohweders is an insufficient nexus to establish that he is causally related to the burglary.

“It is clear that if the loss or damage occurs before the act constituting the crime, there is no causal connection between the two.” Woods, 90 Wn. App. at 909 (restitution order reversed where defendant possessed stolen car, but loss of items in car was caused by earlier theft of the car); see Acevedo, 159 Wn. App. at 230 (restitution order reversed where car thief and buyer held joint and severally liable, but no causal connection was shown between damage to car and buyer).

The trial court committed legal error by ignoring the causation requirement and 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. 3/22/11 RP 8-13.

3. The restitution order must be vacated. In the absence of sufficient evidence connecting Mr. Seymour's criminal conduct to the burglaries for which the restitution order held him responsible, the restitution order must be vacated. Griffith, 164 Wn.2d at 967-68. Unless a defendant agrees, restitution cannot be imposed based on a "general scheme" or acts "connected with" the crime charged, when those acts are not part of the charge. State v. Woods, 90 Wn. App. 904, 907-08, 953 P.2d 834 (1998).

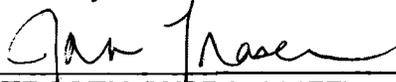
Where the State has failed to show that that Mr. Seymour's conduct was sufficiently tied to the crimes charged in the certification for probable cause, under the terms of the plea agreement, the restitution award must be vacated. See State v. Taylor, 86 Wn. App. 442, 446, 936 P.2d 1218 (1997) (reversing restitution award where State failed to demonstrate that defendant's criminal acts caused amount of losses claimed by State).

E. CONCLUSION.

For the foregoing reasons, Mr. Seymour respectfully requests this Court reverse the restitution order and remand the case for a new restitution hearing.

DATED this 18th day of November, 2011.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jan Trasen", is written over a horizontal line.

JAN TRASEN (WSBA 41177)
Washington Appellate Project (91052)
Attorney for Appellant

APPENDIX A

FELONY PLEA AGREEMENT

Date of Crime: 6-8-10 to 6-11-10
6-19-10, 6-24-10, 7-19-10

Date: 10-25-10

Defendant: Ronnie Seymour
SRA/KNT

Cause No: 10-C-06040e-1 SRA

The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement may be withdrawn at any time prior to entry of the guilty plea. The PLEA AGREEMENT is as follows:

On Plea To: As charged in Count(s) I, II, III, VI of the original amended information.
 With Special Finding(s): deadly weapon - firearm, RCW 9.94A.510(3); deadly weapon other than firearm, RCW 9.94A.510(4); sexual motivation, RCW 9.94A.835; protected zone, RCW 69.50.435; domestic violence, RCW 10.99.020; other _____; for count(s): _____

This is part of an indivisible agreement that includes cause number(s): 10-1-06058-4

DISMISS: Upon disposition of Count(s) I, II, III, VI, the State moves to dismiss: cts. VII & IV
and 10-1-06058-4

REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.530, the parties have stipulated that the following are real and material facts for purposes of this sentencing:

- The facts set forth in the certification(s) for determination of probable cause and prosecutor's summary.
- The facts set forth in Appendix C;

The defendant acknowledges and waives any right to have a jury determine these facts by proof beyond a reasonable doubt.

RESTITUTION: Pursuant to RCW 9.94A.753, the defendant shall pay restitution in full to the victim(s) on charged counts and agrees to pay restitution in the specific amount of \$ _____
 agrees to pay restitution all losses for all charged cts, inc. III

OTHER: State agrees to file no further charges in

CRIMINAL HISTORY AND OFFENDER SCORE: SPD 10-214705; D agrees to rec. all

a. The defendant agrees to this Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A), offender score, and the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing recommendation set forth in the State's sentence recommendation. An essential term of this agreement is the parties' understanding of the standard sentencing range(s); if the parties are mistaken as to the offender score on any count, neither party is bound by any term of this agreement. score 4 as of 10-25-10 on

b. The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, as follows: TSP 1 (13)

- (1) Conviction: _____ Basis: _____
- (2) Conviction: _____ Basis: _____

c. The defendant understands that one or more convictions from other jurisdictions have been included in the offender score, and agrees that these convictions have been properly included and scored according to the comparable offense definitions provided by Washington law.

d. The parties agree that neither party will seek an exceptional sentence, and the defendant agrees that he or she will not request a first-time offender waiver, or a drug offender or parenting sentencing alternative.

Maximum on Count(s) I, II, III is not more than 10 years each and \$ 20,000 fine each.

Maximum on Count(s) _____ is not more than _____ years each and \$ _____ fine each.

- Mandatory Minimum Term(s) pursuant to RCW 9.94A.540 only: _____
- Mandatory weapon sentence enhancement for Count(s) _____ is _____ months each; for Count(s) _____ is _____ months each. This/these additional term(s) must be served consecutively to each other and to any other term and without any earned early release.

The State's recommendation will increase in severity if additional criminal convictions are found or if the defendant commits any new charged or uncharged crimes, fails to appear for sentencing or violates the conditions of release.

Ronnie Seymour
Defendant
[Signature]
Attorney for Defendant
Schewman

[Signature]
Prosecuting Attorney
[Signature]
Judge, King County Superior Court

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

| | | |
|----------------------|---|---------------|
| STATE OF WASHINGTON, |) | |
| |) | |
| Respondent, |) | |
| |) | NO. 66959-1-I |
| v. |) | |
| |) | |
| JONATHAN SEYMOUR, |) | |
| |) | |
| Appellant. |) | |

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 18TH DAY OF NOVEMBER, 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 | (X) | U.S. MAIL |
| APPELLATE UNIT | () | HAND DELIVERY |
| KING COUNTY COURTHOUSE | () | _____ |
| 516 THIRD AVENUE, W-554 | | |
| SEATTLE, WA 98104 | | |

SIGNED IN SEATTLE, WASHINGTON THIS 18TH DAY OF NOVEMBER, 2011.

X _____ *[Signature]*

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STATE OF WASHINGTON
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