

70109-6

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No. 70109-6-I

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

STATE OF WASHINGTON,

Respondent,

v.

ABDIRAZIK O. MOHAMED,

Appellant.

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 MAR -5 AM 11:48

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

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The State did not prove beyond a reasonable doubt that Abdirazik Mohamed committed the crime of bail jumping.

2. The trial court erred in ordering restitution for items missing from a vehicle when Mr. Mohamed was convicted of vehicle prowling but acquitted of theft of items missing from the vehicle.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. A defendant may not be convicted of a crime unless the State proves every element of the crime beyond a reasonable doubt. U.S. Const. amend. VI. XIV; Const. art. I, sec. 3, 22. To convict a defendant of bail jumping, the State must prove beyond a reasonable doubt that the defendant (1) was charged with a particular crime, (2) he was released by court order or admitted to bail with the requirement of a subsequent personal appearance, and (3) he knowingly failed to appear as required. RCW 9A.76.170(1). Where the evidence established that Mr. Mohamed appeared for a case setting hearing and waited for one and one-half to two hours, but was absent when his case was finally called two hours and fifteen minutes after it was scheduled, must his conviction for bail jumping be reversed in the absence of proof that he failed to appear as required?

2. Restitution may be awarded only for injuries or damages resulting from the precise offense proven, and the award must be based on a causal connection between the offense proven and the victim's loss or damages. RCW 9.94A.753. Here, Mr. Mohamed was convicted of vehicle prowl but acquitted of theft based on items missing from the same vehicle. Nonetheless, the court awarded restitution for a missing global positioning system (GPS) based on evidence of Mr. Mohamed's fingerprint on the GPS adapter that was left in the vehicle. In light of the acquittal on the charge of theft, did the trial court abuse its discretion in awarding restitution for the GPS?

C. STATEMENT OF THE CASE

On September 19, 2012, sometime between approximately 3 a.m. and 2 p.m., Taylor Dodge's car was broken into and items valued at \$2371.20 were taken, including a GPS that was plugged into an adapter. 2/4/13 RP 17-20, 23, 33. Ms. Dodge noticed an energy drink bottle inside the car that did not belong to her. 2/4/13 RP 25. There were no witnesses to the incident.

The responding police officer lifted several fingerprints from the interior of the car, including from the GPS adapter and the energy drink bottle. 2/5/13 RP 53, 55-56. The fingerprint from the adapter and the bottle were identified as belonging to Mr. Mohamed. 2/5/13 RP 20.

Mr. Mohamed was charged with theft in the second degree and ordered to appear for a case setting hearing on July 11, 2012 at 1 pm. CP 1-4; 2/5/13 RP 82-83; Ex. 7. According to his attorney, Kris Shaw, Mr. Mohamed arrived early for the hearing and waited for almost two hours. 2/5/13 RP 83, 85. Mr. Shaw probably informed Mr. Mohamed he needed to stay until his case was called. 2/5/13 RP 103. However, when his case was finally called at 3:13 pm, Mr. Mohamed was no longer present. 2/5/13 RP 85; Ex. 9.

The State amended the charges against Mr. Mohamed to add vehicle prowling in the second degree and bail jumping. CP 5-6. Following a jury trial, Mr. Mohamed was found not guilty of theft in the second degree and guilty of vehicle prowling and bail jumping. 2/5/13 RP 170; CP 10-12.

The State requested restitution in the amount of \$3,524.69, based on the value of the missing items and alleged damage to Ms. Taylor's car. 6/4/13 RP 2. Mr. Mohamed objected on the grounds that, in light of the not guilty verdict on the theft charge, the jury was not convinced Mr. Mohamed was responsible for the missing items and there accordingly was no causal connection between Mr. Mohamed and those items. 6/4/13 RP 3-6. The court nonetheless ordered restitution in the amount of \$269.99, the price of the GPS, on the grounds Mr. Mohamed's fingerprint

on the adapter established the necessary causal connection, regardless of the jury's not guilty verdict on the theft charge. 6/4/13 RP 8-9.

D. ARGUMENT

1. The State did not prove beyond a reasonable doubt that Mr. Mohamed committed bail jumping.

- a. The State was required to prove beyond a reasonable doubt every essential element of the offense of bail jumping.

The due process clauses of the federal and state constitutions require the State to prove every essential element of a crime beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 476-77, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); U.S. Const. amend. VI, XIV; Const. art. I, sec. 3, 22. A criminal defendant's fundamental right to due process is violated when a conviction is based upon insufficient evidence. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); *City of Seattle v. Slack*, 113 Wn.2d 850, 859, 784 P.2d 494 (1989). On review, a conviction may stand only if, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 334, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Brown*, 162 Wn.2d 422, 428, 173 P.3d 245 (2007).

- b. The State presented insufficient evidence that Mr. Mohamed failed to appear for court as required, an essential element of the offense of bail jumping.

The bail jumping statute provides in relevant part:

Any person having been released by court order or admitted to bail with knowledge of the requirements of a subsequent personal appearance before any court of this state, ... and who fails to appear ... is guilty of bail jumping.

RCW 9A.76.170(1). The elements of the crime thus are that the defendant (1) was held for, charged with, or convicted of a particular crime, (2) was released by court order or admitted to bail with the requirement of a subsequent personal appearance, and (3) knowingly failed to appear as required. *State v. Williams*, 162 Wn.2d 177, 183-84, 170 P.3d 30 (2007) (quoting *State v. Pope*, 100 Wn. App. 624, 627, 999 P.2d 51 (2000)).

Here, the State introduced certified copies of various documents from the court file and called the courtroom clerk supervisor to explain the documents for the jury. 2/5/13 RP 31, 33-41, 44-45. The testimony of Mr. Mohamed's trial attorney and the documents established:

- On May 23, 2012, Mr. Mohamed appeared for arraignment, he received a notice to appear for a case scheduling hearing on June 6, 2012 at 1:00 p.m., and he was released on his personal recognizance.
- On June 6, 2012, Mr. Mohamed appeared for the case scheduling hearing and the hearing was continued to June 20, 2012 at 1:00 p.m.

- On June 20, 2012, Mr. Mohamed appeared for the case scheduling hearing and the hearing was continued to July 11, 2012 at 1:00 p.m.
- On July 11, 2012, Mr. Mohamed appeared for the case scheduling hearing at 1:00 p.m. and waited for at least one and one-half hours. At 3:13 p.m., when the case was finally called, Mr. Mohamed was no longer present and a bench warrant was issued.

Ex. 4, 5, 6, 7, 8, 9; 2/5/13 RP 83, 85.

In *State v. Coleman*, this Court reversed a bail jumping conviction where the clerk's minutes established that the defendant was not present at 8:30 a.m., but he had been told to appear at 9:00 a.m. 155 Wn. App. 951, 963-64, 231 P.3d 212 (2010). Looking at all the evidence, the court concluded that "nothing before the jury established that Coleman was absent at the time specified in his notice." *Id.* at 964. Here, too, the evidence established that Mr. Mohamed was present at the time, date, and location specified in his notice. 2/5/13 RP 83. Thus, the State failed to establish beyond a reasonable doubt that Mr. Mohamed knowingly failed to appear as required. His conviction for bail jumping must be reversed and dismissed.

2. The trial court erred in awarding restitution in the absence of a causal connection between the charge proven and the damages sought.

- a. A court abuses its discretion when it awards restitution in the absence of a causal connection between the crime of conviction and the damages sought.

A court's authority to award restitution following a criminal conviction is limited by statute and requires an award only where the crime of conviction results in injury to a person or damage or loss of property. RCW 9.94A.753(5); *State v. Gray*, 174 Wn.2d 920, 924, 280 P.3d 1110 (2012). 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." RCW 9.94A.753(3). Thus, restitution is limited to losses that are causally connected to the crime of conviction. *State v. Griffin*, 164 Wn.2d 960, 965, 195 P.3d 506 (2008). Losses are causally connected if, but for the crime of conviction, the victim would not have incurred the losses. *Id.* at 966; *State v. Tobin*, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007).

The State bears the burden of proving by a preponderance of evidence a causal connection between the crime of conviction and the damages sought. *Griffin*, 164 Wn.2d at 965; *State v. Dedonado*, 99 Wn. App. 251, 257, 991 P.2d 1216 (2000). A court's award of restitution is

reviewed for abuse of discretion. *Gray*, 174 Wn.2d at 924. A court abuses its discretion when the award is manifestly unreasonable or untenable. *Id.*

- b. In light of the acquittal on the charge of theft, the State could not prove a causal connection between the conviction for vehicle prowling and the missing GPS.

In determining the amount of restitution, the court “may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved at trial.” *Dedonado*, 99 Wn. App. at 256 (emphasis added). A court may not award restitution for damages “beyond the crime charged or for other uncharged offenses.” *State v. Johnson*, 69 Wn. App. 189, 191, 847 P.2d 960 (1993). “The general rule is that restitution may be ordered only for losses incurred as a result of the precise offense charged. Restitution cannot be imposed based on the defendant’s ‘general scheme’ or acts ‘connected with’ the crime charged, when those acts are not part of the charge.” *State v. Miszak*, 69 Wn. App. 426, 428, 848 P.2d 1329 (1993) (internal citation omitted).

Here, after less than one hour of deliberation, the jury returned a guilty verdict on the charge of vehicle prowling and a not guilty verdict on the theft charge. CP 10, 11; CP 65 (Clerk’s Minutes). Thus, the jury

affirmatively found the State did not to prove that Mr. Mohamed was responsible for any of the items missing from Ms. Dodge's car.

In *State v. Osborne*, the defendant was charged with eight felony counts, but by plea agreement, the State dismissed six of the counts, and the defendant pleaded guilty to the remaining two counts. 140 Wn. App. 38, 40, 163 P.3d 799 (2007). At sentencing, however, the court awarded restitution to the victim of one of the dismissed counts. *Id.* On appeal, that award was vacated, and the court stated, “[T]he court may not require restitution beyond the crime charged unless the defendant expressly agrees to pay restitution for crimes that he was not convicted of.” *Id.* at 42.

Similarly, in *State v. Dauenhauer*, the defendant was convicted of burglary, but the court awarded restitution not only to the victims of the burglary, but also for repairs to a fence and a vehicle that the defendant damaged while fleeing the scene of the burglary. 103 Wn. App. 373, 378-79, 12 P.3d 661 (2000). On appeal, the court vacated the restitution for the damaged fence and vehicle, on the grounds those damages were not part of the burglary charge. 103 Wn. App. at 379-80. *See also State v. Oakley*, 158 Wn. App. 544, 242 P.3d 886 (2010) (restitution for damages incurred while fleeing from scene of crime of conviction vacated for lack of causal connection between the charged crime and the damages).

Here too, in light of the acquittal on the charge of theft, there was no causal connection between the crime of conviction, i.e., vehicle prowling, and the missing items from Ms. Dodge's car. The restitution award for the missing GPS must be vacated.

E. CONCLUSION

Insufficient evidence supported the conviction for bail jumping and restitution was awarded in the absence of a causal connection between the crime of conviction and damages sought. For the foregoing reasons, Mr. Mohamed requests this court reverse his conviction for bail jumping and vacate the order of restitution.

DATED this 4th day of March 2014.

Respectfully submitted,



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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 70109-6-I
v.)	
)	
ABDIRAZIK MOHAMED,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 4TH DAY OF MARCH, 2014, 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:

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<input checked="" type="checkbox"/> ABDIRAZIK MOHAMED (NO VALID ADDRESS) C/O COUNSEL FOR APPELLANT WASHINGTON APPELLATE PROJECT	(<input type="checkbox"/>) (<input type="checkbox"/>) (<input checked="" type="checkbox"/>)	U.S. MAIL HAND DELIVERY RETAINED FOR MAILING ONCE ADDRESS OBTAINED

SIGNED IN SEATTLE, WASHINGTON THIS 4TH DAY OF MARCH, 2014.

x _____ 

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