

FILED
August 27, 2015
Court of Appeals
Division I
State of Washington NO. 73362-1-I

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

STATE OF WASHINGTON,

Respondent,

v.

V.O.,

Appellant.

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

The Honorable Bruce E. Heller, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

1. The trial court erred in imposing restitution in an amount not supported by substantial evidence.

Issue Pertaining to Assignment of Error

1. Did the trial court err in imposing restitution for the cost of replacing the victim's entire front door when the evidence established that only the doorjamb was damaged and not the door itself?

B. STATEMENT OF THE CASE

The State charged V.O. with attempted residential burglary. CP 1. The certificate of probable cause alleged that on May 28, 2014, V.O., together with three other teenagers, opened the back gate to Youngblood's home, hovered around the house, and then kicked the front door several times, attempting to gain entry. CP 2. When they could not kick the door open, they left the premises. CP 4. Youngblood returned home later that day to find her doorframe cracked and some graffiti sprayed on the house. CP 3. Police photographed the damaged doorframe. CP 3.

The trial court granted V.O.'s request for a deferred disposition, but ordered her to pay restitution and set a date for the restitution hearing. CP 30-33 (order granting deferred disposition), 35-37 (statement of juvenile for deferred disposition), 38-41 (motion for deferred disposition).

The court held a restitution hearing on February 6, 2015. 1RP.¹ The State requested \$5,116.91 in restitution, which included \$500 for Youngblood's insurance deductible, \$44.67 to paint over the graffiti, \$1,086.24 to replace 16 feet of fencing, and the remainder to Youngblood's insurance company for replacing the front door. CP 9-28; 1RP 4, 40-41. Pursuant to V.O.'s concession, the trial court awarded restitution for the graffiti, but rejected restitution for the fence because there was no evidence it was so significantly damaged in the attempted burglary. 1RP 21, 40-43.

The focus of the restitution hearing was on the extent of damage to the doorjamb² and the door. The State produced evidence the doorjamb had vertical cracks where the deadbolt latches into the doorjamb, resulting from repeated kicks to the door. 1RP 17; CP 18-22. V.O. did not contest this damage. 1RP 9-10. There was no reported damage to the door itself. 1RP 10-13. Nevertheless, the insurance company paid out funds to replace the entire door, even though an insurance adjuster never inspected the door or determined it needed to be replaced. 1RP 13-15. V.O., on the other hand,

¹ This brief refers to the verbatim reports of proceedings as follows: 1RP – February 6, 2015; 2RP – March 26, 2015.

² The parties referred to this as both a doorjamb and a doorframe. See 1RP 31. A doorjamb consists of the two vertical portions of the doorframe, onto which the door is secured. A doorframe includes the two vertical doorjambs, as well as the horizontal portion at the top of the door. A review of the record indicates the damage was specifically to the doorjamb.

presented evidence that the doorjamb could be repaired independently of the door. 1RP 10-13.

The trial court concluded there was “sufficient documentation to show that there was damage to the doorframe,” but “[t]here’s no evidence whatsoever of damage to the door itself, and no indication, although there was a claim there was damage to the hardware, no indication as to how the hardware itself was damaged.” 1RP 41. The court further noted the insurance company “didn’t conduct any independent investigation,” instead relying “upon the homeowner to report the damage.” 1RP 41. The court therefore awarded restitution only to replace the doorjamb (\$25) and the cost of associated labor. 1RP 41-43. The State informed the court it would negotiate with the defense to establish the final restitution amount. 1RP 43.

The court held another restitution hearing on March 26, 2015, at which time the State sought an amended restitution amount of \$4,030.67. 2RP 52; CP 48-78. The State explained the parties were unable to reach a resolution and Youngblood had provided additional information about the door in the meantime. 2RP 3-4. V.O. requested leave to inspect the door under CrR 4.8, which the trial court denied. 2RP 4-12.

Youngblood then testified at the hearing. 2RP 12. Based on her testimony, the trial court imposed restitution for the cost of replacing the entire door, even though “door may be repairable.” 2RP 67-70. The court

explained, “the insurance company elected to replace this door rather than simply investigate repairing it, and the question, I suppose, is whether the respondents should be held legally responsible for that. Under all the facts of this case, I think they should.” 2RP 69. The court accordingly entered a written order setting restitution at \$500 to Youngblood, which V.O. agreed to, and \$3,530.67 to her insurance company, Grange Insurance Association, for a total of \$4,030.67. CP 82-83; 2RP 11, 60.

On June 4, 2014, the trial court dismissed V.O.’s conviction with prejudice because she successfully complied with the terms of the deferred disposition order. CP 91-92. The court found restitution remained outstanding, so “[t]he restitution order previously entered remains in effect.” CP 91. V.O. timely appeals from the restitution order. CP 84.

C. ARGUMENT

THE RESTITUTION ORDER IS VOID BECAUSE THE AMOUNT IMPOSED IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND LACKED A SUFFICIENT CAUSAL CONNECTION TO THE CRIME.

Juveniles granted a deferred disposition “shall be placed under community supervision,” which includes “[p]ayment of restitution under RCW 13.40.190.” RCW 13.40.127(5). RCW 13.40.190(1)(a) specifies “the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the

respondent.” This includes payment to “any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the offense charged.” RCW 13.40.190(4).

Restitution orders are reviewed for abuse of discretion. State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008). Discretion is abused when exercised in a manifestly unreasonable manner or on untenable grounds. State v. Dauenhauer, 103 Wn. App. 373, 378, 12 P.3d 661 (2000). Where the restitution amount is disputed, the State bears the burden of establishing the amount owed by a preponderance of the evidence. State v. Dennis, 101 Wn. App. 223, 226-27, 6 P.3d 1173 (2000); State v. Dedonado, 99 Wn. App. 251, 257, 991 P.2d 1216 (2000).

The restitution amount must be based on easily ascertainable damages. Griffith, 164 Wn.2d at 965. While the claimed loss need not be established with specific accuracy, it must be supported by substantial credible evidence. Id. ““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. (internal quotation marks omitted) (quoting State v. Hughes, 154 Wn.2d 118, 154, 110 P.3d 192 (2005)).

Restitution is allowed only for losses causally connected to the crime charged. Griffith, 164 Wn.2d at 965. Losses are causally connected if, but

for the charged crime, the victim would not have incurred the loss. Id. A causal connection is not established simply because a victim or insurer submits proof of expenditures for replacing property damaged by the person convicted, because “[s]uch expenditures may be for items of substantially greater or lesser value than the actual loss.” Dedonado, 99 Wn. App. at 257.

In Dedonado, the State presented sworn documentation detailing property damage at one of the victim’s electronics shops. Id. at 253. This included replacing an irreparable generator with a different model. Id. This Court concluded it was impossible to determine from the State’s documentation whether the new generator model was a proper replacement of the original generator. Id. at 257. Given this lack of causal connection, the State failed to meet its burden of proving the restitution amount by a preponderance of the evidence. Id.

This case is analogous to Dedonado. In its summary of loss, the State included an e-mail from Grange Insurance Association stating it did not inspect the door to determine the extent of damage. CP 53. The State did not include any photographs of damage to the door—instead providing photographs only of the cracks in the doorjamb. CP 70-74. This is consistent with the certification of probable cause, which described only the cracked doorframe. CP 203.

Youngblood testified she and her husband purchased the custom door when they remodeled their home six years prior. 2RP 17-18. She explained when she returned home on May 28, 2014, she found the doorframe cracked where the deadbolt latches and the door handle loose, though not broken off. 2RP 14-21. Youngblood also testified there was a small crack in the window next to the door, what the court termed the “relite.” 1RP 31; 2RP 16-20. There were footprints on the door, but no structural damage. 2RP 31-32, 55-56.

Youngblood acknowledged she was not a contractor. 2RP 31. She further acknowledged there were no cracks in the door itself. 2RP 32. Nor was there damage to the locking mechanism in the doorjamb. 1RP 13. Youngblood never asked about the possibility of repairing the door, and no one from the manufacturer or insurance company inspected the door to determine whether it needed to be replaced. 2RP 38-41. Nevertheless, Youngblood purchased an entirely new, custom door for \$2,318.16, plus the cost of installation. 2RP 24; CP 48. She claimed, “It’s one unit, that’s why that door could not be replaced in sections. It’s one unit, the whole frame is there.” 2RP 18.

By contrast, V.O. presented evidence that the doorjamb could be replaced independently from the door. 1RP 12-13, 35-37. It simply requires removing the damaged doorjamb and replacing it with new wood and

screws. 1RP 13. The defense investigator also spoke with Youngblood's contractor, who indicated the only way to know whether the entire door needed to be replaced was to inspect the premises. 2RP 7.

Based on the hearing testimony and the State's documentation, no substantial credible evidence supported to need to replace the entire door. Indeed, there was no damage to the door itself. No one with adequate knowledge inspected the door to determine whether it needed to be replaced. Youngblood claimed only that the door was one unit. But she acknowledged she was not a contractor, and her testimony is not only illogical, but is also inconsistent with the door experts interviewed by the defense. To put it simply: it makes no sense to replace the entire door when only the doorjamb was damaged. At most, the door handle and relite needed to be replaced, but the State did not produce evidence of these independent expenditures.

Furthermore, Dedonado establishes that simply because an insurance company pays out a certain amount does not mean it is entitled to restitution for that amount. No one from the insurance company or manufacturer inspected the door. Yet, V.O. established that the only way to determine whether the door needed to be replaced was to inspect it. She should not be held liable for the insurance company's or the State's lack of diligence. As in Dedonado, it is impossible to discern from the State's documentation or

Youngblood's testimony whether replacing the entire door was proper when there was no actual damage to the door.

Because restitution is authorized only by statute, "a trial court exceeds its statutory authority in ordering restitution where the loss suffered is not causally related to the offense committed by the defendant, or where the statutory provisions are not followed." State v. Vinyard, 50 Wn. App. 888, 891, 751 P.2d 339 (1988). Such is the case here: there is insufficient evidence establishing that the door needed to be replaced in its entirety. The restitution order relating to replacement of the door is void and should be vacated. Dennis, 101 Wn. App. at 229-30.

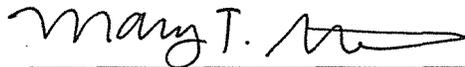
D. CONCLUSION

This Court should vacate the erroneous restitution order.

DATED this 27th day of August, 2015.

Respectfully submitted,

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Attorneys for Appellant

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DIVISION ONE

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
v.)	COA NO. 73362-1-I
)	
V.O.,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 27TH DAY OF AUGUST 2015, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] V.O.
12007 9TH AVENUE SW
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SIGNED IN SEATTLE WASHINGTON, THIS 27TH DAY OF AUGUST 2015.

X *Patrick Mayovsky*