

NO. 38677-1-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

V.

LYNN SMYTHE,

Appellant.

STATE OF WASHINGTON
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COURT OF APPEALS
DIVISION II

ON APPEAL FROM THE
SUPERIOR COURT OF GRAYS HARBOR COUNTY

Before the Honorable Michael J. Sullivan, Judge

OPENING BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court deprived appellant of the due process of law in entering a conviction in the absence of proof beyond a reasonable doubt of each element of the offense of possession of stolen property in the first degree.

2. The State failed to establish a causal connection between the conviction for possession of stolen property and acts and losses included in the restitution order.

3. The court abused its discretion when it entered a restitution order for a loss that was never causally connected to appellant's actions.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether there was sufficient evidence to support a conviction for first degree possession of stolen property? Assignment of Error 1.

2. Restitution must be based on a causal connection between the crime committed and the victim's losses. Here, the State presented no evidence to show, and appellant did not admit to any facts to suggest, that she was involved in a burglary or theft. Nor did the State present evidence that the stolen cabinets in question were damaged while in appellant's control. Did the trial court abuse its discretion by including in the restitution order payment for damages to cabinets incurred during a burglary and theft but

never causally connected them to appellant? Assignments of Error 2 and 3.

C. STATEMENT OF THE CASE

1. Procedural history:

Lynn Smythe [Smythe] was charged by information filed in Grays Harbor County Superior Court with one count of possession of stolen property in the first degree, contrary to RCW 9A.56.150. Clerk's Papers [CP] 1-2.

No motions were filed nor heard regarding either a CrR 3.5 or CrR 3.6 hearing. Trial to a jury took place November 12, 2008, the Honorable Michael J. Sullivan presiding. No objections or exceptions to the court's instructions to the jury were made. Report of Proceedings [RP] at 99.

The jury returned a verdict of guilty as charged. CP 50. The court sentenced Smythe within the standard range. RP (12.5.08) at 6; CP 110.

At a subsequent restitution hearing, the State requested the court order Smythe and two others to pay restitution for damage to cabinets after they were taken from a business in Olympia, Washington and left outside in the elements near Elma, in Grays Harbor County. RP (1.22.09) at 3, 5. The State argued that Smythe was responsible for the damage because "she knew where the cabinets were" and that she and her then-boyfriend Shawn Shapansky took six of the cabinets to Smythe's mother's house, but left the

balance of the cabinets outside in the rain, and that she therefore is responsible “for the damage to all of the cabinets.” RP (1.22.09) at 39. Counsel for Smythe objected, arguing that she “should only be responsible for damages that were caused to the cabinets that she actually possessed.” RP (1.22.09) at 6. The court denied the defense argument and found that Smythe was responsible for damage to all of the cabinets, and imposed restitution in the amount of \$19,963.91 for damages as a result of the theft, joint and several with Perry Vicars¹ and Seth Swan,² who were both convicted of charges related to the theft of the cabinets and truck. CP 123. The court noted:

As far as Ms. Smythe, when she went out with Mr. Shapansky and took a look at the treasure that she was going to turn into cabinets for herself and/or sell it, I can reasonably infer that she was not up to good. I look at her criminal history, you know, that she were—part of the sentencing here and it’s obvious that this—this wasn’t a good faith trying to salvage things for this unknown victim out there. She was part of it or she would have kept hands off and not gotten involved and she wouldn’t be responsible. But as far as I’m concerned once she started dealing with those cabinets and picking and choosing and taking some home, she’s on board for the whole—whole bit.

RP (1.22.09) at 47-48.

Timely notice of appeal was filed on December 8, 2008. CP 108.

¹Grays Harbor County Superior Court Cause No. 08-1-235-0.

²Grays Harbor County Superior Court Cause No. 08-1-217-1.

This appeal follows.

2. Trial testimony:

Steve Carras, owner of a cabinet manufacturing business in Olympia, Washington, reported to police that custom cabinets he had loaded into a Penske rental truck was missing from his business. RP at 8, 9. On April 2, 2008 he loaded the truck with approximately 188 lineal feet of fir cabinets that a client had commissioned, in preparation for transporting the cabinets to the client's house for installation. RP at 7, 8. The cabinets were loaded without drawers or doors in place. RP at 18. When Carras arrived at his shop the next day, the Penske truck and its cargo were missing. RP at 10. The key to the truck, which was kept in a drawer inside Carras' shop, was also missing. RP at 10. Carras did not see any sign of forced entry into his shop. RP at 10. Carras stated that in addition to the truck and cabinets, work tools such as nail guns, air sanders, and routers were also missing from the shop. RP at 15, 16.

Donald Warnock, a deputy with the Grays Harbor County Sheriff's Office, was dispatched to Workman Creek Road near Elma on April 6, 2008, regarding a report of a suspicious vehicle. RP at 1, 2. Deputy Warnock found a yellow Penske truck parked in brush located several feet from the main road. RP at 2. The cargo area of the truck was empty and there were no

keys in the ignition. RP at 3.

On April 16, 2008, while investigating the theft of the Penske truck, the cabinets, and tools from Carras' shop, Detective Keith Peterson of the Grays Harbor County Sheriff's Office went to Patti Norris' house in Elma. RP at 63, RP (1.22.09) at 28. Norris is Smythe's mother. RP at 63. Smythe lived at the house at the time. RP at 40. Smythe and her then-boyfriend Shawn Shapansky were at the house, and Norris arrived a short time later. RP at 67. Smythe told Detective Peterson that she did not know about the cabinets and that they were remodeling the kitchen and had painted the old cabinets. RP at 64. Norris arrived a few minutes later and gave permission to Detective Peterson to look in her house. RP at 64. Detective Peterson found six cabinets in the house—two in the living room, two in a bedroom or office area, one in a detached garage used as living area, and one cabinet covered with cardboard was located outside. RP at 64-65.

The cabinets were removed from the house by county workers using a truck. RP at 67. Smythe was placed under arrest. RP at 68. Shapansky told Detective Peterson that he and Smythe had been to a logging road where a portion of the cabinets were dumped. RP at 68. Detective Peterson went to the Delezine Road, which turned into a logging road, and after traveling on the unpaved logging road for approximately a mile, found several cabinets.

RP at 69, 70. The cabinets were damaged by water and had a lot of nicks and dings in them, but were overall in “pretty reparable condition.” RP at 70. There was older trash in the area of the cabinets, including discarded roofing materials. RP at 84. A county road crew made several trips in a truck to the location and recovered the cabinets. RP at 70. The cabinets were subsequently returned to Carras for restoration. RP at 71.

Seth Swan was convicted of possession of the Penkse truck taken from the cabinet shop. RP at 22. Swan stole the truck in Olympia the afternoon of April 2 and drove it to Elma. RP at 22, 23. He parked the truck at a mobile home park located at 66 Fairgrounds Road in Elma, in front of Jacob Persell’s residence. RP at 24, 31. Perry Vicars, who lived a few trailers down from Persell, got into the truck and told Swan to drive it to Larson Hill, which is located south of Elma. RP at 26, 27. He parked the truck and they both walked down the hill. RP at 27. Swan does not know Smythe. RP at 29.

Smythe testified that she does not know Swan or Vicars. RP at 87. She said that she bought some carpet, linoleum, and laminate for \$100.00 from a person she knows as Scott, who was a friend of her neighbors. RP at 87. She said that it was her mother who wanted to buy the material, and that she bought it for her. Her mother was gone when Scott came to the house so

Smythe negotiated the price with Scott. RP at 88. When Norris returned to the house, she told her daughter that she had paid too much and that she should contact the neighbor in order to get some of her money back. RP at 88. Smythe talked with Scott about this when he brought over the carpet and linoleum, and he said that he had already spent the money, but told her that he had some cabinets that he would sell to her for \$50.00 to \$70.00 over the \$100.00 she had previously paid him in order to make up the difference. RP at 88. Scott told her that the cabinets came from a remodeling job at his parent's house, but that his dad had died and that his mom did not want anything to do with the cabinets any longer. RP at 88. She gave Scott her telephone number. RP at 89. She stated that Scott called her at approximately midnight and told her that he had the cabinets and that they were sitting outside off South Bank Road in Elma and he gave her directions to the location. RP at 89, 94. She said that it was starting to rain and that she had to get them indoors. RP at 89. She said that she and Shapansky went to retrieve the cabinets on the South Bank Road and brought them to her mother's house so that they would not get ruined by the rain. RP at 89. She stated that the cabinets were located near a barn. RP at 89. She and Shapansky unloaded the cabinets at approximately 3 a.m. RP at 94.

Smythe testified that she does not know Scott's last name. RP at 92. She said that she was confused when Detective Peterson asked her about the

cabinets when he was at the house because he kept asking about the “kitchen cupboards,” not cabinets, and she did not understand what he was asking about. RP at 96.

Norris testified that early in the morning in April, 2008, the phone in the house rang and Smythe answered it. RP at 45. Norris went back to sleep, but at approximately 3:00 a.m. she was awoken by a noise. RP at 44. She looked out the window and saw Smythe and Shapansky unloading some cabinets from a pickup truck. RP at 46. In the morning Norris went downstairs and there were cabinets in her living room. RP at 47. Norris said that the cabinets were too big and she did not want them. RP at 48. Norris said that her daughter told her that the cabinets were from a field and that they needed to be removed because it was raining. RP at 50.

Carras stated that all the cabinets were returned to him, but that they were “in terrible shape.” RP at 14. He stated that the recovered cabinets sustained damage from being banged around while the truck was driven and unloaded and from water damage. RP at 14. He estimated that the value of the six cabinets recovered from Norris’ house was \$5000.00. RP at 13.

D. ARGUMENT

1. **THERE WAS INSUFFICIENT EVIDENCE TO UPHOLD THE CONVICTION FOR POSSESSION OF STOLEN PROPERTY.**

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *Salinas*, at 201; *State v. Craven*, 67 Wn. App. 921, 928, 841 P.2d 774 (1992). Circumstantial evidence is no less reliable than direct evidence, and criminal intent may be inferred from conduct where “plainly indicated as a matter of logical probability.” *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom. *Salinas*, at 201; *Craven*, at 928. In cases involving only circumstantial evidence and a series of inferences, the essential proof of guilt cannot be supplied solely by a pyramiding of inferences. *State v. Bencivenga*, 137 Wn.2d 703, 711, 974 P.2d 832 (1999) (citing *State v. Weaver*, 60 Wn.2d 87, 89, 371 P.2d 1006 (1962)).

To convict Smythe of possession of stolen property, the State had to prove, in part, that she possessed the property, knowing it had been stolen. Bare possession of recently stolen property alone is not sufficient to justify a

conviction. *State v. Portee*, 25 Wn.2d 246, 170 P.2d 326 (1946). Possession of recently stolen property coupled with “slight corroborative evidence of other inculpatory circumstances tending to show ... guilt” will support a conviction. *State v. Couet*, 71 Wn.2d 773, 776, 430 P.2d 974 (1967) (quoting *State v. Portee*, 25 Wn.2d at 253). In *Couet*, the court upheld the conviction where the evidence other than possession indicated that the defendant had lied to the police about being in the vehicle on the night in question, and had given the police an unsubstantiated and improbable story of another person giving him permission to use the car. *Couet*, 71 Wn.2d at 776.

Possession may be actual or constructive: “Actual possession occurs when the goods are in the personal custody of the person charged with possession; whereas, constructive possession means that the goods are not in actual, physical possession, but that the person charged with possession has dominion and control over the goods.” *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). No single factor is dispositive in establishing dominion and control. The totality of the circumstances must be considered. *State v. Collins*, 76 Wn. App. 496, 501, 886 P.2d 243, review denied, 126 Wn.2d 1016 (1995). A momentary handling is not sufficient to establish the element of personal custody necessary for actual possession; constructive possession requires that the defendant have dominion and control of the property. *Id.* at

29; *State v. Werry*, 6 Wn. App. 540, 494 P.2d 1002 (1972) (it is not sufficient evidence to constitute a *prima facie* case of possession if there is merely a passing control, such as momentary handling); *State v. Summers*, 45 Wn. App. 761, 728 P.2d 613 (1986) (mere proximity to stolen property or one's presence at the place where it is found, without proof of dominion and control over the property, is insufficient proof of possession).

The evidence presented in this case was insufficient to establish that Smythe acted with knowledge that the cabinets were stolen, though there was evidence that she may have assumed such to be the case. There is no evidence connecting her to the truck or the shop where the cabinets were stolen or where the cabinets were located on the logging road. This is not the type of evidence from which a rational trier of fact can infer guilty knowledge on Smythe's part, especially when juxtaposed with the circumstances of those cases where the courts have found sufficient evidence of culpable knowledge. Here, no evidence was presented that Smythe offered an improbable account of how the cabinets came to be where they were found by the police in Norris' house. *Couet*. She explained that her mother felt that she had paid too much for the linoleum and carpet and that Scott had agreed to sell her cabinets to make up the difference. The relatively small amount of money she paid for the cabinets is not an indication that the cabinets were stolen,

given the condition of the cabinets. When she got the cabinets, they were damaged by rain and had been banged and dinged. They had been stored outdoors. Moreover, they were unfinished; they did not have drawers or doors on them. She explained that she was told that the cabinets originated from a remodeling job of Scott's parents, and that his father's death caused the project to be ceased and that his mother wanted nothing more to do with it. This is plausible and explains the price of the cabinets and circumstances in which she got them. Moreover, the State's argument is that the cabinets were not retrieved from the South Bank Road, as Smythe testified, but from a place on a remote logging road used as a dumpsite. The cabinets were incomplete and damaged, and were in a dump site, leading to the conclusion that the cabinets were not stolen, but were instead discarded junk not wanted by Scott or his mother, and that he was merely trying to make a small amount of money on discarded garbage.

Consequently, the evidence and reasonable inferences do not meet the test that any rational trier of fact, after viewing the evidence most favorably to the State, could have found beyond a reasonable doubt that Smythe acted with knowledge that the cabinets had been stolen. The evidence against Smythe constitutes nothing more than the pyramiding of inferences condemned in *State v. Bencivenga, supra*, with the result that the

conviction for possession of stolen property should be reversed.

2. **THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT IMPOSED RESTITUTION FOR A LOSS NOT CAUSALLY CONNECTED TO SMYTHE'S ACTIONS.**

Smythe argues there was no causal connection between the facts presented at trial pertaining to possession of stolen property and the damage caused during the burglary and theft and subsequent storage of the cabinets outside, requiring reversal of that portion of her restitution order imposing joint and several liability with Swan and Vicars, in the amount of \$19,963.91. CP 123.

A court's authority to order restitution is governed by RCW 9.94A.753. *State v. Dedonado*, 99 Wn.App. 251, 255, 991 P.2d 1216 (2000). In ordering restitution, the court "may either rely on a defendant's admission or acknowledgment of the amount of restitution or it may determine the amount by a preponderance of evidence." *State v. Hunsicker*, 129 Wn.2d 554, 558-59, 919 P.2d 79 (1996) (citations omitted). Where a court imposes restitution for a loss not "causally related to the offense committed by the defendant," the court exceeds its authority and reversal of the restitution order may be required. *State v. Woods*, 90 Wn.App. 904, 907, 911, 953 P.2d 834, rev. denied, 136 Wn.2d 1021 (1998) (quoting *State v. Vinyard*, 50 Wn.App.

888, 891, 751 P.2d 339 (1988)).

The burden on the State in establishing restitution is not unreasonable: a trial court need only find that a victim's injuries were causally connected to the defendant's crime before ordering the defendant to pay restitution for the resulting expenses of the victim. *State v. Kinneman*, 122 Wn.App. 850, 860, 95 P.3d 1277 (2004), *rev. granted*, 154 Wn.2d 1001 (2005) (citing *State v. Enstone*, 137 Wn.2d 675, 682, 974 P.2d 828 (1999)). The State must establish, "by a preponderance of the evidence a causal connection between the restitution requested and the crime with which the defendant is charged." *Id.* (citing *State v. Bunner*, 86 Wn.App. 158, 160, 936 P.2d 419 (1997)). A causal connection exists when, but for the offense, the loss or damages would not have occurred. *State v. Hahn*, 100 Wn.App. 391, 399, 996 P.2d 1125, *rev. granted*, 141 Wn.2d 1025 (2000). In *Woods*, the defendant pled guilty to possession of stolen property in the second degree for unlawfully possessing a truck. *Woods*, 90 Wn.App. at 908. At the restitution hearing, the court ordered the defendant to pay restitution for items missing from the truck from the date it was stolen. *Id.* But the defendant's conviction was for possession of the truck, which occurred one month after the truck and the items therein were taken. *Id.* The appellate court reversed, finding the State's "attempt to relate back the possession of the truck to the date of the

theft is ineffective,” reversing the restitution order since Woods’ admitted acts were not causally connected to the loss of property from inside the vehicle. *Id.* at 911.

In the instant matter, Smythe was convicted of possession of stolen property. The testimony is that she and Shapansky retrieved six cabinets from a cache of cabinets located outdoors, either on a logging road off the Delezene Road, or near a barn off the South Bank Road. RP at 68, 69, 89. When she got the cabinets it was beginning to rain. She took the cabinets to her mother’s house and the rest remained outdoors. The cabinets were recovered by police on April 16, by which time they had sustained water damage. All the cabinets were recovered, and were eventually repaired at Carras’ shop and were delivered to the customer. RP at 11, 12.

There is no causal connection between Smythe’s possession of stolen property and the burglary and theft where the truck and its cargo of cabinets was taken. Absent a causal connection, ordering Smythe to pay restitution for damages caused during the theft and incurred while the cabinets were exposed to rain was not supported by law and requires reversal of that portion of the joint and several restitution order.

Here, the State simply cannot establish the “but for” relationship required to demonstrate a causal connection between Smythe's actions and

the damages sustained when the cabinets were being transported, unloaded, and when they were exposed to the elements. In order to establish such a causal connection, the State must demonstrate that but for Smythe's unlawful possession of the cabinets, the damage would not have occurred. The State appears to argue that because Smythe left the balance of the cabinets outside after she and Shapansky took six of them, she somehow constructively possessed the cabinets and was responsible for damage between and the time they were recovered. RP (1.22.09) at 39. This is untenable. Moreover, there is no evidence that the damage was caused between the time that she and Shapansky picked up the cabinets and April 16 when they were recovered by law enforcement. It is equally plausible that the damage had already occurred before she was aware of the location of the cabinets. This is supported by Carras' testimony that almost all of the cabinets were water damaged, and that "[t]here may have been one or two that were weren't water damaged. I'm not positive." RP (1.22.09) at 19. This supports the conclusion that all the cabinets were exposed to water, and that almost all of them were damaged *before* Smythe was aware of their existence or their location. As in *Woods*, where the State sought to hold the defendant liable for items taken from a car during the entire month the car was missing, here, Smythe's possession of stolen property cannot be "related back" to the incident in which the cabinets

were taken, carelessly transported and unloaded, or to the placement of the cabinets outside where they were exposed to rain, thus requiring reversal of that portion of the restitution order for the damage incurred. *See Woods*, 90 Wn.App. at 911.

Because the State failed to establish a causal connection between the complainant's loss associated with the damages caused by the theft and Smythe's actions, reversal of the portion of the joint and several restitution order pertaining to her is required. *Dedonado*, 99 Wn.App. at 256-58.

E. CONCLUSION

Based on the above, Lynn Smythe respectfully requests this court to reverse and dismiss her conviction consistent with the argument made herein. In the alternative, Smythe requests this Court remand her case for entry of a restitution order that excludes damage not causally connected to her actions.

DATED: August 17, 2009.

Respectfully submitted,

THE TILLER LAW FIRM



PETER B. TILLER-WSBA 20835
Of Attorneys for Lynn Smythe

EXHIBIT A

STATUTES

RCW 9A.56.150

Possessing stolen property in the first degree — Other than firearm or motor vehicle.

(1) A person is guilty of possessing stolen property in the first degree if he or she possesses stolen property, other than a firearm as defined in RCW 9.41.010 or a motor vehicle, which exceeds one thousand five hundred dollars in value.

(2) Possessing stolen property in the first degree is a class B felony.

RCW 9.94A.753

Restitution — Application dates.

This section applies to offenses committed after July 1, 1985.

(1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days except as provided in subsection (7) of this section. The court may continue the hearing beyond the one hundred eighty days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have.

(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the

community corrections officer of the change in circumstances.

(3) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction 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 for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime.

(4) For the purposes of this section, for an offense committed prior to July 1, 2000, the offender shall remain under the court's jurisdiction for a term of ten years following the offender's release from total confinement or ten years subsequent to the entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years for payment of restitution. For an offense committed on or after July 1, 2000, the offender shall remain under the court's jurisdiction until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The portion of the sentence concerning restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confinement in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) 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 or as provided in subsection (6) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the offender has satisfied support obligations under the superior court or administrative order for the period provided in RCW 4.16.020 or a maximum term of twenty-five years following the offender's release from total confinement or twenty-five years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

(7) Regardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition

the court within one year of entry of the judgment and sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

(8) In addition to any sentence that may be imposed, an offender who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(9) This section does not limit civil remedies or defenses available to the victim, survivors of the victim, or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim.

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

STATE OF WASHINGTON, Respondent, vs. LYNN M. SMYTHE, Appellant.		COURT OF APPEALS NO. 38677-1-II GRAYS HARBOR COUNTY NO. 08-1-00272-4 CERTIFICATE OF MAILING
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The undersigned attorney for the Appellant hereby certifies that one original and one copy of the Opening Brief of Appellant were mailed by first class mail to the Court of Appeals, Division 2, and copies were mailed to Appellant Lynn M. Smythe and Gerald R. Fuller, Deputy Prosecuting Attorney, by first class mail, postage pre-paid on August 17, 2009, at the Centralia, Washington post office addressed as follows:

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Clerk of the Court
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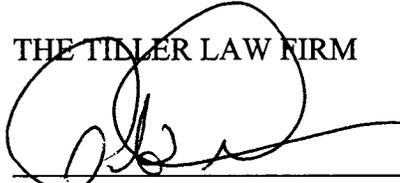
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