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

NO. 44271-0-II

FROM CLALLAM COUNTY SUPERIOR COURT

NO. 12-1-00139-1

STATE OF WASHINGTON,

Respondent,

vs.

KRISTINA CAWYER,

Appellant.

BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF THE ISSUES

ISSUE ONE

Whether, in light of the trial court's authority to determine legal financial obligations arising from the prosecution and defense of a crime, the trial court has authority to impose an obligation to repay the state for the cost of extraditing Ms. Cawyer from another state.

ISSUE TWO

Whether, in light of the purposes of restitution, the trial court could have chosen to impose a legal financial obligation of restitution to the state.

STATEMENT OF THE CASE

It appears the only fact in this case is that Clallam County paid $2,707.56 to transport Ms. Cawyer from Springfield, Ohio to Port Angeles, Washington (Appendix A). The trial court ordered payment based upon language in RCW 10.01.160, reasoning as follows:

> Again, under all the circumstances I think that it's appropriate to impose reimbursement to the taxpayers for the cost of having to bring someone back to face criminal charges, especially in a case such as this where they clearly fled the jurisdiction in violation of other orders, and [it] seems clear to the Court in an attempt to escape orders at least as related to the underlying charges.

(RP 49). The trial court ordered Ms. Cawyer to repay the State for extradition costs (CP 3). Ms. Cawyer appealed only the trial court's authority to impose extradition costs.

ARGUMENT

ISSUE ONE

Whether, in light of the trial court's authority to determine legal financial obligations arising from the prosecution and defense of a crime, the trial court has authority to impose an obligation to repay the state for the cost of extraditing Ms. Cawyer from another state.

RESPONSE

The trial court was well within both its discretionary authority and statutory authority to impose reimbursement for extraditions costs.

I. Standard of Review: Imposition of fines is within the trial court's discretion. *State v. Curry,* 118 Wn.2d 911, 916, 829 P.2d 166 (1992). While some costs are mandatory, "the defendant may be ordered to pay for expenses incurred in prosecuting the defendant,..." *Id*, at 914.

II. Response: The trial court clearly understood that the extradition costs were incurred in prosecuting the defendant. She had hidden in North Carolina and then relocated to Ohio (RP 40). The extradition costs were necessary to bring her to Clallam County.

Ms. Cawyer argues, however, the trial court did not possess statutory authority to impose extradition costs pursuant to RCW 10.01.160, arguing that the statute is limited to those costs clearly stated in the statute. The statutory language in point reads as follows:

> (2) Costs shall be limited to expenses *specially incurred* by the state in prosecuting the defendant…

RCW 10.01.160 (emphasis added). The only limitation is that the costs cannot include expenses inherent in providing a constitutionally guaranteed jury trial. This same limitation is found in *Curry,* at 914, 829 P.2d 166. This is the only limitation placed on the state's request for reimbursement. Later in the same subsection, a limitation is placed on expenses incurred for serving a warrant and other costs, but these limitations do not relate back to the first sentence providing authority to the trial court to collect specially incurred costs. The trial court had discretionary authority to impose extradition costs pursuant to RCW 10.01.160. No further statutory authority was necessary.

Ms. Cawyer argues, however, that the legislature struck extradition reimbursement in 1989, citing to Laws of 1989, ch. 252, § 4, sub. 10. The language reads:

> 10) If a sentence imposed includes ((~~a fine or restitution~~)) payment of a legal financial obligation, the sentence shall specify ((~~a reasonable manner and time in which the fine or restitution shall be~~

> ~~paid. Restitution to victims shall be paid prior to any other payments of monetary obligations. In any sentence under this chapter the court may also require the offender to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary (a) to pay court costs, including reimbursement of the the state for costs of extradition if return to this state by extradition was required, (b) to make recoupment of the cost of defense attorney's fees if counsel is provided at public expense, (c) to contribute to a county or interlocal drug fund, and (d) to make such other payments as provided by law))~~ the total amount of the legal financial obligation owed, and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit.

Read as Ms. Cawyer indicates, reimbursement for extradition costs can no longer be collected. Read in context, her interpretation would mean all court costs and defense attorney's costs cannot be collected, either. However, read correctly, all the revision does is place the three items into the term "legal financial obligation."

Costs of extradition are recoverable pursuant to RCW 9.92.060 (2) (c). RCW 9.95.210 (2) (c) states the same thing. As a condition of probation a defendant may be required to repay the costs of extradition. Ms. Cawyer argues, however,

these two statutes do not apply to her because she is not on probation and her sentence was not deferred.

The argument is a *reductio ad absurdum.* Arguing that the court has no authority to require her to repay the costs of extradition because she is not under further court review overlooks that such an argument means the court has no authority over her, period. Carried to its illogical conclusion, the trial court has no authority to collect restitution, court costs, defender costs, or any other cost normally associated with a criminal conviction because she is not on probation or serving a deferred sentence. In fact, both statutes show that restitution for the costs of extradition are normal court costs. The trial court was well within discretionary and statutory authority to impose reimbursement of extradition costs.

ISSUE TWO

Whether, in light of the purposes of restitution, the trial court could have chosen to impose a legal financial obligation of restitution to the state.

RESPONSE

Even if the trial court did not have authority to impose the costs of extradition as a specially incurred expense, it had authority to order repayment as restitution.

I. Standard of Review: A trial court's order of restitution will not be disturbed on appeal absent an abuse of discretion. *State v. Enstone,* 137 Wn.2d 675, 974 P.2d 828 (1999).

II. Analysis: "[R]estitution ordered by a court pursuant to a criminal conviction shall be based upon easily ascertainable damages for injury to person, ..." RCW 9.94A.753 (3). The State must prove by a preponderance of the evidence the victim's loss is "causally connected" to the crime charged. Causation can be determined by a "but for" inquiry. *State v. Tobin,* 161 Wn.2d 517, 524, 166 P.3d 1167 (2007), citing to *State v. Kinneman,* 155 Wn.2d 272, 286-288, 119 P.3d 350 (2005). "In sum, costs that a victim incurs as the result of the defendant's crimes have been deemed a loss of property under the restitution statute." *Tobin,* at 526-27, 829 P.2d 166.

Tobin addressed only whether the state's investigative,

administrative and resurveying costs were sufficiently related to the defendant's crimes. *Tobin,* at 527, 829 P.2d 166.

The reasoning of *Tobin* applies directly to this case. The State was the victim in *Tobin;* the State is the victim, here. But for Ms. Cawyer's flight to North Carolina and then to Ohio, and then her adamant refusal to return (RP 13 – "repeatedly denied the Court's orders"), the State would never have incurred the cost of extradition. Finally, the need to extradite Ms. Cawyer was directly related to her crimes. She had been charged with 2 counts of Custodial Interference in the First Degree (CP 31), to which she pleaded guilty (RP 8). She denied access to the other parent, taking and concealing the children in another state. Had she not fled the state with the children, there would have been no extradition costs.

CONCLUSION

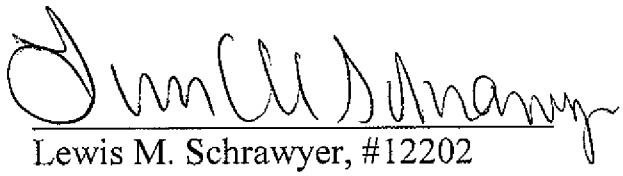
The trial court was well within discretionary and statutory authority to order restitution to the state as a "specially incurred" cost pursuant to RCW 10.01.160. The trial court's

authority over a convicted person does not ebb or end because the person is not on probation or no further sentence is imposed.

The trial court also would have had authority to order repayment to the State as a victim pursuant to RCW 9.94A.753 (3). The loss was easily ascertainable; the bill is attached as Appendix A. But for her flight from the state, the cost would not have been incurred. The cost is directly related to the elements of custodial interference and her failure to obey court orders to return to Washington State. This Court should affirm the trial court's decision.

Respectfully submitted this 10th day of July, 2013.

DEBORAH KELLY, Prosecutor

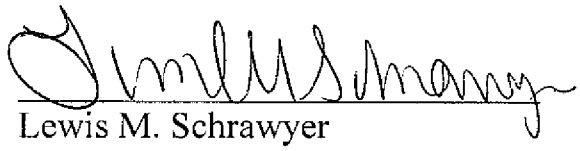


Lewis M. Schrawyer, #12202
Deputy Prosecuting Attorney
Clallam County

CERTIFICATE OF DELIVERY

Lewis M. Schrawyer, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically or mailed to elaine@washapp.org on 7/10/2013.

DEBORAH KELLY, Prosecutor



Lewis M. Schrawyer

APPENDIX A

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CSI
1169 S. Main St., #295
Manteca, CA 95337

Prisoner Transportation Invoice

0030072

9/19/2012

P.O. Number	INVOICE #
	2012-317

[redacted]

Clallam County Sheriff's Office
Attn: Sgt. D. Bryant
223 E. 4th St
Suite 12
Port Angeles, WA 98362

Inmate Name
Cawyer, Kristina

Texas Vendor ID# 1260042530

RECEIVED
SEP 27 2012
CLALLAM COUNTY
PROSECUTING ATTORNEY

Person Assigning
Sgt. Wenzl

DESCRIPTION OF SERVICES PROVIDED	QTY	RATE	SERVICED	AMOUNT
State Extradition of Prisoner Cawyer, Kristina Marie DOB: 07/20/1981 Springfield, OH to Port Angeles, WA completed by E. Kindley on 09-19-12	2,484	1.09		2,707.56

Remit To:

Court Services
Payment Processing Center
P.O. Box 13115
Spokane, WA 99213

Pay Online with a credit card. Visit our web site at:
https://www.courtservices.org/payments.html

Total	$2,707.56
Payments/Credits	$0.00
Balance Due	$2,707.56

Order Online at www.courtservices.org/requestservice.html

Phone #	Fax #	E-mail	Web Site
209-554-6920	209-444-0445	sales@courtservices.org	www.courtservices.org

R36

CLALLAM COUNTY PROSECUTOR

July 10, 2013 - 12:29 PM

Transmittal Letter

Document Uploaded: 442710-Respondent's Brief.pdf

Case Name: State v. Cawyer

Court of Appeals Case Number: 44271-0

Is this a Personal Restraint Petition? Yes ■ No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: __Respondent's__

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Lew M Schrawyer - Email: **lschrawyer@co.clallam.wa.us**

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