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DIVISION II
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STATE OF WASHINGTON
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No. 47874-9-II

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

STATE OF WASHINGTON, Respondent

v.

CHRISTIAN J. LORENZO, Appellant

APPEAL FROM THE ORDER OF THE SUPERIOR COURT
OF THE STATE OF WASHINGTON FOR
WAHIAKUM COUNTY

RESPONDENT'S BRIEF

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I. RESPONSE TO ASSIGNMENTS OF ERROR

1. The appellant says there is no record that the substance appellant possessed was methamphetamine, but this is not so, as a glance at Exhibit 57 will quickly show.
2. The trial court acquitted the defendant of stealing Mr. Ericson's pistol but convicted him of possessing it. Since it is permissible to award restitution when a defendant possessed stolen property, the restitution award herein was well founded and should be upheld.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The lab report that the appellant claims was not admitted into evidence, was admitted into evidence. It's Exhibit 57.

2. The fact that the defendant possessed stolen property he did not steal himself does not immunize him from a restitution award.

III. STATEMENT OF THE CASE

The facts herein are set out in the Findings of Fact and Conclusions of Law. CP 56-66. They include a number of items having to do with crimes appellant CJ Lorenzo was found to have committed and from which no appeal was taken. Relevant to the issues herein are Findings of Fact 10-21, describing how the appellant visited his acquaintance Erik Ericson, who discovered that his .380 caliber Grendel automatic pistol was missing soon after the appellant left; and the appellant showed that pistol to Mark Landreth, his accomplice in various other crimes, claiming he had not stolen it but he got it from the person who did; and that Mr. Ericson never saw his pistol after it disappeared. Also relevant are Findings of Fact 22-24, describing how when the appellant was arrested for

various crimes, he had a baggie in his pocket with a white crystalline substance that was tested by the State Patrol crime lab and found to be methamphetamine.

Appellant was convicted on these counts and others from which no appeal is taken.

IV. ARGUMENT

A. The Juvenile's Conviction for Methamphetamine Possession Was Warranted by the Evidence

The appellant claims that there is no evidence that the substance appellant possessed was truly methamphetamine: that although a laboratory report existed and was stipulated to by the defense, “the court did not admit it into evidence.” Appellant’s brief at 13.

The defense is simply factually incorrect. The lab report the defense says is not in evidence, is in evidence. The appellant

himself forwarded that very report -- Exhibit 57 -- to this court. CP 35, 67; Exhibit 57. The appellant also designated the clerk's exhibit list of the second day of trial, which duly shows Exhibit 57 was admitted. CP 54. If the appellant had any trouble figuring out what was actually happening at RP 284, where the parties stipulate to its admission, the clerk's records should put to rest any doubt.

The appellant neither assigns error to, nor questions the accuracy of, CP 54 reflecting Exhibit 57's admission; nor does the appellant assign error to Exhibit 57 itself (unless denying its existence constitutes an assignment of error). The defense itself designated CP 54 and Exhibit 57 without challenging their accuracy. Unchallenged facts are verities on appeal. E.g., State v. Gibson, 152 Wn.App. 945, 950, 219 P.3d 964 (2009). And the court found as fact that the substance now in question was methamphetamine, based on laboratory tests. CP 62.

Instead of assigning error to the admission of the lab report into evidence, appellant simply denies that it ever happened. That leaves this court without anything to decide. “The burden of drafting a proper assignment of error rests upon an appellant.” Jones v. Nat’l Bank of Commerce of Seattle, 66 Wn.2d 341, 345, 402 P.2d 673 (1965). No error in the admission of these documents having been assigned or argued, appellant cannot make them disappear by acting like they are not there.

As the defense itself states, the court could hardly have found that the substance Mr. Lorenzo was arrested in possession of was methamphetamine without considering the crime lab report. Thus, the fact that Mr. Lorenzo was indeed convicted of that count is further proof, if any were needed, that Exhibit 57 was admitted into evidence. And, in fact, the trial court stated as much in its Findings of Fact at #22, in which it stated, regarding the substance Mr. Lorenzo had in his pocket when arrested, “That substance was

tested by the State Patrol lab and found to be methamphetamine.”
CP 62.

The appellant’s citation to an oral record he claims is equivocal and his attempt to use it to undermine the written record, especially the court’s findings, reverses the actual order of things. Oral rulings may be used to supplement written findings, but only so long as the written findings are not contradicted. It is the written record that prevails. The Court of Appeals ruled as much in State v. Moon, 48 Wash.App. 647, 653, 739 P.2d 1157, review denied, 108 Wash.2d 1029 (1987): “Similarly, so long as no inconsistency exists, we have held that an appellate court may use the trial court’s oral ruling to interpret written findings and conclusions.” Quoting State v. McGary, 37 Wn.App. 856, 861, 683, P.2d 1125 (1984), the Moon court goes on to note, “These rules make sense because the basic reason for requiring written findings and conclusions is to enable the appellate court to review the issues raised on appeal.”

Read in light of the court’s findings of fact, the fact that the clerk’s contemporaneous trial record shows the lab report in question was entered into evidence, and the fact that this court can look at its copy of Exhibit 57 in the clerk’s papers at any time – read in this light, the appellant’s bald assertion that Exhibit 57 does not exist simply wilts. The State suggests this court should accept the evidence of its eyes, and the guidance of the Moon and McGary courts.¹

B. The Juvenile’s Restitution Award Was Proper

Appellant assumes, without argument or citation to authority, that the award of restitution for a firearm he did not steal, but did possess after it was stolen, was “not associated with an offense the

¹ It is possible the State has misunderstood the defense’s position, and the defense is attempting to raise a factual question regarding whether, despite the record, Exhibit 57 was actually not admitted at trial. If that’s what is going on, then the State notes no new facts have been alleged, and any new factual allegations can only be made through the procedure set out in RAP 9.11, which has not been invoked.

defendant committed.” Appellant’s Brief at 15. And that is the sum total of argument appellant gives us.

But it has been long established that a person who possesses stolen property may be liable for restitution due to loss or damage to the property. Where the possessor, by holding or transferring the property, “leads to permanent deprivation of an owner’s property... restitution for the value of the item is proper.” State v. Rogers, 30 Wn.App. 653, 656, 638 P.2d 89 (1981). (Note that here, the court made a finding that the victim, Mr. Ericson, never saw his gun again; therefore he was permanently deprived of the property. CP 60: “The gun was never returned to Mr. Ericson.”) Rogers was a case in adult court, but the Court of Appeals has approved the award of restitution in possession of stolen property cases in juvenile courts. State v. Fellers, 37 Wn.App. 613, 619, 683 P.2d 209 (1984) (juvenile possessed stolen bicycle that had been damaged).

“A restitution award will not be disturbed absent an abuse of discretion. State v. Enstone, 137 Wash.2d 675, 679, 974 P.2d 828 (1999). We find an abuse of discretion only when the action of the court is “manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” Id. at 679–80, 974 P.2d 828 and cases cited.” State v. Donahoe, 105 Wn.App. 97, 100, 18 P.3d 618 (2001). The trial court’s award of restitution in this possession of stolen property case is based on law that has been established for more than thirty years (Rogers, 1981; Fellers, 1984). The ruling was not manifestly unreasonable.

The court’s ruling also comports with the purposes of the legislature’s juvenile justice scheme. “Two specifically enumerated purposes of the Juvenile Justice Act of 1977, chapter 13.40 RCW, are promoting accountability in juvenile offenders and providing restitution to crime victims. RCW 13.40.010(2)(c), (h). Restitution is a required part of juvenile sentencing. RCW

13.40.190.” State v. A.M.R., 147 Wn.2d 91, 95, 51 P.3d 790, 792 (2002).

And to that end, this court is to construe statutes in favor of orders of restitution. “RCW 13.40.190(1) provides: “In its dispositional order, 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.” Juvenile restitution provisions are liberally construed to achieve their purpose, which is to compensate the victims and hold the juvenile accountable. State v. Sanchez, 73 Wash.App. 486, 489, 869 P.2d 1133 (1994).” State v. Donahoe, 105 Wn.App. 97, 99-100, 18 P.3d 618 (2001).

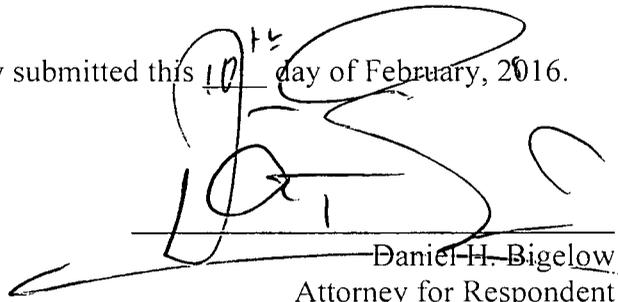
Considering the lack of argument from the appellant, the purpose of the Juvenile Justice Act to make victims whole and juveniles accountable, this court’s obligation to liberally construe the Juvenile Justice Act to that end, and the fact that the courts have been awarding restitution in juvenile possession of stolen property

cases for more than thirty years, this court should uphold the restitution award herein.

V. CONCLUSION

Appellant does his best to misconstrue what happened in court at RP 284, but context, including the clerk's papers, the court's findings, and the fact that Exhibit 57 is in this court's hands, shows that the trial court accepted the parties' stipulation to the crime lab report showing that appellant possessed methamphetamine. Appellant's belief that one cannot be charged restitution when convicted of possessing stolen property is out of date. This court should uphold all convictions, and all portions of the restitution award, herein.

Respectfully submitted this 10th day of February, 2016.



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CERTIFICATE

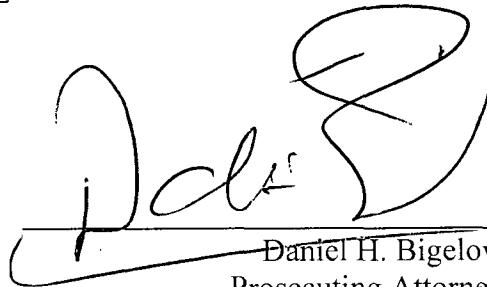
I certify that I mailed a copy of the foregoing Respondent's Brief to the following addresses, postage prepaid, on February 11, 2016.

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