

FILED
Court of Appeals
Division II
State of Washington
9/18/2018 3:06 PM

No. 51679-9-II

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

STATE OF WASHINGTON,

Respondent,

v.

C.T.
Appellant.

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

The Honorable Jonathan Lack, Commissioner
Cause No. 17-8-00299-34

BRIEF OF RESPONDENT

Joseph J.A. Jackson
Attorney for Respondent

2000 Lakeridge Drive S.W.
Olympia, Washington 98502
(360) 786-5540

TABLE OF CONTENTS

A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR 1

B. STATEMENT OF THE CASE 1

C. ARGUMENT 2

1. The trial court did not abuse its discretion when it ordered restitution in the amount that the victim had paid for the iPhone 6s 2

D. CONCLUSION..... 5

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

State ex. rel. Carroll V. Junker,
79 Wn.2d 12, 26, 482 P.2d 775 (1971) 3

State v. Kinneman,
155 Wn.2d 272, 285, 119 P.3d 350 (2005) 4

Decisions Of The Court Of Appeals

State v. Bush,
34 Wn.App. 121, 123, 659 P.2d 1127 (1983)..... 3

State v. Fambrough
66 Wn.App.223, 224-225, 831 P.2d 789 (1992)..... 3, 4

State v. Fleming,
75 Wn.App. 270, 275, 877 P.2d 243 (1994)..... 4

State v. Hentz,
32 Wn. App. 186, 190, 647 P.2d 39 (1982)..... 3

State v. Horner,
53 Wn.App. 806, 807, 770 P.2d 1056 (1989)..... 3

State v. Mark,
36 Wn.App. 428, 434, 675 P.2d 1250 (1984)..... 3

Statutes and Rules

RCW 13.40.020(26) 2

RCW 13.40.190(1) 2

RCW 13.40.190(1)(a)..... 2

A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether the trial court acted within its discretion when it ordered \$649.99 in restitution based on the victim's testimony that her family paid that price for the phone which was damaged beyond repair?

B. STATEMENT OF THE CASE.

C.T. pled guilty in juvenile court to the charge of malicious mischief in the third degree for damaging property belonging to M.H. CP 15. The recommendation included the requirement that C.T. pay restitution for the damaged property. CP 19. The trial court required restitution in a reserved amount in the Order on Adjudication and Disposition. CP 28.

A restitution hearing was held on March 5, 2018. RP 1.¹ M.H. indicated that C.T. had broken her iPhone 6s cellular phone. RP 6. The phone had been purchased at Costco for \$649.99 which was paid in installments of \$27 per month. RP 7-8. The phone was originally purchased on August 3, 2016. RP 7-8. The incident that damaged the phone occurred on May 21, 2017. RP 5. At the time of the restitution hearing, the balance on the phone's payment plan was \$162.37. RP 9. M.H. indicated that she could no longer use the phone. RP 10.

¹ For purposes of this brief, RP refers to the Transcript of Recorded Proceedings- Restitution Hearing, March 5, 2018.

The State requested that the trial court order restitution in the amount of \$649.99, the amount that M.H.'s mother purchased the iPhone 6s for. RP 30. Defense counsel argued that the trial court should impose \$300, which was the number estimated in the police report. RP 32. Noting that, "the only evidence that I have is that the phone was purchased for \$649," the trial court imposed the \$649.99 amount as the restitution amount. RP 33. This appeal follows.

C. ARGUMENT.

1. The trial court did not abuse its discretion when it ordered restitution in the amount that the victim had paid for the iPhone 6s.

The authority for the juvenile court to impose restitution is included in RCW 13.40.190(1), which states, "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." RCW 13.40.190(1)(a). Restitution means "financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury or loss of property." RCW 13.40.020(26). "Easily ascertainable damages are those tangible damages which are proved by sufficient evidence to exist. Precise

determination is not required.” State v. Bush, 34 Wn.App. 121, 123, 659 P.2d 1127 (1983).

“Appellate review of an order of restitution under the Juvenile Justice Act of 1977 is limited to determining whether the trial court abused its discretion in ordering the restitution.” State v. Fambrough, 66 Wn.App.223, 224-225, 831 P.2d 789 (1992); State v. Horner, 53 Wn.App. 806, 807, 770 P.2d 1056 (1989). The appellant bears the burden of proving abuse of discretion. State v. Hentz, 32 Wn. App. 186, 190, 647 P.2d 39 (1982), *reversed on other grounds*, 99 Wn.2d 538 (1983).

Judicial discretion is a composite of many things, among which are conclusions drawn from objective criteria; it means a sound judgment exercised with regard to what is right under the circumstances and without doing so arbitrarily or capriciously. Where the decision or order of the trial court is a matter of discretion, it will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.

State ex. rel. Carroll V. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971) (internal citations omitted). If the amount of damage is established by substantial credible evidence at the restitution hearing, no abuse of discretion will be found. State v. Mark, 36 Wn.App. 428, 434, 675 P.2d 1250 (1984).

In Fambrough, the respondent made the same request of the trial court as the C.T. did in this case. The respondent requested restitution based on a police investigator's estimate. 66 Wn.App at 224. The trial court accepted written estimate for repair. Id. The Court of Appeals upheld the trial court's decision because "the estimate was the most credible evidence before the court." Id. at 227.

Here, the trial court conducted an evidentiary hearing regarding the amount of restitution. The only evidence before the court was the amount paid for the iPhone 6s. This was the "most credible evidence" before the court. The preponderance of the evidence clearly supported the amount that the trial court ordered. "Absent clear abuse... we defer to the trial court's discretion." State v. Fleming, 75 Wn.App. 270, 275, 877 P.2d 243 (1994).

C.T. cites to State v. Kinneman, 155 Wn.2d 272, 285, 119 P.3d 350 (2005), for the proposition that "if the defendant disputes facts relevant to determining restitution, the State must prove the damages at an evidentiary hearing by a preponderance of the evidence." That is exactly what occurred in this case. The trial court held an evidentiary hearing, and entered a restitution amount

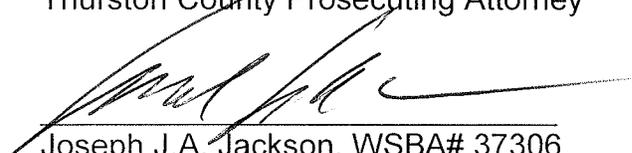
based on the preponderance of the evidence presented. There was no abuse of discretion.

D. CONCLUSION.

The trial court properly acted within its discretion when it set the restitution amount at \$649.99. The amount order was based on the most credible evidence available to the Court at the hearing and was supported by a preponderance of the evidence. Absent a clear showing of abuse of discretion, this Court should defer to the trial court's discretion and affirm the restitution order.

Respectfully submitted this 18 day of September, 2018.

JON TUNHEIM
Thurston County Prosecuting Attorney



Joseph J.A. Jackson, WSBA# 37306
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I served a copy of the Brief of Respondent on the date below as follows:

ELECTRONICALLY FILED AT DIVISION II

TO: DEREK M. BYRNE, CLERK
COURT OF APPEALS DIVISION II
950 BROADWAY, SUITE 300
TACOMA WA 98402-6045

VIA E-MAIL

TO: DAVID B. KOCH
NIELSEN, BROMAN & KOCH, PLLC
1908 E MADISON STREET
SEATTLE, WA 98122

KOCHD@NWATTORNEY.NET

I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 18th day of September, 2018, at Olympia, Washington.


CYNTHIA WRIGHT, PARALEGAL

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

September 18, 2018 - 3:06 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51679-9
Appellate Court Case Title: State of Washington, Respondent v Cindy Nguyen Truong, Appellant
Superior Court Case Number: 17-8-00299-1

The following documents have been uploaded:

- 516799_Briefs_20180918150547D2519710_7346.pdf
This File Contains:
Briefs - Respondents
The Original File Name was C.T. BRIEF OF RESPONDENT.pdf

A copy of the uploaded files will be sent to:

- jacksoj@co.thurston.wa.us
- kochd@nwattorney.net
- winderm@co.thurston.wa.us

Comments:

Sender Name: Cynthia Wright - Email: wrightc@co.thurston.wa.us

Filing on Behalf of: Joseph James Anthony Jackson - Email: jacksoj@co.thurston.wa.us (Alternate Email: PAOAppeals@co.thurston.wa.us)

Address:
2000 Lakedrige Dr SW
Olympia, WA, 98502
Phone: (360) 786-5540

Note: The Filing Id is 20180918150547D2519710