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Court of Appeals
Division II
State of Washington
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No. 51724-8-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

KEVIN ARTHUR STANFIELD,

Appellant.

On Appeal from the Pierce County Superior Court
Cause No. 17-1-00937-9
The Honorable K.A. van Doorninck, Judge

OPENING BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

1. The trial court erred when it imposed restitution in the amount of \$24,873.50 against Appellant.

II. ISSUE PERTAINING TO THE ASSIGNMENT OF ERROR

1. Is the trial court's order of restitution invalid where law enforcement's decision to pursue Appellant's vehicle under unsafe conditions and in an unsafe manner, and not Appellant's attempt at eluding, was the direct cause of the damage?

III. STATEMENT OF THE CASE

On the night of March 5, 2017, Deanna Clark called 911 to report an altercation occurring at her place of employment, a Shell gas station on Pacific Avenue in Tacoma. (TRP3 266, 271)¹ According to Clark and another employee, Heather Laird, a customer was acting belligerent and assaultive towards Clark. (TRP3 267-69, 291) The customer left in his vehicle when Clark called 911. (TRP2 271, 293-94)

Pierce County Sheriff's Deputy Nathan Betts responded.

¹ The transcripts of pretrial hearings will be referred to by the date of the proceeding. The transcripts of trial, labeled volumes 1 through 4 will be referred to by their volume number (TRP#). The transcript of the sentencing hearing will be referred to as "SRP."

(TRP2 177-78) Due to the nature of the report, he sped to the area with his patrol vehicle's emergency overhead lights activated and siren turned on. (TRP2 178-79) As he approached the station, he saw a vehicle matching dispatch's description driving the opposite direction. (TRP2 179) Deputy Betts turned his vehicle around and began following the car, a red Oldsmobile Alero. (TRP2 180, 256-57)

Deputy Betts caught up to the Oldsmobile after it had already entered Highway 512. (TRP2 183) He estimated that the Oldsmobile was driving about 75 miles per hour. (TRP2 183) According to Deputy Betts, the Oldsmobile accelerated away, and reached speeds he estimated at 90 to 100 miles per hour. (TRP2 183) The Oldsmobile passed several other cars and did not make an effort to move to the side of the road or stop. (TRP2 185-86)

Deputy Betts continued to follow the Oldsmobile, which eventually spun out and came to a stop in a grassy median after an unsuccessful attempt to negotiate the curved ramp leading to Interstate 5. (TRP2 187-189) The Oldsmobile immediately accelerated out of the median and reentered the roadway, so Deputy Betts decided to do a PIT maneuver in an effort to stop or

disable the Oldsmobile.² (TRP 189, 190) But the Oldsmobile was able to steer out of the maneuver and continue down the Interstate 5 entrance ramp. (TRP2 191-92)

Deputy Betts contemplated terminating the pursuit. (TRP2 193, 211) He was concerned for his safety and the safety of other drivers, due to the heavy traffic on Interstate 5 and the wet and potentially slippery conditions of the roadway. (TRP2 185, 193, 211) But instead he followed the Oldsmobile, and was able to locate the vehicle as it drove along the entrance/acceleration lane of Interstate 5. (TRP2 194, 210)

The Oldsmobile was quickly approaching the area where the entrance lane merged with the right mainline lane of Interstate 5. But Deputy Betts decided to approach the Oldsmobile on its left, which blocked its ability to merge onto Interstate 5 and put the Oldsmobile in danger of running off the road. (TRP2 194-95, 210-11)

Deputy Betts positioned his vehicle so that its front bumper was near the Oldsmobile's front door panel, in the Oldsmobile driver's blind spot. (TRP2 197, 211) According to Deputy Betts,

² A PIT maneuver involves tapping the rear quarter panel of the suspect's car with the front quarter panel of the patrol car with the goal of making the suspect's car spin out or become disabled. (TRP2 191)

the Oldsmobile turned sharply and collided with the patrol vehicle. The patrol vehicle was sent spinning across Interstate 5 and came to rest against the concrete barrier. (TRP2 195) The Oldsmobile was sent into the air and over the barrier, coming to rest in the opposite lanes of Interstate 5. (TRP2 198, 220)

Deputy Betts was unhurt, and immediately contacted the driver of the Oldsmobile, who was identified as Kevin Arthur Stanfield. (TRP2 199, 202) Stanfield was bleeding but conscious and alert, and was transported to the hospital for treatment. (TRP2 199, 200, 222)

The State subsequently charged Stanfield with one count of attempting to elude a police vehicle, two counts of assault against Deanna Clark at the Shell station, and one count of assault against Deputy Betts. (CP 5-7) The State alleged that Stanfield assaulted Deputy Betts by intentionally turning the Oldsmobile into the patrol vehicle and causing it to crash. (TRP4 341-43)

Deputy James Cowan testified at trial that he noted red paint transfer and tire marks on the side of Deputy Betts' patrol vehicle. That indicated to him that the Oldsmobile was turning at a sharp angle when it collided with the patrol vehicle. (TRP2 235, 237, 239, 252)

Stanfield testified that he did not hit or assault anyone at the Shell station. (TRP3 308-09) He also did not realize at first that Deputy Betts was signaling him to pull over, and was starting to slow down so he could pull over. (TRP3 311-12, 314) But he was afraid for his life after the Deputy attempted the PIT maneuver. (TRP3 311-12) He was trying to merge onto Interstate 5 and he was slowing down, but did not purposefully collide with Deputy Betts' patrol vehicle. (TRP3 312)

The jury found Stanfield guilty of attempting to elude, but acquitted him of the charges that he assaulted Clark and Deputy Betts. (TRP4 RP 369-70; CP 88-91) The trial court sentenced Stanfield within his standard range to 60 days in jail. (SRP 6-7; CP 97, 101) Over objection, the court also ordered Stanfield to pay \$24,873.50 in restitution for damage to the patrol vehicle. (SRP 4, 5-7; CP 98, 107-08) Stanfield timely filed a Notice of Appeal. (CP 109)

IV. ARGUMENT & AUTHORITIES

Under the SRA, the sentencing court is required to order restitution "whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property[.]" RCW 9.94A.753(5). When restitution is ordered, "[t]he 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.*” RCW 9.94A.753(3) (emphasis added). The general rule is that “restitution may be ordered only for losses incurred as a result of the precise offense charged.” State v. Woods, 90 Wn. App. 904, 907, 953 P.2d 834 (1998) (quoting State v. Miszak, 69 Wn. App. 426, 428, 848 P.2d 1329 (1993)).

Accordingly, “restitution is appropriate so long as there is a causal connection between the crime and the injuries for which compensation is sought.” State v. Enstone, 89 Wn. App. 882, 886, 951 P.2d 309 (1998). “A causal connection exists when, ‘but for’ the offense committed, the loss or damages would not have occurred.” Enstone, 89 Wn. App. at 886 (quoting State v. Hunotte, 69 Wn. App. 670, 676, 851 P.2d 694 (1993)). The trial court cannot impose restitution based on a defendant's “general scheme” or acts “connected with” the crime charged, when those acts are not part of the charge. Woods, 90 Wn. App. at 907-08 (internal quotation marks omitted) (quoting Miszak, 69 Wn. App. at 428).

For example, in State v. Dauenhauer, Division 3 vacated a restitution order for damages resulting from uncharged acts. 103 Wn. App. 373, 379-80, 12 P.3d 661 (2000). In that case,

Dauenhauer burglarized three storage units. 103 Wn. App. at 375. He drove through two fences and collided with a truck in an attempt to flee a police officer who observed Dauenhauer at the crime scene. 103 Wn. App. at 375. A jury convicted Dauenhauer of second degree burglary, and the trial court ordered him to pay restitution for damage to the fences and the truck. 103 Wn. App. at 379. The appellate court determined that the trial court had no statutory authority to order restitution for these damages because they resulted from “Dauenhauer’s general scheme or acts merely connected with the burglaries.” 103 Wn. App. at 380.

Similarly, this Court reversed the trial court’s restitution order for damages unrelated to the crimes of conviction in State v. Oakley, 158 Wn. App. 544, 242 P.3d 886 (2010). In that case, the defendant, while fleeing an attempted drive-by shooting, drove into a neighbor’s driveway and struck the neighbor’s car and garage door. 158 Wn. App. at 547-48. Oakley was charged and convicted of assault and attempted drive-by shooting. 158 Wn. App. at 549. The trial court ordered Oakley to pay \$3,872.00 in restitution for damage to the neighbor’s vehicle and garage. 158 Wn. App. at 549. This Court reversed the order because there was no causal connection between the crimes and the damage to the neighbor’s

car and garage. 158 Wn. App. at 553. Though Oakley inflicted the damages while fleeing the scene of his crimes, the damage to the garage was not the result of the precise charges filed. 158 Wn. App. at 553.

The trial court here imposed \$24,873.50 in restitution for damage to Deputy Betts' patrol vehicle.³ (SRP 4, 5-7; CP 98, 107-08) This damage was not directly caused by Stanfield attempting to elude. The crime of attempting to elude is committed by:

Any driver of a motor vehicle who willfully fails or refuses to immediately bring his or her vehicle to a stop and who drives his or her vehicle in a reckless manner while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop[.]

RCW 46.61.024(1).

The damage to the patrol vehicle was not directly caused by Stanfield's failure to stop. Instead, this damage was the direct result of Deputy Betts' decision to pursue Stanfield despite the hazardous and unsafe road conditions, to intentionally ram into Stanfield's vehicle by doing a PIT maneuver, and to block Stanfield's ability to safely merge onto Interstate 5 and place

³ When the defendant challenges the legal basis for an award of restitution, the reviewing court addresses the issue de novo. *State v. McCarthy*, 178 Wn. App. 290, 296, 313 P.3d 1247 (2013) (citing *Oakley*, 158 Wn. App. at 552).

Stanfield in the position of having to collide with the patrol vehicle or be run off the road. (TRP2 185, 190, 192, 193, 195, 197, 210-11)

In hit and run cases, courts have held that restitution may not be ordered for damage caused by the accident because the driver's fault in causing the accident is independent of the hit and run charge. See, e.g., State v. Hartwell, 38 Wn. App. 135, 141, 684 P.2d 778 (1984) (overruled on other grounds). Similarly, a driver's decision to elude police is independent of an officer's decision to cause damage by unsafely pursuing or ramming into the vehicle. Deputy Betts considered terminating the pursuit due to unsafe conditions, but chose to continue instead. (TRP3 193)

It was error for the trial court to order restitution for damage to Deputy Betts' patrol vehicle. This is particularly clear given that the jury acquitted Stanfield of assault in the second degree, thus rejecting the State's theory that Stanfield intentionally struck the vehicle. (TRP4 343, 369-70; CP 91) Because there was no causal link between the offense of which Stanfield was actually convicted and the damages sought, the court abused its discretion in ordering restitution.

Deputy Betts' decision to pursue Stanfield, and the manner of his pursuit, is the direct cause of the loss of property at issue.

The crime committed by Stanfield did not directly cause the loss and the trial court did not have the authority to impose restitution. This Court should reverse.

V. CONCLUSION

This Court should reverse and vacate the order of restitution because the trial court lacked the statutory authority to impose restitution for the damage to the patrol vehicle, as Stanfield's actions were not the legal cause of the damage.

DATED: August 27, 2018



STEPHANIE C. CUNNINGHAM
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Attorney for Kevin Arthur Stanfield

August 27, 2018 - 2:16 PM

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Appeal No. 51724-8-II

DECLARATION OF SERVICE

I, Stephanie C. Cunningham, court-appointed counsel for Appellant Kevin Arthur Stanfield, certify that I caused to be placed in the mails of the United States, first class postage pre-paid, a true and complete copy of the OPENING BRIEF OF APPELLANT and this CERTIFICATE OF MAILING, addressed to:

Kevin Stanfield
3020 24th Ave Ct SE
Puyallup, WA 98374

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: August 27, 2018



STEPHANIE C. CUNNINGHAM, WSB #26436
Attorney for Appellant Kevin Arthur Stanfield

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