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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

KEVIN ARTHUR STANFIELD, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Judge K.A. van Doorninck

No. 17-1-00937-9

Brief of Respondent

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court properly order restitution for damages to Deputy Betts's marked police vehicle following defendant's conviction for Attempting to Elude a Police Vehicle where: defendant failed to stop after Deputy Betts signaled with lights and sirens; defendant drove recklessly, eventually veering into Deputy Betts's police vehicle causing the crash that ended the pursuit; and but for these actions, the damage to the police vehicle would not have occurred? (Appellant's Assignment of Error #1).

B. STATEMENT OF THE CASE.

1. FACTS

On March 5, 2017, Kevin Arthur Stanfield (the "defendant") got into an altercation with the employees of a Shell station at the intersection of 108th Street and Pacific Avenue in Tacoma, Washington. 02-21-18 VRP 177-78, 202.¹ Defendant appeared to be intoxicated during the altercation. 02-22-18 VRP 268, 293. Eventually, Shell employee Deanna Clark called 911. 02-22-18 VRP 266, 271. Minutes later, the defendant jumped into his vehicle and sped away from the Shell station, his tires squealing. 02-22-18 VRP 300-1.

¹ While some of the Verbatim Records of Proceedings (VRPs) were assigned volume numbers, not all were, and some volume numbers were used twice. In the interest of clarity, the State will cite the VRPs as follows "[date of proceeding] VRP [page]."

Pierce County Deputy Sheriff Nathan Betts was dispatched to the Shell station and was en route in a fully marked Ford Explorer with the emergency lights flashing and the siren activated. 02-21-18 VRP 175, 177-78. Deputy Betts sped northbound on Pacific Avenue towards the station. 02-21-18 VRP 179. Dispatch relayed the description of the suspect vehicle leaving the scene to Deputy Betts. *Id.* As he moved closer, Deputy Betts noticed a vehicle matching the description make a wide, sweeping turn out of the station and head southbound on Pacific Avenue. 02-21-18 VRP 179-80. Deputy Betts made a U-turn to get behind the vehicle, driven by defendant, and attempted to initiate a traffic stop. 02-21-18 VRP 180-81, 221.

Defendant quickly turned onto Highway 512 West. 02-21-18 VRP 183. By the time Deputy Betts caught up with the defendant's vehicle on Highway 512, they were travelling at speeds of about 75 mph. *Id.* Defendant did not pull over, instead accelerating away from Deputy Betts. *Id.* Defendant reached speeds between 90 and 100 mph with Deputy Betts trailing him, the lights flashing and siren sounding on Deputy Betts's patrol car. 02-21-18 VRP 183-84. The pair passed several cars as they sped down a damp Highway 512. 02-21-18 VRP 185.

Defendant slowed to between 70 and 80 mph as he approached the on-ramp to northbound I-5. 02-21-18 VRP 187. Deputy Betts dropped

back, unsure that he could safely navigate the curve of the on-ramp at that speed. *Id.* Defendant darted across solid white fog lines to the on-ramp lane. 02-21-18 VRP 187-88. He did not slow, swerving to overtake the three other cars on the ramp. 02-21-18 VRP 188-89. As he passed a vehicle, defendant overcorrected, swerving to the right and his rear tires began to slide. 02-21-18 VRP 189. Defendant overcorrected again in response, swerving to the left and losing control. *Id.* Defendant's vehicle slid off the roadway, taking out a highway sign before coming to rest on the grassy embankment. *Id.* Deputy Betts stayed on the pavement to avoid getting stuck in the grass. 02-21-18 VRP 190.

Defendant spun his tires in the wet grass until they caught, and he accelerated back towards the roadway. 02-21-18 VRP 189-90. As defendant re-entered the roadway, Deputy Betts attempted a low-speed Pursuit Immobilization Technique (PIT) maneuver to disable defendant's car and end the pursuit safely. 02-21-18 VRP 190-91. Defendant steered out of the PIT maneuver and quickly accelerated northbound onto I-5. 02-21-18 VRP 191-92.

The pursuit traveled onto I-5 with the defendant in the far-right, merge-only lane. 02-21-18 VRP 193. Knowing that the lane would end, Deputy Betts moved one lane left to block traffic and accelerated. 02-21-18 VRP 194. Deputy Betts noticed there was more traffic, 15 to 20

cars in the surrounding area, compared to Highway 512, and began to consider terminating the pursuit.² 02-21-18 VRP 192-93. As Deputy Betts pulled even with defendant, Deputy Betts turned his head to get a visual on defendant driving. 02-21-18 VRP 195.

With a quick jerking motion, defendant steered his vehicle into Deputy Betts's patrol car causing a crash. 02-21-18 VRP 195, 198. Deputy Betts was sent spinning across four lanes of I-5 traffic until the passenger side of the patrol car slammed against the jersey barrier. 02-21-18 VRP 195; Exhibits 16, 21. The patrol car came to a rest facing southbound in the northbound lanes. 02-21-18 VRP 236. Defendant's car similarly veered across four lanes following the collision. 02-21-18 VRP 198, 238; Exhibits 7, 21. However, when defendant's vehicle hit the jersey barrier it went airborne, landing in the southbound lanes of I-5 on the other side of the barrier. *Id.*

Deputy Betts, along with recently arrived Deputies James Cowan and Jeff Laeuger, approached defendant and removed him from the vehicle. 02-21-18 VRP 200. Both Deputies Betts and Cowan noted the odor of intoxicants on the defendant. 02-21-18 VRP 200, 230. Deputy Laeuger followed as defendant was transferred to the hospital where

² Deputy Betts described the amount of time that elapsed between him considering terminating the pursuit and the eventual collision as not "even a five-second period. It was... instantaneous[]." 02-21-18 VRP 210.

defendant was “agitated, combative, [and] angry.” 02-21-18 VRP 223. Deputy Laeuger read defendant his Miranda rights from a prepared card, and defendant elected to speak with Laeuger. *Id.* Defendant told Deputy Laeuger he was “trying to defend a homeless person and those fuckers called the police... when the officer got behind [defendant] and turned on his lights it scared [defendant] and he did something stupid.” *Id.*

Defendant testified at trial and maintained his story that he was defending another person at the Shell station. 02-22-18 VRP 307-8. He admitted to drinking two beers less than an hour before going to the convenience store that night. 02-22-18 VRP 307. Defendant claimed that the clerk and others followed him as he escorted the homeless man outside, and then they initiated the physical confrontation. 02-22-18 VRP 308-9. Defendant also stated that he suffers from memory problems and PTSD stemming from the head injury caused by the accident. 02-22-18 VRP 307, 310.

Defendant further testified that he did not notice the police car behind him until he was on Highway 512. 02-22-18 VRP 311. He claimed to have no memory of the police car closing in on him. *Id.* The next thing defendant knew he was slowing down and Deputy Betts was executing the PIT maneuver. *Id.* Defendant said, “I figured he was trying to kill me, so I got out of the PIT maneuver as best I could and took off as far

as I could go.” 02-22-18 VRP 312. Defendant testified that he did not remember the eventual collision but remembered his car sliding while his foot was on the brake. 02-22-18 VRP 311.

Deputy Betts’s patrol car sustained extensive damage in the collision initiated by defendant. Exhibits 10, 16, 18. The body shop determined that the vehicle was totaled, estimating repairs would cost \$17,897.43. *See* Restitution Information. The amount of restitution was reached by subtracting the amount recovered at auction through the sale of the totaled vehicle from the cash value of the vehicle plus taxes and fees which totaled \$24,873.50. *Id.*

2. PROCEDURE

On March 7, 2017, the Pierce County Prosecuting Attorney’s Office charged the defendant with Count I- Assault in the Second Degree, Count II- Attempting to Elude a Police Vehicle, Count III- Assault in the Fourth Degree for assaulting Deanna Clark, and Count IV- Unlawful Carrying or Handling of Weapons Apparently Capable of Producing Bodily Harm. CP 3-4. Counts I and III stemmed from the defendant’s conduct at the Shell station. CP 5-7; 02-20-18 VRP 4. Trial commenced in Pierce County Superior Court before the Honorable Judge Kitty-Ann van Doorninck on February 20, 2018. 02-20-18 VRP 1. At that time, the State filed an amended information changing Count IV to Assault in the

Second Degree for assaulting Deputy Betts based on defendant's collision with Deputy Betts. CP 5-7; 02-20-18 VRP 4. The State also specified that Count I was against Deanna Clark. CP 88. After a jury trial, defendant was found not guilty of the assault charges (Counts I, III, and IV). CP 88, 90-91. The defendant was convicted of Count II- Attempting to Elude a Police Vehicle. CP 89.

On March 9, 2018, the trial court imposed a standard range sentence of 60 days in jail. CP 96-106; 03-09-18 VRP 3-7. The State requested \$24,873.50 in restitution for damage to Deputy Betts's patrol vehicle. 03-09-18 VRP 4; *see also*, Restitution Information. Defendant objected to the restitution, contending that there was an insufficient nexus between the elements of the eluding charge and the damage caused. 03-09-18 VRP 6-7. The trial court imposed the restitution, finding "there's no question that the accident was a result of a Felony Elude." CP 107-8; 03-09-18 VRP 7. Defendant timely appealed. CP 109. On appeal, defendant challenges the restitution order, contending that neither his failure to stop nor his steering into Deputy Betts's vehicle caused the collision. Appellant's Brief at 1. Defendant asserts the more direct cause was Deputy Betts's decision to continue the pursuit. *Id.*

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN ORDERING RESTITUTION, WHERE BUT FOR DEFENDANT’S DECISION TO ELUDE POLICE THE POLICE WOULD NOT HAVE PURSUED DEFENDANT, AND BUT FOR DEFENDANT VEERING INTO DEPUTY BETTS’S VEHICLE THERE WOULD NOT HAVE BEEN A COLLISION.

Restitution is an “integral” part of the Washington criminal justice system. *State v. Shannahan*, 69 Wn. App. 512, 517, 849 P.2d 1239 (1993). When authorized by statute, 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, 679, 974 P.2d 828 (1999). An abuse of discretion occurs when the order is manifestly unreasonable, exercised on untenable grounds, or exercised for untenable reasons. *Id.* at 679-80. Courts derive the power to impose restitution solely from statute. *State v. Tobin*, 161 Wn.2d 517, 523, 166 P.3d 1167 (2007). For adult defendants, this power is granted by the Sentencing Reform Act of 1981. *See* RCW 9.94A.753(3), (5). Restitution ordered in a criminal case “shall be based on easily ascertainable damages for injury to or loss of property. . .” RCW 9.94A.753(3).

One of the goals of the restitution statute is to “require[] the defendant to face the consequences of his criminal conduct.” *Enstone*,

137 Wn.2d at 680 (quoting *State v. Davison*, 116 Wn.2d 917, 922, 809 P.2d 1374 (1991)). Thus, restitution is only allowed for losses that are causally connected to the crimes charged as determined using a “but for” test. *Tobin*, 161 Wn.2d at 524. The State has the burden of establishing this causal link by a preponderance of the evidence. *State v. Cawyer*, 182 Wn. App. 610, 617, 330 P.3d 219 (2014). The court must find that but for the defendant’s actions, the damage would not have happened. *Id.* Foreseeability, however, is *not* an element of restitution. *Enstone*, 137 Wn.2d at 677.

- a. Restitution may be ordered for damages resulting from defendant’s attempt to elude a police vehicle.

The trial court properly exercised its discretion in ordering restitution because defendant led police on a high-speed pursuit which carries inherent risks. Defendant drove at speeds of 90 to 100 mph through traffic on damp roadways. 02-21-18 VRP 183-85. The defendant saw Deputy Betts behind him signaling defendant to pull over. 02-21-18 VRP 321. Nevertheless, defendant continued fleeing until he veered into Deputy Betts’s vehicle, causing the crash that ended the pursuit. 02-21-18 VRP 195. But for the defendant’s choice to elude police—and subsequently to veer into Deputy Betts’s vehicle—the pursuit and eventual crash which damaged the police vehicle would not have happened.

Defendant asserts that the State may not recoup compensation for damages sustained during a police pursuit from the person convicted of eluding police in said pursuit. App. Br. at 8. However, he provides no legal support for this conclusion from cases involving a charge of Attempting to Elude a Police Vehicle. When assessing whether restitution is appropriate, courts should look to the underlying facts of the charged crime (not only at the name of the crime defendant committed, nor strictly at the abstract elements of that crime). See *State v. Landrum*, 66 Wn. App. 791, 799, 832 P.2d 1359 (1992) (*abrogated by statute on other grounds as recognized in, State v. D.P.G.*, 169 Wn. App. 396, 403, 280 P.3d 1139 (2012));³ *State v. Acevedo*, 159 Wn. App. 221, 230, 248 P.3d 526 (2010).

In an unpublished opinion, Division 1 of this Court recently decided *State v. Molina*, No. 73025-8-I, 2016 WL 264896 (Wash. Ct. App. January 19, 2016) (unpublished), a remarkably similar case.⁴ Molina fled police in a stolen vehicle, running through red lights and stop signs

³ Though *Landrum* is a juvenile matter, case law interpreting the relevant adult statute, the Sentencing Reform Act (SRA), is applicable in interpreting the relevant juvenile statute, the Juvenile Justice Act (JJA), where there is no contrary intent. *State v. P.B.T.*, 67 Wn. App. 292, 302, 834 P.2d 1051 (1992). The respective definitions of restitution are quite similar and do not suggest contrary intent. Compare, RCW 9.94A.753(3) with RCW 13.40.020(26).

⁴ General Rule 14.1 allows citation to unpublished opinions of the Court of Appeals filed on or after March 1, 2013. The unpublished decision cited above has no precedential value, is not binding on any court, and is cited only for such persuasive value as the court deems appropriate.

before driving into oncoming traffic. *Id.* at *1. Police rammed Molina's vehicle three times before the pursuit ended, the second time causing Molina to hit several parked cars. *Id.* Finally, an officer ended the pursuit by ramming the stolen car Molina was driving a fourth time. *Id.* Molina pleaded guilty to Attempting to Elude a Police Vehicle. *Id.*

Division 1 upheld restitution in the amount of \$74,948.55 for damage to three patrol cars, one parked car, and the stolen car. *Id.* at *1-2. In doing so, the court rejected the argument that Molina did not directly cause the damage. *Id.* Additionally, it found that—even though foreseeability is not required—the damage done during the pursuit was a foreseeable consequence of Molina's attempt to elude police. *Id.* The *Molina* court held that, “[B]ut for Molina's attempt to elude police vehicles, officers would not have needed to disable Molina's car, which resulted in the damage to the cars.” *Id.* at *2.

Similarly, here defendant claims that restitution is not appropriate, because the cause of the damage was not defendant's decision to flee but Deputy Betts's decision to continue the pursuit. App. Br. at 8-9. This fails for three reasons. First, there were unquestionably more factors that weighed in favor of terminating the pursuit in *Molina*. The officers there had time to terminate the pursuit, they disabled Molina's car to end the pursuit, and restitution was upheld. *Molina*, 2016 WL 264896 at *1-2.

Law enforcement in *Molina* rammed the defendant three times before ending the pursuit, and Deputy Betts executed only one low-speed PIT maneuver which was ineffective. *Molina*, 2016 WL 264896 at *1; 02/21/18 VRP 190.

Second, Deputy Betts testified that mere seconds elapsed between him considering the possibility that conditions warranted ending the pursuit and the collision. 02-21-18 VRP 210. Defendant's argument that Deputy Betts intended to use the ending merge-only lane to force defendant off the road ignores that defendant could have simply slowed and pulled over when signaled to do so. Ultimately, Deputy Betts's actions within the pursuit are irrelevant because defendant's initial decision to flee set in motion the events that lead to the collision and resulting damage. *Molina*, 2016 WL 264896 at *2. To allow a police officer's decision to continue a pursuit to act as an intervening cause would be to encourage suspects to escape culpability by making a pursuit more dangerous.

Finally, "Washington courts have not yet directly addressed whether an intervening cause can sever responsibility for damage incurred by a criminal act, thereby relieving a defendant of liability for restitution." *State v. Hiatt*, 154 Wn.2d 560, 571, 115 P.3d 274, 280 (2005) (Sanders, J., concurring in part and dissenting in part) (footnote omitted). Moreover, if

courts were to recognize the ability of a superseding cause to sever responsibility in criminal restitution matters, they would likely adopt the civil standard requiring the intervening act “be unforeseeable to break the causal chain.” *Hiett*, 154 Wn.2d at 566 (citing *Schooley v. Pinch's Deli Market, Inc.*, 134 Wn.2d 468, 482, 951 P.2d 749 (1998)).

In *Hiett*, two of the juvenile defendants were passengers in a stolen car. *Hiett*, 154 Wn.2d at 562. When a deputy sheriff started following them, the two passengers jumped out of the moving car. *Id.* Once the deputy described the passengers to dispatch, he activated his lights and siren to pursue the stolen vehicle. *Id.* The pursuit ended when the fleeing driver took a corner too fast and lost control, colliding with a bystander vehicle and crashing into a store front. *Id.* The trial court imposed joint and several liabilities on the driver and all passengers. *Id.* The Washington Supreme Court upheld the restitution order, even finding that the damage was foreseeable, and that ordering restitution comported with the legislature’s intent to fully compensate victims. *Id.* at 566.

Courts have found restitution proper when ordered against a driver who attempted to elude police and against passengers in a stolen vehicle that were not even in the vehicle when the damage occurred. *See Hiett*, 154 Wn.2d at 566; *Molina*, 2016 WL 264896 at *2. Here, even if an intervening cause could sever causation, it is hardly unforeseeable that

police would pursue defendant when he failed to stop after Deputy Betts signaled for him to do so, or that a pursuit reaching 100 mph on a busy interstate would end in a collision. Defendant's actions caused significant damage to Deputy Betts's patrol vehicle and defendant should be held responsible.

- b. The jury's not guilty verdict on the assault count is neither a legal nor factual bar to ordering the defendant to pay restitution for damages.

The fact that a jury found defendant not guilty of Assault in the Second Degree against Deputy Betts does not preclude ordering the defendant pay restitution for damage caused as he attempted to elude police. It should first be noted that a not-guilty verdict is not a finding of innocence. *State v. Thomas*, 138 Wn. App. 78, 155 P.3d 998 (2007), is instructive. The defendant in *Thomas* was the driver of a vehicle involved in a single car accident that seriously injured her passenger. *Id.* at 80. There, the jury declined to find Thomas guilty of vehicular assault, instead finding her guilty of Driving Under the Influence. *Id.*

This Court upheld restitution for expenses stemming from her passenger's injuries, noting that the State need only establish causation for restitution by a preponderance of the evidence. *Id.* at 83. "The jury's failure to be convinced beyond a reasonable doubt that Thomas's DUI

caused [her passenger's] injuries is neither a legal nor factual bar to the trial court finding, at a restitution hearing, that Thomas's DUI probably caused those same injuries.” *Id.* Nor is the jury’s not guilty verdict on the assault charge a bar to imposing restitution here. Restitution requires causation proven beyond a preponderance of the evidence, not intent proven beyond a reasonable doubt as assault does. *Compare*, RCW 9.94A.753(3) *with* RCW 9A.36.021. Causation was sufficiently proven where the damage to Deputy Betts’s police vehicle was caused by defendant’s attempts to elude police and accompanying reckless driving. Even if defendant’s intent to assault Deputy Betts was not proven, the order of restitution was proper.

- c. Defendant relies heavily on *Hartwell*, *Woods*, *Oakley*, and *Dauenhauer* which—unlike the case at bar— all involve restitution ordered for damage that was caused by uncharged conduct.

Defendant attempts to analogize hit-and-run cases to the case at hand, but they are not instructive. App. Br. at 9; *see State v. Hartwell*, 38 Wn. App. 135, 684 P.2d 778 (1984) (*overruled on other grounds by State v. Krall*, 125 Wn.2d 146, 881 P.2d 1040 (1994)). In *Hartwell*, the court determined that injuries to the victim were caused by Hartwell hitting the victim, not by fleeing the scene. *See Hartwell*, 38 Wn. App. at 141. Had Hartwell stayed on the scene, thus not committing hit-and-run, the injuries

would have been the same. *Id.* Restitution cannot be ordered for a crime where the criminal act did not cause the damage. *Id.*

A driver can drive in a perfectly safe manner, but if he leaves the scene of a collision he has committed a hit-and-run. Unlike the hit-and-run statute, RCW 46.52.020, the eluding statute requires the driver operate his vehicle “in a reckless manner.” RCW 46.61.024. Here, the criminal act—defendant’s failure to yield to a signaling police vehicle and reckless driving—set in motion the events that led to the crash and resulting damages. *See Molina*, 2016 WL 264896 at *2

The key inquiry is whether the defendant could have committed underlying acts constituting the crime without causing the damage. The defendant cites *State v. Woods*, 90 Wn. App. 904, 906, 953 P.2d 834 (1998), where the court reversed an order of restitution for personal property that was inside a vehicle when it was stolen. However, the defendant there only pleaded guilty to possessing the stolen vehicle on the day he was arrested. *Id.* at 908-9. The State had not proven defendant stole the vehicle or what happened during the weeks of time when the vehicle was unaccounted for. *Id.* Thus, the personal items for which restitution was ordered could have been removed before defendant even possessed the vehicle. *Id.*

Defendant similarly relies on *State v. Oakley*, 158 Wn. App. 544, 242 P.3d 886 (2010), and *State v. Dauenhauer*, 103 Wn. App. 373, 379, 12 P.3d 661 (2000). Those cases hold that restitution cannot be ordered for damage that occurred during flight from the charged crime, because the State did not have to prove flight for the defendant to be convicted of the crime. *Oakley*, 158 Wn. App. at 553; *Dauenhauer*, 103 Wn. App. at 379. These cases all uphold the general rule that the sentencing court may only rely on information admitted in the plea agreement or proven at trial. See, *Woods*, 90 Wn. App. at 907; RCW 9.94A.530 (*held unconstitutional on other grounds in, State v. Hunley*, 175 Wn.2d 901, 917-18, 287 P.3d 584, 593 (2012)).

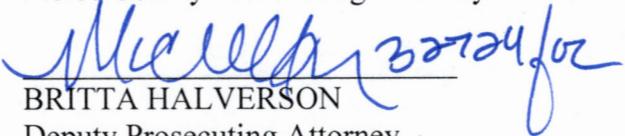
Here, defendant's flight was not uncharged conduct incidental to the charged offense, it *was* the charged offense. The State had to prove defendant willfully failed to stop for a signaling police vehicle and he drove his vehicle in a reckless manner. CP 79; RCW 46.61.024. Because these elements were proven as part of the charged crime, defendant's attempts to elude police, reckless driving, and the damages stemming therefrom became valid grounds for restitution. Thus, the trial court properly ordered restitution.

D. CONCLUSION.

The trial court's order of restitution is authorized by statute. The damages were easily ascertainable and, but for the defendant's decision to elude police he would not have veered into Deputy Betts's vehicle causing the crash and resulting damages. It was even foreseeable that police would pursue defendant's car when he fled. For these reasons, it was well within the trial court's discretion to order restitution in this case and its decision should not be disturbed on appeal. The State respectfully requests this Court affirm the trial court's order of restitution.

DATED: November 14, 2018.

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Evan Boeshans
Rule 9

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PIERCE COUNTY PROSECUTING ATTORNEY

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