

FILED

OCT 29 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 302407

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

DIVISION III

ERIC C. WILLIAMS

APPELLANT,

V.

STATE OF WASHINGTON

RESPONDENT

—
BRIEF OF RESPONDENT

KARL F. SLOAN
Prosecuting Attorney
237 4th Avenue N.
P.O. Box 1130
Okanogan County, Washington

509-422-7280 Phone
509-422-7290 Fax

FILED

OCT 29 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 302407

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

ERIC C. WILLIAMS

APPELLANT,

V.

STATE OF WASHINGTON

RESPONDENT

—
BRIEF OF RESPONDENT

—
KARL F. SLOAN
Prosecuting Attorney
237 4th Avenue N.
P.O. Box 1130
Okanogan County, Washington

509-422-7280 Phone
509-422-7290 Fax

TABLE OF CONTENTS

A. ASSIGNMENTS OF ERROR 2

B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR 2

C. STATEMENT OF THE CASE 3

D. ARGUMENT 6

The Appellant raises for the first time on appeal objection to the imposition of restitution based on the crime of Hit and Run. The trial court did not abuse its discretion in ordering restitution for damages causally connected to the crime 6

 The Appellant did not dispute the trial court’s decision to base restitution on the crime of Hit and Run, and waived the issue on appeal. 7

 The trial court properly ordered restitution where the injury to Ms. William’s was in fact caused by the defendant’s commission of the crime of Hit and Run..... 8

The trial court should have ordered the defendant to serve one year on community custody for Count 1 which is classified as a “crime against persons” 14

The Appellant acknowledged his prior conviction history and offender score at the time of sentencing and has waived this issue on appeal. 15

E. CONCLUSION..... 19

TABLE OF AUTHORITIES

Cases

<i>In re Pers. Restraint of Cadwallader</i> , 155 Wash.2d 867, 876, 123 P.3d 456 (2005).....	19
<i>Cabrera</i> , 73 Wash.App. at 168, 868 P.2d 179.)	20
<i>City of Walla Walla v. Ashby</i> , 90 Wash.App. 560, 952 P.2d 201 (1998)	13, 14, 15
<i>State v. Ammons</i> , 105 Wash.2d 175, 713 P.2d 719 (1986)....	19, 21
<i>State v. Barnett</i> , 36 Wn.App. 560, 563, 675 P.2d 626 (1984).....	11
<i>State v. Blackwell</i> , 120 Wn.2d 822, 830, 845 P.2d 1017 (1993)...	10
<i>State v. Blunt</i> , 118 Wash. App. 1, 8, 71 P.3d 657, 661 (2003)	22
<i>State v. Bresolin</i> , 13 Wash.App. 386, 396, 534 P.2d 1394 (1975)	21
<i>State v. Davison</i> , 116 Wn.2d 917, 919, 809 P.2d 1374 (1991)....	10, 11
<i>State v. Duvall</i> , 84 Wn. App. 439, 928 P.2d 459 (1996), aff'd, 86 Wn. App. 871, 940 P.2d 671 (1997)	12
<i>State v. Enstone</i> , 137 Wn.2d 675, 974 P.2d 828 (1999). 8, 9, 10, 13	
<i>State v. Ewing</i> , 102 Wn.App 349; 7 P.3d 835 (2000).....	12, 13
<i>State v. Fleming</i> , 75 Wash.App. 270, 274, 877 P.2d 243 (1994), petition dismissed, 129 Wash.2d 529, 919 P.2d 66 (1996)).....	10
<i>State v. Ford</i> , 137 Wash.2d 472, 480, 973 P.2d 452 (1999)..	19, 20, 22
<i>State v. Garza</i> , 123 Wash.2d 885, 890, 872 P.2d 1087, 1090 (1994)	18, 22
<i>State v. Grayson</i> 154 Wash.2d 333, 338-339, 111 P.3d 1183, 1186 (2005)	21
<i>State v. Handley</i> , 115 Wash.2d 275, 282-83, 796 P.2d 1266 (1990)	18, 21, 22
<i>State v. Harrington</i> , 56 Wash.App. 176, 180-181, 782 P.2d 1101, 1103 (1989)	8
<i>State v. Israel</i> , 113 Wash.App. 243, 54 P.3d 1218 (2002)	10
<i>State v. Lopez</i> , 147 Wash.2d 515, 519, 55 P.3d 609 (2002)	19
<i>State v. Mail</i> , 121 Wash.2d 707, 712, 854 P.2d 1042 (1993)	18
<i>State v. Marks</i> , 90 Wn.App. 980, 983, 955 P.2d 406 (1998).....	10
<i>State v. Martinez</i> , 78 Wash. App. 870, 881, 899 P.2d 1302 (1995), review denied, 128 Wash. 2d 1017, 911 P.2d 1342 (1996)	11
<i>State v. Mendoza</i> , 165 Wash.2d 913, 920, 205 P.3d 113, 116 (2009)	20, 21
<i>State v. Nelson</i> , 53 Wn. App. 128, 766 P.2d 471 (1988)	12
<i>State v. Smith</i> , 119 Wn.2d 385, 389, 831 P.2d 1082 (1992).....	9
<i>State v. Tobin</i> , 161 Wn.2d 517, 524 (2007).....	13

<i>State v. Warren</i> , 55 Wash.App. 645, 649–50, 779 P.2d 1159 (1989)	8
--	---

Statutes

RCW 46.61.522(1)(c)	3
RCW 9.94A.030(54)(a)(xiii)	14
RCW 9.94A.411(2)	14, 15
RCW 9.94A.505	8
RCW 9.94A.507	15
RCW 9.94A.530(2)	17
RCW 9.94A.701	15
RCW 9.94A.753	8, 10
RCW 9.94A.753(5)	8

A. ASSIGNMENTS OF ERROR

1. Whether the trial court abused its discretion when it ordered restitution for loss resulting from, and causally connected to, the defendant's criminal acts.
2. Whether the court erred in imposing eighteen months community custody for the defendant's conviction for vehicular assault instead of on year of community custody.
3. Whether the State sufficiently proved the defendant's prior convictions where the defendant acknowledged and agreed with the offender score at the time of sentencing.

B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. The Appellant did not object to, or challenge, the trial court's finding that Ms. Williams suffered damages as a direct result of the defendant's Hit and Run. Does the Appellant's failure to specifically raise a challenge to restitution preclude him from raising it for the first time on Appeal?
2. Even if Appellant had made a specific objection to the trial court's reason for imposing restitution, a trial courts order of restitution will not be overturned absent an abuse of discretion. Was there an abuse of discretion where the trial court found the damages were directly and causally connected the defendant's criminal act of fleeing the scene of the collision?
3. The crime of vehicular assault committed by operating a vehicle with disregard for the safety of others is not a violent offense but is a crime against persons. Did the trial court err when it imposed 18 months of community custody instead of 12 months?

4. Appellant alleges a lack of sufficient proof of his prior convictions for the first time in his Statement of Additional Grounds for Review. Did Appellant waive his right to challenge sufficiency of proof where the prior convictions and offender score were acknowledged, agreed to, *and* proven by a preponderance at the time of sentencing?

C. STATEMENT OF THE CASE

On August 18, 2011, the defendant was convicted of Vehicular Assault under the disregard for safety prong (RCW 46.61.522(1)(c)) in Count 1; Hit and Run Injury Accident in Count 2; and Driving While License Suspended in the Third Degree in Count 3. *CP 10-21, 23.*

The crimes were committed mid-day on August 10, 2011, when the defendant struck a pedestrian, John Danielson, who was crossing the street in a cross walk. *RP 47-49, 51-53, 69-70, 71-72, 74, 111, 120, 129, 141-142, 174-176.* The collision fractured Mr. Danielson's lumbar vertebra. *RP 177.*

The defendant was driving a pick-up truck owned by his cousin, Simone Williams. *59, 193-197.* After striking Mr. Danielson, the defendant drove the vehicle a short distance, abandoned the vehicle, and fled on foot. *RP 55, 70-71, 72, 121, 142.*

The defendant was sentenced to a term of 60 months on counts 1 and 2. His sentence was based on an offender score of 9 in Count 1 and 9+ in Count 2. The defendant was also ordered to serve 18 months on community custody for Count 1. *CP 10-21*.

The defendant's initial sentencing hearing was continued from September 7, 2011 to September 12, 2011, to confirm if one of the defendant's prior convictions for Burglary was a juvenile or an adult conviction. *Report of Proceedings Sentencing (hereinafter "RPS") 3, 6, 16*. Defense agreed that the status of the prior Burglary would not affect the standard range of either Count 1 or Count 2. *RPS 3*. The State confirmed the conviction was a juvenile offense and adjusted the score accordingly. Defense agreed that even with the adjustment, the defendant's score for Counts 1 and 2 remained at the top of the scoring range. *RPS 6-7*

Defense agreed that the defendant's calculated score was correct based on its review of materials, including the defendant's judgment and sentence from his 2007 VUCSA conviction. *RPS 10-11, 15*. The defendant's comments to the court were asking how the "point system goes" because "I just know that a lot of these crimes were back from 1989..." and "I know...you don't

have...much room to move or whatever...I don't know what's being held against me..." RPS 14-15. The court referred the defendant to the list of convictions that his attorney possessed. The defendant's attorney explained that he had sat down with the defendant and had gone over a copy of the 2007 felony judgment and sentence; a copy of the defendant's case history; and correspondence from the State regarding the defendant's criminal history. *RPS 15.* The court then went through the defendant's convictions on the record. *RPS 15-16* and explained why the defendant's older offenses did not wash out for scoring purposes. *RPS 16.* The defendant did not have any additional questions, nor did he make any objection. *RPS 16-17.*

At sentencing the State requested that restitution of \$580 be paid to Ms. Williams. The defendant used Ms. Williams' vehicle in committing the offenses. *RPS 9-10.* The defendant abandoned Ms. Williams' vehicle and took the keys. The vehicle was impounded requiring Ms. Williams having to pay impound and tow fees, and to make a new key, in order to reclaim and regain the use of her vehicle. *RPS 13.* The State argued that Ms. Williams's damages were a direct result of the defendant's crime of Hit and Run. The defendant's act of leaving the scene

and abandoning the vehicle caused the injury to Ms. Williams.

RPS 13-14. Defense objected to the restitution only on the basis that Ms. Williams “assumed the risk” of loss when she permitted the defendant to use her truck. *RP 11-12, 14.*

The trial court acknowledged that damage or injury caused by a collision that precedes the crime of Hit and Run is not the result of the crime, because the crime is leaving the scene of the collision. The trial court found Ms. William’s injuries were in fact caused by the crime, and ordered restitution for her loss. *RP 18.*

The Appellant now assigns error to the trial court’s order of restitution and the imposition of 18 months community custody on Count 1. In his Statement of Additional Grounds for Review, Appellant also assigns error to the trial court for “...*failing to make the State prove that the defendant’s prior convictions were properly used as points for his sentencing score.*”

D. ARGUMENT

- 1. The Appellant raises for the first time on appeal objection to the imposition of restitution based on the crime of Hit and Run. The trial court did not abuse its discretion in ordering restitution for damages causally connected to the crime.**

- a. The Appellant did not dispute the trial court's decision to base restitution on the crime of Hit and Run, and waived the issue on appeal.

In the present case, the defendant did not challenge, or raise any objection to the court's finding that the damages to Ms. Williams were in fact caused by the crime of Hit and Run. The defendant's only objection was to claim the victim assumed the risk of loss when she permitted the defendant to use her vehicle. The Respondent is not aware of any legal authority to deny restitution under this theory, and defendant provided no authority to the trial court.

Appellant raises for the first time on appeal a claim that the loss was not causally connected to the crime of Hit and Run. Because Appellant did not dispute the trial court's decision to base the restitution on the causal connection to the crime of Hit and Run, he is precluded from raising in for the first time on appeal. See *State v. Harrington*, 56 Wash.App. 176, 180-181, 782 P.2d 1101, 1103 (1989); *State v. Warren*, 55 Wash.App. 645, 649-50, 779 P.2d 1159 (1989) *State v. Branch*, 129 Wash.2d 635, 651, 919 P.2d 1228 (1996).

- b. The trial court properly ordered restitution where the injury to Ms. William's was in fact caused by

the defendant's commission of the crime of Hit
and Run.

The court's authority to order the restitution is clearly controlled by settled law, pursuant to RCW 9.94A.753(5) and *State v. Enstone*, 137 Wn.2d 675, 974 P.2d 828 (1999).¹

RCW 9.94A.753(5) states in part:

Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property...unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record.

In enacting the statute, the Legislature granted broad power to the trial court to order restitution. *Enstone* at 679 (citing *State v. Smith*, 119 Wn.2d 385, 389, 831 P.2d 1082 (1992)). The restitution statute is to be interpreted broadly to carry out the Legislature's intention. *E.g.*, *State v. Israel*, 113 Wash.App. 243, 54 P.3d 1218 (2002).

When restitution is authorized by statute, imposition of restitution is generally within the discretion of the trial court and

¹ See also RCW 9.94A.505, which states in part: (1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter...(7) The court shall order restitution as provided in RCW 9.94A.753.

will not be disturbed on appeal absent an abuse of discretion.

Enstone at 680 (citing *State v. Davison*, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991); *State v. Fleming*, 75 Wash.App. 270, 274, 877 P.2d 243 (1994), petition dismissed, 129 Wash.2d 529, 919 P.2d 66 (1996)).

Discretion is abused if the discretionary decision is not based on tenable grounds or tenable reasons. *E.g.*, *State v. Marks*, 90 Wn.App. 980, 983, 955 P.2d 406 (1998) (quoting *State v. Blackwell*, 120 Wn.2d 822, 830, 845 P.2d 1017 (1993)).

In contrast to civil judgments, the purpose of restitution is not solely to compensate the victim. *See State v. Martinez*, 78 Wash. App. 870, 881, 899 P.2d 1302 (1995), review denied, 128 Wash. 2d 1017, 911 P.2d 1342 (1996) (compensation is not the primary purpose of restitution); *State v. Davison*, 116 Wash. 2d 917, 920, 809 P.2d 1374 (1991) (citing David Boerner, *Sentencing in Washington* sec. 4.8, at 4-14 (1985) (restitution may have a "strong punitive flavor"))).

Additionally, victims are entitled to seek restitution, even when other types of damages may be sought in a civil action. Although the courts recognize that the criminal process should not

be used simply as a means to enforce civil claims, it is also clear that a defendant should not benefit at the expense of a third party. *Cf., State v. Barnett*, 36 Wn.App. 560, 563, 675 P.2d 626 (1984), review denied 101 Wn.2d 1011 (1984) (trial court did not abuse its discretion in awarding restitution to insurance company who paid victim for damages cause by criminal acts.)

The general policy underlying the restitution statute is to require the offender to face the consequences of his or her criminal conduct. *State v. Duvall*, 84 Wn. App. 439, 928 P.2d 459 (1996), *aff'd*, 86 Wn. App. 871, 940 P.2d 671 (1997).

Restitution is intended to be punishment subject to supervision, modification and enforcement within the criminal justice system and separate from civil remedies expressly preserved to the victim. *State v. Nelson*, 53 Wn. App. 128, 766 P.2d 471 (1988).

As restitution is punitive in nature rather than compensatory, the court can order restitution in an amount double the amount of the victim's loss from the commission of the crime. *See State v. Ewing*, 102 Wn.App 349; 7 P.3d 835 (2000); RCW 9.94A.753(3).

The proper inquiry for the court in setting restitution is whether the claimed loss resulted from the crime, and whether it

is the kind of loss for which restitution is authorized. If so, the statute plainly grants discretion to make a restitution award. *Ewing*, at 354. Under the statute, restitution is allowed for losses that are “causally connected” to the crimes charged, and the court may use a “but for” inquiry to determine causation. *State v. Tobin*, 161 Wn.2d 517, 524 (2007). Although a causal connection is required, foreseeability is not required in the determination. See, *Id.* (citing *Enstone*, 137 Wn.2d at 682-83).

Nonetheless, Appellant argues Ms. Williams was not a “victim” of the crime of hit and run, and cites *City of Walla Walla v. Ashby*, 90 Wash.App. 560, 952 P.2d 201 (1998) for support. However, the court in *Ashby* was addressing whether restitution should be ordered for damage to the “struck” vehicle, where a defendant must be involved in a collision or an accident resulting in property damage or bodily injury as a *predicate* to being convicted of hit-and-run. *Ashby*, 90 Wash.App. at 565.

Ashby is not applicable to the facts in the present case, where the damage was a consequence of the Hit and Run. The *Ashby* court recognized the difference between damage caused

to the struck vehicle and that which is caused during and after the defendant's commission of the crime of hit and run.²

² Ashby discussed the case of State v. Hartwell, 38 Wash.App. 135, 138, 684 P.2d 778 (1984) at length, stating:

In *Hartwell*, the case relied upon in the municipal court by Ms. Ashby, Division One addressed the same issue before this court; whether restitution is proper when the crime is hit-and-run. There, Mr. Hartwell was involved in an accident where three people were seriously injured. He left the scene of the accident without stopping to render aid or leave information. Later, he was apprehended and charged with hit-and-run of an occupied vehicle. His sentence was suspended conditioned on his fulfilling an order of restitution. The court stated that because the injuries took place before the actual crime happened (i.e., leaving the scene); there was not a sufficient relationship between the crime and the injuries. The court reasoned that if Mr. Hartwell chose to stay at the scene of the accident and not committed the crime of leaving, the injuries would have been the same. It then reasoned the crime could not then be said to have caused the injuries. *Id.* The court concluded restitution in such circumstances is inappropriate... The court's decision did, however, seem to leave open restitution for any increased investigation expenses caused by an investigation to identify the fleeing driver. (Emphasis added; internal citations omitted).

Ashby, 90 Wash.App. at 563.

In the present case, the injury to Ms. Williams occurred as a direct result of the defendant abandoning Ms. William's vehicle.³

³ The to convict instruction for Count 2 Hit and Run stated in part:

To convict the defendant of hit and run, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about August 10, 2010, the defendant was the driver of a vehicle;
- (2) That the defendant's vehicle was involved in an accident [resulting in injury to any person;
- (3) That the defendant knew that he or she had been involved in an accident;
- (4) That the defendant failed to satisfy his or her obligation to fulfill all of the following duties:

- (a) Immediately stop the vehicle at the scene of the accident or as close thereto as possible;

- (b) Immediately return to and remain at the scene of the accident until all duties are fulfilled;

- (c) Give his or her name, address, insurance company, insurance policy number and vehicle license number, and exhibit his or her driver's license, to any person struck or injured;

- (d) Render to any person injured in the accident reasonable assistance, including the carrying or making of arrangements for the carrying of such person to a physician or hospital for medical treatment if it is apparent that such treatment is necessary or such carrying is requested by the injured person or on his or her behalf; and

- (5) That any of these acts occurred in the State of Washington.

Instruction #13, CP 76-99.

The injury to Ms. Williams resulting from impoundment of her vehicle and loss of the keys would not have occurred “but for” the defendant’s criminal act. The defendant failed to immediately stop the vehicle at the scene of the accident; he failed to return to and remain at the scene; he failed to give his name, address, insurance, and show his license; and he failed to render assistance to the injured person. It was the defendant’s flight to avoid identification and responsibility for the collision, that necessitated the vehicle tow, impound, and re-keying.

There is no basis to find the trial court abused its discretion when it ordered the defendant to pay restitution for the damages he caused Ms. Williams.

2. The trial court should have ordered the defendant to serve one year on community custody for Count 1 which is classified as a “crime against persons”.

The Appellant is correct that under RCW 9.94A.030(54)(a)(xiii) vehicular assault committed by operating a vehicle with a disregard for the safety of others is not classified as a “violent offense”. Vehicular Assault is classified under RCW 9.94A.411(2) as a “crime against persons”.

The term of community custody for offenders sentenced to the custody of the Dept. of Corrections is set out in RCW

9.94A.701, which states in part:

(1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody for three years:

(a) A sex offense not sentenced under RCW 9.94A.507;

or

(b) A serious violent offense.

(2) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for eighteen months when the court sentences the person to the custody of the department for a violent offense that is not considered a serious violent offense.

(3) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for one year when the court sentences the person to the custody of the department for:

(a) Any crime against persons under RCW 9.94A.411(2);...

Accordingly, the Appellant should have been ordered to serve one year of community custody, rather than eighteen months.

3. The Appellant acknowledged his prior conviction history and offender score at the time of sentencing and has waived this issue on appeal.

In order to dispute any of the information presented for consideration at a sentencing hearing, a defendant must make a timely and specific challenge. E.g., *State v. Garza*, 123 Wash.2d

885, 890, 872 P.2d 1087, 1090 (1994); *State v. Mail*, 121 Wash.2d 707, 712, 854 P.2d 1042 (1993); *State v. Handley*, 115 Wash.2d 275, 282-83, 796 P.2d 1266 (1990).

In the present case, the defendant made no general or specific objection to the proof of his prior convictions. Rather defense acknowledged that the calculated score was correct based on its review of materials, including the defendant's judgment and sentence from his 2007 VUCSA conviction. Accordingly, the defendant waived his right to challenge proof of his prior convictions.

The State bears the burden of proving the existence of prior convictions by a preponderance of the evidence. *In re Pers. Restraint of Cadwallader*, 155 Wash.2d 867, 876, 123 P.3d 456 (2005); *State v. Lopez*, 147 Wash.2d 515, 519, 55 P.3d 609 (2002); *State v. Ammons*, 105 Wash.2d 175, 713 P.2d 719 (1986). The best evidence to establish a defendant's prior conviction is the production of a certified copy of the prior judgment and sentence. *Lopez*, 147 Wash.2d at 519, 55 P.3d 609 (citing *State v. Ford*, 137 Wash.2d 472, 480, 973 P.2d 452 (1999)). However, the State may introduce other comparable documents of record or transcripts of prior proceedings to

establish criminal history. E.g. *Ford* at 480 (citing *Cabrera*, 73 Wash.App. at 168, 868 P.2d 179.)

It is the obligation of the State, not the defendant, to assure that the record before the sentencing court supports the criminal history determination. *State v. Mendoza*, 165 Wash.2d 913, 920, 205 P.3d 113, 116 (2009) (citing *Ford*, 137 Wash.2d at 480, 973 P.2d 452.) This reflects fundamental principles of due process, which require that a sentencing court based its decision on information bearing some minimal indicium of reliability beyond mere allegation. *Mendoza* at 920 (citing *Ford* 481, 973 P.2d 452; *United States v. Ibarra*, 737 F.2d 825, 827 (9th Cir.1984)).

The State's burden is not overly difficult to meet. The State must introduce evidence of some kind to support the alleged criminal history. *Ford* at 480. Facts at sentencing need not be proved beyond a reasonable doubt. Washington courts have long held that in imposing sentence, the facts relied upon by the trial court must have some basis in the record. *Ford* at 482 (citing *State v. Bresolin*, 13 Wash.App. 386, 396, 534 P.2d 1394 (1975)).

Nonetheless, under the SRA, a trial judge may rely on facts that are admitted, proved, or acknowledged to determine any sentence. RCW 9.94A.530(2); *State v. Grayson* 154 Wash.2d

333, 338-339, 111 P.3d 1183, 1186 (2005). “Acknowledged” facts include all those facts presented or considered during sentencing that are not objected to by the parties. *Id.* (citing *State v. Handley*, 115 Wash.2d 275, 282-83, 796 P.2d 1266 (1990)). See also *Mendoza*, 165 Wash.2d at 929 (clarifying *Grayson*, that “facts” upon which a trial court may rely do not encompass “bare assertions” as to criminal history.)

If a defendant disputes a factual aspect of a prior conviction as alleged by the State, the sentencing court may either ignore the disputed fact or hold an evidentiary hearing. Evidentiary hearings provide a chance to “contest” disputed facts. *Ammons*, 105 Wash.2d at 185 (1986). But an evidentiary hearing is not required where the defendant does not specifically object to factual statements and request an evidentiary hearing to challenge them. *State v. Garza*, 123 Wash.2d 885, 889, 872 P.2d 1087 (1994).

If a defendant neither objects to information presented at neither sentencing nor requests an evidentiary hearing, that information is deemed acknowledged. *State v. Blunt*, 118 Wash. App. 1, 8, 71 P.3d 657, 661 (2003) (citing *State v. Handley*, 115 Wash.2d 275, 282-83, 796 P.2d 1266 (1990)). Acknowledgment

allows the judge to rely on unchallenged facts and information introduced for the purposes of sentencing. *Blunt* at 8 (*citing Ford*, 137 Wash.2d at 482-83, 973 P.2d 452.)

In the present case, the State's offer of documents sufficiently proved the defendant's prior convictions. Moreover the defendant's prior conviction history and offender score were not simply unchallenged, they were agreed to by defense. Appellant's allegation that he objected to the proof of his prior convictions is not supported by the record; it is contradicted by it. The defense expressed a lack of understanding of the "point system" but made did not make a specific objection (or even a general one) to the "sufficiency" of proof of his prior convictions or their admissibility. Additionally the defendant did not request an evidentiary hearing to challenge any of the documentation.

The defendant's history was acknowledged, agreed, and was proven by the documents and information presented at sentencing. The trial court judge properly relied upon the uncontested information at sentencing.

E. CONCLUSION

Where the Appellant did not object to, or challenge, the trial court's finding that Ms. Williams suffered damages as a direct

cause of the defendant's Hit and Run, he cannot raise the issue for the first time on appeal. Even if Appellant had made a specific objection to the trial court's reason for imposing restitution, the trial court did not abuse its discretion when it ordered restitution for damages that were a direct consequence of the defendant's criminal act of fleeing the scene of the collision.

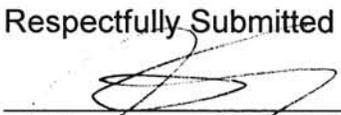
The trial court *did* err in ordering eighteen months of community custody where the crime of Vehicular Assault committed by operating a vehicle with disregard for the safety of others, is not a violent offense. The court should have imposed one year of community custody because the crime is classified as a crime against persons.

Appellant did not make a specific objection to the proof of his prior convictions at sentencing and cannot raise the challenge for the first time on appeal. Because the defense admitted to, and acknowledged the offender score at the time of sentencing, he can make no showing that the trial court committed error with respect to his offender score.

With the exception of the term of community custody, the other assignments of error should be rejected and the sentence and order restitution affirmed.

Dated this 25 day of October 2014

Respectfully Submitted by:


KARL F. SLOAN, WSBA #27217
Prosecuting Attorney
Okanogan County, Washington