

FILED
Jun 12, 2014
Court of Appeals
Division III
State of Washington

No. 32087-1-III
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

LISSA M. RAFTIS,

Defendant/Appellant.

APPEAL FROM THE LINCOLN COUNTY SUPERIOR COURT
Honorable John F. Strohmaier, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The court erred in ordering restitution because Raftis did not agree to pay restitution for uncharged offenses in her plea agreement.
2. The court erred in entering a restitution order for losses not causally connected to Raftis' acts.
3. The evidence was insufficient to impose any order of restitution against Raftis.

Issue Pertaining to Assignments of Error

On multiple occasions during the period between January 5th and March 8th, various items were stolen from a residence and outbuilding in Lincoln County. On February 26th, appellant was observed at that location helping load some items into a pickup truck. She eventually pled guilty to second degree theft occurring on the 26th. The State did not allege that appellant was an accomplice or co-conspirator in the multiple thefts and did not offer any evidence segregating damages by date of theft. Where the state could not prove the loss was directly attributable to the charged offense, did the trial court err in imposing restitution for total damages sustained over a two-month period?

B. STATEMENT OF THE CASE

The Lincoln County Prosecutor's Office initially charged Lissa

Raftis with one count of residential burglary and one count of theft of a motor vehicle, and alleged both crimes occurred on or about February 26, 2013. CP 1. In exchange for Raftis' plea, the State reduced the charges to one count of theft in the second degree, alleging it occurred on the same date. CP 10. Raftis entered a guilty plea, which allowed the court to consider the police report to establish a factual basis for the plea. CP 19.

That report contained the following description of the crime:

On 02/26/13 at approximately 0839 hours the Ford truck returned to the residence. I noticed there were 3 white male subjects and one whit female subject in the truck. During the [motion activated surveillance camera] pictures taken on 02/26/13 there are multiple pictures of all the subject[s] loading items in the Ford truck from the area of the residence and the shop. ...

[On 03/08/13] CCD Telford conducted a traffic stop of the vehicle and noticed the three males in the truck were the male subjects in the photographs removing items from the [Sprague, Washington] residence on 02/21/13, 02/25/13, 02/26/13/ and 03/08/13. The male subjects were identified as Robert H. Clark, Joshua D. Letchworth and Roger D. Lewis. The three males were arrested and booked in the Lincoln County Jail. The truck was taken as evidence.

While conducting interviews of Clark and Lewis the female subject in the photos loading items in the Ford truck was identified as Lissa M. Raftis (Clark's live in girlfriend). Raftis also lives at the residence at 1314 Joseph St. in Spokane where a search warrant was served and stolen property was located. ...

CP 6. Raftis did not agree to pay restitution on any additional uncharged offenses.

At a restitution hearing before the Honorable John Strohmaier, the

State did not put on any witnesses. The State sought joint and several liability against Raftis and co-defendant Lewis for \$79,440. That amount had been established at a prior restitution hearing regarding a co-defendant as representing the homeowners' total losses over the two-month¹ period of thefts. 11/20/13 RP 14–15. While defense counsel acknowledged his client should be held responsible for loss attributable to her actions on February 26, 2013, he objected to the request on the basis the State failed to establish a causal connection between Raftis' offense and the amount of money sought for restitution. CP 41–43; 11/20/13 RP 21–22.

The prosecutor urged the court to impose restitution of \$79,440 against Raftis because co-defendants Clark and Letchworth had already been found jointly and severally liable for that amount and the prosecutor was seeking similar liability in that amount against Lewis and two more co-defendants. 11/20/13 RP 14–15. He represented to the court, “on all my deals with all defendants, we – the plea agreement took into account restitution on all counts originally charged. And that was the agreement.” 11/20/13 RP 16. The prosecutor claimed “all of them” were involved in an “over-arching conspiracy”, and because Raftis “had to know what was going on ... even though it's not charged the court's entitled to recognize

¹ According to the statement of arresting officer, police first responded to a possible burglary at the Sprague Lake Washington property on January 5, 2013, and last

conspiracy in terms of restitution.” 11/20/13 RP 18.

The court found co-defendant Lewis jointly and severally liable for the losses of \$79,440. 11/20/13 RP 24–25. The court acknowledged Raftis “was not charged with a conspiracy” and in her statement of defendant on plea of guilty did not agree to pay restitution for uncharged crimes or dismissed counts. 11/20/13 RP 23, 26. Nevertheless the court imposed joint and several liability upon Raftis for \$79,440 because “she can share equally with the other ones so payments hopefully will be less for ... everyone ... [because] they’re all involved in this [theft spree] repeatedly.” 11/20/13 RP 26; CP 44.

This appeal followed. CP 49.

C. ARGUMENT

The State’s evidence of damages not causally related to the charged offense was insufficient to support the restitution order, requiring reversal.

A trial court’s authority to impose restitution is not an inherent power of the court, but is derived solely from statutes. *State v. Tracy*, 73 Wn. App. 386, 388, 869 P.2d 425 (1994), citing *State v. Davison*, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). Restitution shall be ordered

encountered any co-defendants at the property on March 8, 2013. CP 5–6.

“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).

Restitution must be based on a causal connection between the crime and the victim’s damages. *State v. Bunner*, 86 Wn. App. 158, 160, 936 P.2d 419 (1997).

The court’s power to impose restitution is limited by the offense charged: “if the loss or damage arises out of an earlier, uncharged crime, there can be no causal relationship between the offense charged and the loss resulting from the earlier crime.” *State v. Fleming*, 75 Wn. App. 270, 272, 877 P.2d 243 (1994). Moreover, “[r]estitution cannot be imposed based on the defendant’s ‘general scheme’ or acts ‘connected with’ the crime charged, when those acts are not part of the charge.” *State v. Miszak*, 69 Wn. App. 426, 428, 848 P.2d 1329 (1993); *State v. Tindal*, 50 Wn. App. 401, 403, 748 P.2d 695 (1988) (“Restitution may not be based on acts connected with the crime charged when those acts are not part of the charge.”); *State v. Ashley*, 40 Wn. App. 877, 878–79, 700 P.2d 1207 (1985) (courts are authorized to order restitution only “for losses or damage resulting from the precise offense charged”).

Where a victim’s loss is caused by conduct that occurs prior to the charged offense, restitution cannot be imposed. *State v. Hartwell*, 38 Wn.

App. 135, 684 P.2d 778 (1984); see also *State v. Mead*, 67 Wn. App. 846, 836 P.2d 57 (1992) (where defendant pled guilty to possession of stolen property, court erred in imposing restitution for damage occurring during burglary in which property was taken); *State v. Raleigh*, 50 Wn. App. 248, 253–54, 748 P.2d 267 (trial court erred by imposing restitution for a string of burglaries, where defendant only pled guilty to one incident), *rev. denied*, 110 Wn.2d 1017 (1988).

The standard of review for determining the existence of statutory authority is de novo. *State v. Angulo*, 77 Wn. App. 657, 660, 893 P.2d 662 (1995). Only after determining the court had authority to order restitution, does the appellate court review the order for abuse of discretion. See *State v. Vinyard*, 50 Wn. App. 888, 891, 751 P.2d 339 (1988). Where, as here, the court orders restitution for losses not causally related to the offense or fails to follow the statutory requirements, the court “exceeds its statutory authority” and reversal is required. *Id.*

The decisions in *Miszak* and *Raleigh*, *supra*, support Raftis’ argument in this appeal. In *Miszak*, the defendant pleaded guilty to a single count of attempted theft occurring on a single day, but he was ordered to pay restitution for 13 items allegedly stolen over a period of months. *Miszak*, 69 Wn. App. at 428. On appeal, the court refused to

require him to pay restitution for any of the items, however, in the absence of proof that the victim's losses had resulted from the precise offense charged or that Miszak had expressly agreed to pay for them as part of his plea agreement. *Miszak*, 69 Wn. App. at 428–30. There was no such proof.²

There is a similar lack of proof here. Raftis was charged with and pled guilty to second degree theft of property occurring on February 26, 2013, the date designated in the amended information. It should also be noted the original charges of residential burglary and theft of an automobile were also limited to an incident date of February 26. At the restitution hearing, the State offered no evidence whatsoever to prove the numerous items comprising a total loss of \$79,440 had been taken during commission of the charged crime. In fact, the prosecutor's repeated arguments claiming there was an "over-arching conspiracy" tended to prove the contrary, that the losses took place systematically over a period of two months. The evidence was insufficient to establish the necessary causal connection between Raftis' crime and the victim's loss.

² Miszak was required to pay restitution for one item of jewelry based on his admission in his statement on plea of guilty he had stolen the item. *Miszak*, 69 Wn. App. at 427, 430. Raftis' statement on plea of guilty contains no such admission.

In *Raleigh*, the defendant and another individual broke into a church. In his statement on guilty plea, Raleigh admitted to stealing beer valued at \$112.92. Without a hearing, the trial court imposed the same restitution on Raleigh as it had on the other individual—\$9,179.01. On appeal, Raleigh contended that his amount of restitution should be limited to \$112.92, because the church had been burglarized by others during the period for which he was charged. On appeal, the court held that: (1) due process required Raleigh be given a hearing on disputed issues of restitution; and (2) the trial court further erred by imposing restitution in the full amount when Raleigh had not been informed that he could be held liable for more than that to which he pleaded guilty. *Raleigh*, 50 Wn .App. at 254.

Here, a restitution hearing was held (unlike in *Raleigh*) and the State presented no evidence. The State asked to use a restitution amount determined at a prior hearing against co-defendants which defense counsel disputed as not being causally connected to his client's offense. Because there was no evidence which items were stolen on February 26, 2013, the requisite link between the charged crime and the victim's loss is based entirely upon speculation and Raftis' "failure" to prove that she did not cause \$79,440 worth of damage. The defendant at a restitution hearing,

however, has no such burden. *State v. Dedonado*, 99 Wn. App. 251, 255, 991 P.2d 1216 (2000) (“The State did not meet its burden of proving the restitution amounts here by a preponderance of the evidence because the documentation it provided did not establish a causal connection between Dedonado’s actions and the damages”).

As in *Raleigh*, Raftis had not been informed that she could be held liable for more than that to which she pleaded guilty. Before entering a plea of guilty, the defendant must be advised of all the direct consequences of his plea, including the possibility of restitution. *State v. Cameron*, 30 Wn. App. 229, 233, 633 P.2d 901 (1981). Raftis’ guilty plea form states: “I understand that ... [i]f *this* crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate.” CP 12–13, paragraph 6(e). The guilty plea form also indicates she was informed that the prosecutor’s recommendation would include “Restitution TBD (to be determined)”. CP 14, paragraph (g). The record does not demonstrate that Raftis agreed to pay restitution on uncharged counts or that she was advised restitution would be ordered for all the property taken during the two month theft spree of others. *See Dedonado*, 99 Wn. App. at 256 (sentencing court may rely on no more

information than acknowledged or admitted at trial or proven at sentencing).

Finally, it is worth noting if the State wanted Raftis to pay restitution for damages that may have occurred on other days in exchange for reducing the original charges, the State had the means to do so. The relevant statute provides that restitution is appropriate:

[w]hen the offender pleads guilty to a lesser offense or fewer offenses *and agrees with the prosecutor's recommendation that the offender be required to pay restitution* to the victim of an offense or offenses which are not prosecuted pursuant to a plea agreement
...

RCW 9.94A.753(5) (emphasis added). The State never secured an agreement from Raftis requiring her to pay restitution for the victim's losses that are not attributable to her actions on February 26, 2013.

At hearing, the State represented, "on all my deals with all defendants, we – the plea agreement took into account restitution on all counts originally charged. And that was the agreement." 11/20/13 RP 16. In imposing joint and several liability for restitution on Raftis, the trial court also relied upon the State's representation "that the restitution was part of the plea negotiations for the entry of the plea." 11/20/13 RP 27. However, since the counts originally charged against Raftis involved only residential burglary and theft of a motor vehicle, occurring on the February

26 date, at best the State's representation as to Raftis is that she *may* have orally agreed to pay restitution only for losses attributable to her actions on February 26.

An agreement to pay restitution stemming from uncharged offenses must be express. *State v. Johnson*, 69 Wn. App. 189, 192, 847 P.2d 960 (1993). The plea agreement was not entered into evidence and the guilty plea statement makes no reference to such an agreement. Because there was no agreement, this section of the statute does not provide alternate justification for the court's restitution order.

The State knew the amount of losses was disputed by Raftis at the time of the restitution hearing on November 20, 2013. The victims were present in the courtroom and therefore available as witnesses if the State wished them to testify to any losses they incurred on the February 26, 2013 date. 11/21/13 RP 18–19. The State chose not to do so. The evidence presented by the State was insufficient to support the order of restitution against Raftis. The trial court erred in imposing the order. The order for restitution must be stricken because no new evidence may be admitted. *State v. Griffith*, 164 Wn. 2d 960, 968 and fn. 6, 195 P.3d 506, 509 (2008)

(Introducing new evidence on remand would conflict with the statutory requirement that restitution be set within 180 days after sentencing).

D. CONCLUSION

For the reasons stated, the trial court was without authority to order restitution for losses that were not causally connected to the crime charged and proved. The restitution order should be stricken in its entirety.

Respectfully submitted on June 7, 2014.

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