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Court of Appeals
Division III
State of Washington

NO. 32087-1-III

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

STATE OF WASHINGTON,
Plaintiff/Respondent,

v.

LISSA M. RAFTIS
Defendant/Appellant

APPEAL FROM THE SUPERIOR COURT OF
LINCOLN COUNTY, STATE OF WASHINGTON
HONORABLE JOHN STROHMAIER

BRIEF OF RESPONDENT

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I. ISSUES PRESENTED

- A. The court did not abuse its discretion in entering a restitution order for losses causally connected to Raftis' acts.
- B. The evidence was sufficient to impose any order of restitution against Raftis.

II. STANDARD OF REVIEW

This court reviews a challenge to the amount of a restitution order for abuse of discretion. State v. Davison, 116 Wn.2d 917, 919 809 P.2d 1374 (1991). Under the abuse of discretion standard, an appellate court determines whether the trial court's exercise of discretion was based on untenable grounds, was manifestly unreasonable, or was arbitrarily exercised. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

III. ARGUMENT

The Court did not abuse its discretion in finding evidence of damages causally related to the charged offense was sufficient to support the restitution order, and should be upheld.

Restitution must be established by a preponderance of the evidence. State v. Kinneman, 155 Wn.2d 272, 285 119 P.3d 350 (2005).

Evidence is sufficient to support a restitution order if it provides a reasonable basis, other than conjecture or speculation, to estimate the loss. *Id.*; State v. Fleming, 75 Wn.App. 270, 274-75, 877 P.2d 243 (1994). Restitution is not limited to cases where the damage computation is simple. Kinneman, 155 Wn.2d at 285. The rules of evidence do not apply to restitution hearings. ER 1101(c); State v. Kisor, 68 Wn.App. 610, 620, 844 P.2d 1038 (1993). Instead basic due process concerns govern this situation—whether the defendant had the opportunity to contest the evidence and whether the evidence was reasonably reliable. Kisor, 68 Wn.App. at 620.

Generally a trial court's discretion in awarding restitution is limited to the precise offense charged. State v. Ashley, 40 Wn. App. 877, 878-79, 700 P.2d 1207 (1985) (citing State v. Mark, 36 Wn. App. 428, 675 P.2d 1250 (1984)). "Restitution may not be based on acts connected with the crime charged, when those acts are not part of the charge." State v. Hartwell, 38 Wn. App. 135, 141, 684 P.2d 778 (1984).

However, a trial court may order restitution if the victim's damage was a foreseeable consequence of the defendant's criminal acts. State v. Steward, 52 Wn. App. 413, 416, 760 P.2d 939 (1988). In Steward, a juvenile defendant was convicted of taking a motor vehicle without

permission. The defendant admitted she had taken the car and abandoned it in a parking lot with the keys in the ignition, but denied she had damaged the car or stolen any of the contents. Steward, 52 Wn. App. at 414. Without finding that the defendant actually took the items missing from the car, the trial court ordered her to pay restitution because "it was foreseeable and likely to a reasonable person that the car would be subject to stripping and theft of the contents of the car." Steward, 52 Wn. App. at 415. The appellate court affirmed the order of restitution, holding that the "theft occurred as a result of the offense for which Steward was convicted." Steward, 52 Wn. App. at 416. See also State v. Rogers, 30 Wn. App. 653, 656, 638 P.2d 89 (1981) (court upheld a restitution order for the value of a vehicle which was never recovered where the defendant was convicted only of possession of stolen property). Compare, Hartwell, 38 Wn. App. at 140 (court held an insufficient causal connection existed between the crime charged and the damage where the defendant, who entered a plea of guilty to leaving the scene of an accident, was ordered to pay damages for injuries the victim received prior to the defendant's commission of the offense with which he was charged).

Here, the documents provided to the court in the charging documents and stipulated to at the Appellant's plea demonstrated

Appellant's involvement in the crime. Both in the theft of the property that she pled to and later being found in possession of the property at her home. See CP at 5-7, see also CP at 19. Moreover, damage to the home and loss of property was a foreseeable result of Appellant's illegal theft of the property therein. See State v. Harrington, 56 Wn. App. 176 (1989).

This evidence establishes the link between Appellant's conduct and the damage. Thus, there is sufficient evidence that but for defendant's illegal act, the victim's property would not have been in a position to sustain the damage it did.

The Appellant seems to argue, however, that restitution cannot be ordered where the conduct which directly caused the injury can be characterized as another crime with which the defendant has not been charged. Such an argument is without merit. The fact that the damage was the immediate result of specific acts which might constitute an "uncharged crime" cannot be used to legally excuse Appellant's action. State v. Harrington, 56 Wn. App. 176 (1989).

The trial court's finding that the Appellant's theft of the property was causally related to the victim's loss is a legally and factually sufficient basis for the restitution order. State v. Harrington, 56 Wn. App. 176 (1989).

While an order of restitution must be based on a causal relationship between the offense charged and proved by the State and the loss or damage incurred by the victim of the crime, State v. Johnson, 69 Wn.App 189, 847 P.2d 960 (1993), restitution need not be proven with specific accuracy but by evidence sufficiently accurate to afford a reasonable basis for estimating the loss. State v. Kisor, 68 Wn.App. 610, 844 P.2d 1038 (1993).

Here, the casual connection was established by Appellant's criminal conduct. The loss of damage was established by the victim's valuation of damages presented at the restitution hearing and attached to the order on restitution. See CP at 52. It is also important to note that the valuation of damages was never challenged or objected to, but rather the application of that valuation to the Appellant. See RP at 21. This provided a reasonable basis, other than conjecture or speculation, to estimate the loss.

This case is clearly distinguishable from Raleigh. In Raleigh, the defendant pleaded guilty to second degree burglary of beer valued at \$89.00 and the trial court ordered him, along with a codefendant, to make restitution in the amount of \$9,179.01, which represented the total amount of damages sustained to the building that the defendant broke into, which

had been burglarized several times during the time period in question. 50 Wn. App. at 249-50. Division One of this court held that in that instance, where the State presented no evidence at the sentencing hearing to establish the amount of loss and relied only on the previous order imposing restitution on the defendant's co-defendant, the trial court erred in failing to grant a separate restitution hearing to take evidence on the matter. *Id.* at 250. In Kisor, the defendant was convicted of burglary, theft, and harming a police dog, and the sentencing judge ordered the defendant to pay restitution for the cost of replacing the police dog. 68 Wn.App at 612-14. Division Two reversed the restitution order and remanded for a new restitution hearing, holding that the order, which was based only on the State's affidavit containing the hearsay declarations of a risk manager who "checked" on training costs with the Tacoma police and the Spokane Canine Training Unit but did not provide any indication of where she obtained the figures submitted, was not substantial credible evidence and the trial court's reliance on the affidavit offended due process.

In contrast, here the State, unlike in Raleigh, did present evidence. Unlike Kisor, the evidence was not simply an uncorroborated affidavit from a risk manager about anticipated replacement costs. Instead, it was a detailed print out of the lost property and damage suffered by the victim as

presented at the restitution hearing, attached to the order on restitution, and was not objected to by defense as to valuation. The evidence was reasonably reliable and the appellant had the opportunity to contest it. The restitution order was based on documentary evidence presented, and mandated by former RCW 16.52.200(4).

Even if the court were to find issue with the restitution order, the remedy would be remand for a new restitution hearing. Appellant cites to State v. Griffith to stand for the proposition that the restitution order must be stricken. In fact the court in Griffith held that remand for a new hearing was appropriate. The Court indicated that “Griffith asks this court not only to vacate her restitution order, but also to refuse to remand for a new restitution hearing. We decline to go this far. Griffith pleaded guilty to possessing stolen property and should pay restitution for her crime. We remand for the trial court to determine the value of Mrs. Linscott's unrecovered items from the police report that can be identified by a preponderance of the evidence to have been in Griffith's possession”. State v. Griffith, 164 Wn.2d 960 at 968 (2008).

The State can still present the evidence of victim's loss and the information from the police reports to establish damage if necessary. As such remand is the appropriate action if the court were to find an issue.

IV. CONCLUSION

The trial court's exercise of discretion in the restitution amount ordered was not based on untenable grounds, was not manifestly unreasonable, and was not arbitrarily exercised. The casual connection of the Appellant's criminal conduct and the damage to the victims was established by both the crime itself and the foreseeable consequences of the theft.

The loss of damage was established by the victim's valuation of damages presented at the restitution hearing and attached to the order on restitution. This provided a reasonable basis, other than conjecture or speculation, to estimate the loss.

Therefore, no abuse of discretion occurred, the trial court's actions were proper and the order on restitution must be upheld.

Certificate of Mailing