

FILED

MAR 22 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 334180

COURT OF APPEALS, DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON, Petitioner

and

NATHAN ELDRED, Appellant

APPEAL FROM THE SUPERIOR COURT

OF LINCOLN COUNTY

HONORABLE JOHN F. STROHMAIER

BRIEF OF RESPONDENT

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I
ARGUMENT

The trial court did not abuse its discretion or otherwise err in entering the Order On Restitution dated May 6, 2015. The trial court correctly imposed restitution grounded in a causal relationship between the crimes to which Mr. Eldred plead guilty and the victim's damages. The losses for which Mr. Eldred was ordered to pay restitution were a result of both of the precise offenses to which he plead guilty.

Under RCW 9.94A.753(5) restitution is mandated, "whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property." The purpose of restitution is in part to require the defendant to face the consequences of his conduct. State v. Enstone, 137 Wash.2d 675, 680, 974 P.2d 828 (1999). The restitution statute is designed "to promote respect for the law by providing punishment that is just." State v. McCarthy, 178 Wash.App. 290, 295, 313 P.3d 1247 (2013). That statute is not given "an overly technical construction that would permit the defendant to escape from just punishment." Id. at 296 citing State v. Tobin, 161 Wash.2d 517, 524, 166 P.3d 1167 (2007); State v. Davison, 116 Wash.2d 917, 922, 809 P.2d 1374

(1991); State v. Cosgaya-Alvarez, 172 Wash.App. 785, 791, 291 P.3d 939 (2013).

When determining restitution under RCW 9.94A.753(5), the order “must be grounded on the existence of a causal relationship between the crime charged and proven and the victim’s damages.” State v. McCarthy, 178 Wash.App. 290, 296-297, 313 P.3d 1247 (2013) citing State v. Griffith, 164 Wash.2d 960, 965, 195 P.3d 506 (2008).

Mr. Eldred was found guilty by plea of Possession of Stolen Property Second Degree with the property defined as “property belonging to 39500 SR 25 N, Davenport, WA” as well as Rendering Criminal Assistance Second Degree. (CP 10-12). Additionally, he stipulated “that the court may review the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea.” (CP 20). The reports attached to the Motion and Affidavit for Order of Probable Cause specifically state the property belonging to 39500 SR 25 N, Davenport, WA included, “two John Deere push lawn mowers (model number JA62 and JS36 with SN GXJ536A512046) a Red Max weed eater (model BC250), 4 Proxes tires 275x55Rx20 w/ blk wheels, 4 Kumho tires 305x14x22 w/ Hoyo wheels, a Snap On tool box, and some snowmobile covers”. (CP 5)

The report of Deputy Manke goes on to state that, "Eldred stated he agreed to loan Stevie and Nick his pickup, and agreed to follow the two in Stevie's jeep which Eldred stated was already full of items (unknown what they were)." (CP 7-8). Deputy Manke went on to state, "Once there Stevie talked Eldred into letting him continue to use his truck and take it to Spokane with the items in the back. I asked Eldred what was in the back and he stated he could remember tires on wheels and a lawn mower. Eldred then stated he agreed to let Stevie use the truck only if he could follow in his Jeep." (CP 8). Later, Deputy Manke reported that Mr. Eldred stated he was in possession of a green John Deere lawn mower and "Stevie had left it in his pickup the day they all traveled to Spokane." (CP 8).

A review of the items for which Mr. Eldred was ordered to pay restitution show they all match the story he told Deputy Manke. He was ordered to pay restitution for tires on wheels and one lawn mower. This was broken down as \$1,681.71 for tires and wheels (CP 50), \$424.94 for one lawnmower (CP 52), and another \$1,000 for separate tires and wheels (CP 53). See also RP 45. This was exactly what Mr. Eldred reported to Deputy Manke that he saw and was involved in transporting. Mr. Eldred, through his attorney, stipulated to the value of the items. (RP

43). He was not ordered to pay restitution for any other items taken beyond those specifically addressed by Mr. Eldred himself. Because Mr. Eldred plead guilty to the Amended Information including Possession of Stolen Property Second Degree with the property defined as “property belonging to 39500 SR 25 N, Davenport, WA” (CP 11) the items listed were a result of the “precise offense charged.” In fact, Mr. Eldred was only ordered to pay for that property which he stated he was involved in transporting and possessing, not the entire list of items that were taken.

There is no question that there is a causal relation between the restitution ordered and the crimes of Possession of Stolen Property for all the property taken from 39500 SR 25 N, Davenport, WA and Rendering Criminal Assistance Second Degree from that location. Mr. Eldred plea guilty to possessing all the stolen property taken from that location. He also plead guilty to providing the use of his vehicle and his personal assistance in transporting the stolen property from the location.

Rendering criminal assistance as it applies in this case is defined as “... a person ‘renders criminal assistance’ if, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he or she knows has committed a crime ... he or she ... (3) Provides such person with money, transportation, disguise, or other means of avoiding

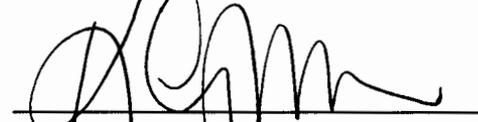
discovery or apprehension..." RCW 9A.76.050. Mr. Eldred admitted that he allowed a co-defendant to use his truck, that when the truck was returned it had items in the back which he described as "tires on wheels and a lawn mower", that he then gave further permission for the co-defendant to drive his truck with the items into Spokane while he followed in the co-defendant's vehicle. (CP 8). By allowing his truck to be used and by agreeing to follow in another vehicle, Mr. Eldred provided transportation and assistance which allowed the co-defendant's to avoid discovery and apprehension by helping them remove the stolen property from the location where it was taken. If Mr. Eldred had not provided this assistance, the property may not have been removed from the location and there would not have been a need for restitution for the stolen property.

The trial judge did not err in concluding that, "But for the Defendant providing transportation and assistance after the Burglary occurred and but for the Defendant's possession of stolen property, the victim would not have suffered damages. (CP 55). There is no question that an adequate causal link exists between both the crimes to which Mr. Eldred plead guilty and the restitution amount that was ordered.

II
CONCLUSION

It is therefore respectfully requested that this Court of Appeals
affirm the decision of the trial court.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'K. Chapman', written over a horizontal line.

Keely Chapman, WSBA #34263
Special Deputy Prosecuting Attorney
Jeffrey S. Barkdull
Prosecuting Attorney
Lincoln County