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Court of Appeals
Division III
State of Washington
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NO. 35536-5-III

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

STATE OF WASHINGTON

PLAINTIFF/RESPONDENT,

V.

THOMAS ROBERTSON

DEFENDANT/APPELLANT

BRIEF OF RESPONDENT

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A. STATEMENT OF THE CASE

1. Procedural History

On December 18th 2015, the Defendant Thomas Robertson was charged in Okanogan County Superior Court as principal or accomplice for the crimes of Burglary Second Degree, Theft in the First Degree, Possession of Marijuana with Intent to Deliver, and Malicious Mischief in the Third Degree. CP 47-49.

On May 27th 2016, the Defendant ultimately pled guilty to the charges. CP 36-46. The Court-approved plea agreement involved the State dismissing Count 3 (Possession of Marijuana), and the Defendant agreeing to pay restitution in an amount to be determined. CP 29-35. The Court followed the plea agreement recommendations. The Defendant was sentenced to 14 months in custody, and ordered to pay restitution in an amount to be determined. CP 19-28.

In the Defendant's guilty plea, he stipulated that the Court could consider the police reports and/or a statement of probable cause supplied by the prosecution to establish a factual basis for the plea. CP 45. The probable cause declaration for the Defendant's case included the relevant police report for this incident. CP 50- 56. The police report likewise

documented the involvement of Co-Defendant's James Jones, and Nathaniel Mowen.

2. Underlying Facts

In 2015, Ed Rhinehart operated a licensed marijuana farm in the Methow Valley region of Okanogan County. The farm was gated, and protected by fencing on the perimeter of the property. The harvested, processed and packaged marijuana was stored in a trailer located on the property. This trailer was secured by a locked door. The property had a number of surveillance cameras, one of which was located inside the storage trailer. CP 53.

On evening of December 10th 2015, the Defendant along with Joseph Jones and Nathaniel Mowen burglarized the business of Ed Rhinehart.

The Defendant and Jones were both former employees of Ed Rhinehart. They had been fired a number of months earlier. CP 54.

The three arrived at the farm using Mowen's truck. Jones jumped over the fence and opened the gate for the other two. All three then entered the farm. This was captured on one of the farm's security cameras. The Defendants breached the door to the storage trailer by destroying the door. Once inside the storage trailer, the Defendants seized

a number of black garbage bags. Each of these bags was filled with processed marijuana. In the course of this burglary, a security guard became aware of the event and chased all the Defendant's off the property. All three Defendants managed to away using Mowen's car, but Mowen dropped one of the bags of marijuana.

Immediately after the report of the burglary, the police questioned the owner, Ed Rhinehart, and the security guard. They viewed surveillance footage, and foot and tire impressions in the snow. The security guard reported that although there was a security camera sited inside the storage trailer, it was oriented toward a wall, therefore it was not in a position to capture footage from the interior of the shed.

Mowen was captured and confessed to the crime and the joint involvement of the Defendant and Jones. Mowen explained that the proceeds of the theft were split so that the Defendant received one full bag of stolen marijuana. Jones was then arrested, and two full bags of stolen marijuana was found in the ceiling of his apartment. Jones confirmed that the Defendant and Mowen were involved in the burglary.

3. Restitution Hearing

Because all three individuals ultimately pled guilty for their joint involvement in the burglary, a single restitution hearing was scheduled.

There were several continuances to accommodate the presence of all three Defendants and their respective counsel in Okanogan County. *See* 12.14.17 Jones VRP 97- 101.

The restitution hearing was held on August 23rd 2017 with all Defendants present with their attorneys. The victim, Ed Rhinehart testified regarding the losses he sustained from the theft and burglary.

Rhinehart testified in support of a written victim's restitution estimate form. RP 10-12 and Ex. 1. The bulk of Rhinehart's testimony (and questioning on cross examination) involved explanations of his calculation of the market values for the marijuana that was permanently lost, versus the value of marijuana that was recovered but sold at depressed prices.

Rhinehart testified as to the replacement costs for the broken trailer door and the broken surveillance camera next to that door. He explained that the trailer door was completely destroyed, with the entire frame being broken out. RP 83. He testified that he had to purchase a replacement door from Home Depot, and then paid a carpenter to install the door. The costs of the replacement door and installation were \$800.00. RP 13.

Rhinehart testified that the security camera inside the trailer was also damaged. He explained that the cost of the security camera was \$200.00. He explained that although he did not save receipts for the

purchase, he was well aware of the value because he had at some time purchased thirty of those cameras. RP 13, 17, 38.

Neither the Defendant nor co-Defendants presented any testimony at the restitution hearing. The Court ultimately ordered restitution in an amount of \$76,670.00, to be paid joint and several between all three Defendants. RP 54. Included in this was the \$200.00 cost of the security camera that was damaged in the course of the burglary.

B. ARGUMENT

The Court Appropriately Ordered Restitution for the Value of the Damaged Surveillance Camera.

The Defendant's argument on appeal is essentially that the Court was without authority to order restitution for the damaged surveillance camera, because the camera was damaged prior to the burglary. *App Br. at 6*. This is incorrect. The camera was damaged in the course of the burglary, therefore the Court properly included its valuation in the restitution order.

The Court's authority to impose restitution is vested in statute. RCW 9.94A.501 and RCW 9.94A.753 dictate that restitution *shall* be imposed in felony cases whenever an offender is convicted of an offense

which results in damage to or loss of property. RCW 9.94A.753(5) The restitution amount must be based on “easily ascertainable damages for injury to or loss of property....The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime.” RCW 9.94A.753(3)

RCW 9.94A.753 allows the judge *considerable discretion* in determining restitution, which ranges from none (in some extraordinary circumstances) up to double the offender's gain or the victim's loss. *State v. Kinneman*, 155 Wn.2d 272, 282, 119 P.3d 350, 355 (2005). When disputed, the facts supporting a restitution award must be proved by a preponderance of the evidence. *State v. Deskins*, 180 Wn.2d 68, 82, 322 P.3d 780, 787 (2014).

A Court’s order of restitution will not be disturbed on appeal absent an abuse of discretion. *State v. Tobin*. 161 Wn.2d 517, 523, 166 P.3d 1167, 1169–70 (2007). An example of a relevant abuse of discretion was the case of *State v. Dedonado*. 99 Wn. App. 251, 256, 991 P.2d 1216, 1219 (2000). In *Dedonado* the Defendant was convicted of the crime of Taking a Motor Vehicle without Permission. The allegation was essentially that in the process of stealing and driving a stolen van, the Defendant Dedonado damaged the ignition system. *Id.* at 253. The trial

court awarded restitution for the costs of improvements to the van such as replacing fluids, light bulbs, and re-aligning the suspension system. *Id* at 255. The reviewing Court held that this award was an abuse of discretion as the ordered restitution was for items unrelated to the Defendant's actions and the damages. *Id.*

In the present case, the Defendant pled guilty to Burglary in the Second Degree and Malicious Mischief Third Degree. The police report specifically mentions that there was a surveillance camera positioned near the site of the breached door. The property owner and victim testified at a restitution hearing that this surveillance camera was damaged in the course of the burglary, and therefore had to be replaced.

The Defendant argues here that the reviewing Court should make an implicit factual finding that the surveillance camera was damaged prior to the burglary. As support, the Defendant references the statement of a security guard that the surveillance camera was oriented in a particular direction several days before the burglary *App Br. at 7; CP 54*. However, the referenced statement in the report *does not* suggest that this camera was damaged prior to the burglary. The report indicates that the camera was near the door to the trailer, and that the door was smashed inward during the course of the burglary. The victim (property owner and

manager) testified that the force of the door breach was such that the frame was destroyed, and that “the door, when they kicked it in, flew against the wall, hit a security camera and broke the security camera.” RP at 13. Nothing in the police report contradicts this statement.

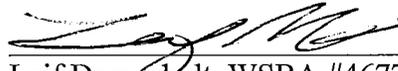
The nexus between the burglary and the broken security camera is obvious. *Cf. State v. Smith*, 61 Wn. App. 277, 279, 809 P.2d 763, 764 (1991). The security camera along with the door was damaged in the course of the burglary. The valuation of the camera was that of its price at the time of purchase, \$200. This valuation did not include extraneous expenses relating to improvements of the farm’s other security cameras, or maintenance on other devices. The restitution award was based on substantial evidence, and was appropriately ordered for an item damaged in the course of the burglary.

C. CONCLUSION

For the aforementioned reasons, the State asks that this Court affirm the Restitution Order.

Dated this 11th day of June, 2018

Respectfully Submitted:



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PROOF OF SERVICE

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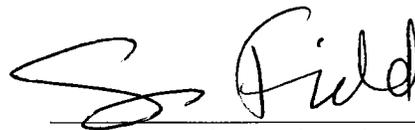
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