

79883-4

24389-3-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JOAN M. GRIFFITH, APPELLANT

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APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

HONORABLE TARI S. EITZEN

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BRIEF OF RESPONDENT

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I.

APPELLANT'S ASSIGNMENT OF ERROR

(1) The trial court erred in awarding [sic] Appellant to pay more restitution than was proven.

II.

ISSUE PRESENTED

(1) Did the trial court abuse its discretion in awarding restitution for the value of the missing jewelry seen in the defendant's possession?

III.

STATEMENT OF THE CASE

Defendant/appellant Joan Griffith pled guilty in the Spokane County Superior Court to one count of possession of stolen property in the second degree. CP 2-8, 22. She originally had been charged with second degree trafficking in stolen property. CP 1.

The trial court, the Honorable Tari Eitzen, imposed a first offender sentence as requested by the parties. The judgment also directed that a restitution hearing be scheduled. CP 9-20.

The restitution hearing was held before the Honorable Linda Tompkins. It took place some three and one-half years after the crime. RP 1 *et seq.* One of the victims, Elaine Linscott, testified that when her house was burglarized, there had been total losses of \$44,000. Included was a \$5,000 pearl necklace that was recovered from the Eastern Washington Coin Company store that had purchased it from the defendant. There also was \$11,000 of other jewelry lost that was not recovered. RP 4-7. The victim expressly identified the \$11,000 as jewelry seen on the defendant at the time she visited the Coin Company. RP 7. Exhibit 1, a list of the missing property, was admitted at the hearing without objection. RP 5.

John Slaughter, a representative of the Coin Company also testified. RP 7-15. He remembered twice dealing with the defendant and purchasing a set of pearls for \$5,000 on one occasion. Defendant had a large plastic bag full of "stuff" that included a ring with a large stone that looked like the victim's missing two and half carat diamond ring. RP 9-10. He could not remember for certain what he had seen and was not certain that the large ring he saw was the victim's ring. RP 13-14.

During argument defense counsel made reference to the affidavit of facts on file in the case. The judge took recognition of that

document over the objection of the prosecutor. RP 18-19; CP 29-31.<sup>1</sup> Judge Tompkins ruled that the victim's testimony that the un-recovered jewelry seen at the Coin Company was valued at \$11,000 supported a restitution order in that amount. The large diamond, for which the Coin Company had offered<sup>2</sup> the defendant \$500, also should be included. The court declined to double the amount and ordered that restitution be set at \$11,500. RP 25.

A written order to that effect was entered. CP 25-26. This appeal followed. CP 27-28.

#### IV.

#### ARGUMENT

##### A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING THE RESTITUTION.

The sole issue presented in this appeal is whether the trial court erred in ordering the \$11,500 in restitution. The court had broad discretion here and did not abuse that discretion.

The authority to enter an order of restitution is purely statutory. State v. Davison, 116 Wn. 2d 917, 919, 809 P.2d 1374 (1991).

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<sup>1</sup> Presumptive pagination. The document has not yet been indexed.

<sup>2</sup> CP 30.

“When the particular type of restitution in question is authorized by statute, imposition of restitution is generally within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion.” Id. Discretion is abused when it is exercised on untenable grounds or for untenable reasons. State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

RCW 9.94A.753(3) provides:

Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. 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.

When called upon to construe this provision, the Davison court noted: “The very language of the restitution statutes indicates legislative intent to grant broad powers of restitution.” 116 Wn.2d at 920.

The defense argues here that there was not a sufficient connection between the missing jewelry and the fact that defendant had a bag of items when she visited the Coin Company that included items belonging to the victim. The record supports the conclusion that the other

items belonged to the Linscotts. Elaine Linscott told the court that Mr. Slaughter had seen “many of my gem stones” and described several of her missing rings. RP 5-6. She valued the missing jewelry at \$11,000. RP 7. While her basis of knowledge<sup>3</sup> may be questioned given its hearsay nature, this testimony did provide a factual basis for the trial court’s order. Indeed, Elaine Linscott’s testimony was cited by Judge Tompkins as the basis for that conclusion. RP 24.

Defendant also suggests that consideration of the missing jewelry somehow was beyond the scope of the crime. It was not. Defendant pled guilty to second degree possession of stolen property. That simply requires that she possess stolen property in excess of \$250 in value. RCW 9A.56.160. Any and all property she possessed belonging to the Linscotts fell within the scope of the crime. Defendant’s plea statement form did not limit itself to any particular piece of stolen property. Instead, her plea let the court consider the affidavit of facts. CP 7-8. There was no specific limitation on the amount of property defendant acknowledged possessing.

While skimpy, the record provides a factual basis for the trial court’s determination. The restitution ordered was within the scope of the crime.

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<sup>3</sup> Defendant did not object to the testimony. Regardless, the Rules of Evidence do not apply in sentencing proceedings. ER 1101(c)(3).

The trial court did not abuse its "broad discretion." There was no error.

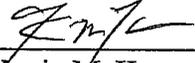
V.

CONCLUSION

For the reasons stated, the order of restitution should be affirmed.

Respectfully submitted this 7 day of June, 2006.

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\_\_\_\_\_  
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