

66305-4

66305-4

No. 66305-4-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

ELDEN GRAFTENREED,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

BRIEF OF APPELLANT

GREGORY C. LINK
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

FILED
COURT OF APPEALS
DIVISION ONE
2011 MAY 31 PM 4:52

TABLE OF CONTENTS

A. ASSIGNMENT OF ERROR..... 1

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR 1

C. STATEMENT OF CASE..... 1

D. ARGUMENT..... 2

THE STATE DID NOT PROVE THE AMOUNT OF
LOSS WHICH RESULTED FROM MR.
GRAFTENREED’S CRIMINAL ACTS 2

 1. Restitution is a strictly statutory remedy
 authorized only for damages causally connected
 to the crime of conviction..... 2

 2. A person is not “legally accountable” for the
 actions of another unless he is an accomplice as
 defined in RCW 9A.08.020, and thus, damages
 arising from a co-participant’s crime of which the
 defendant was not an accomplice are not be
 causally related to the defendant’s crime 3

E. CONCLUSION 8

TABLE OF AUTHORITIES

Washington Supreme Court

State v. Cronin, 142 Wn.2d 568, 14 P.3d 752 (2000)..... 4
State v. Davison, 116 Wn.2d 917, 809 P.2d 1374 (1991) 2
State v. Roberts, 142 Wn.2d 471, 14 P.3d 713 (2000)..... 4, 5, 6
State v. Stein, 144 Wn.2d 236, 27 P.3d 184 (2001)..... 4, 5

Washington Court of Appeals

State v. Dauenhauer, 103 Wn.App. 373, 12 P.3d 661 (2000) 2
State v. Hefa, 73 Wn.App. 865, 871 P.2d 1093 (1994) 2
State v. Israel, 113 Wn.App. 243, 54 P.3d.1218 (2002), review denied, 149 Wn.2d 1013 (2002) 5, 6

United States Supreme Court

Pinkerton v. United States, 328 US. 640, 66 S.Ct. 1180, 90 L.Ed.2d 1489 (1946) 4

Statutes

RCW 9.94A.753 7
RCW 9A.08.020 3, 4, 5, 7

A. ASSIGNMENT OF ERROR

In the absence of sufficient proof to establish either a causal connection between the victims' loss and Elden Graftenreed's crimes, the trial court erred in entering the restitution order in this case.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Restitution is limited to losses which are causally connected to the defendant's crimes of conviction. A person cannot be criminally liable for the actions of an accomplice unless the person has knowledge of and assists in the specific crime committed by the accomplice. If a person cannot be legally accountable for acts of which he is unaware, can he nonetheless be required to pay restitution for damages arising from those acts?

C. STATEMENT OF CASE

Mr. Graftenreed pleaded guilty to residential burglary and theft of a firearm. CP 8-30. Nothing in his guilty plea, or the incorporated documents, establishes his intent to enter the home was to cause damage or that he knew that he was assisting his codefendant in doing so. Instead, the co-participant in the burglary, Timothy Hemphill, appears to have gratuitously damaged property inside the home. 10/13/10 RP 2-3

Following Mr. Graftenreed's plea, the State asked the court to order Mr. Graftenreed to pay restitution for the damage caused by Mr. Hemphill. Mr. Graftenreed objected, arguing he had no knowledge that Mr. Hemphill intended to engage in such conduct. 10/13/10 RP 2-3. The State did not dispute that Mr. Graftenreed did not contemplate the damage Mr. Hemphill caused, but the deputy prosecutor contended that an accomplice is "in for a dime, in for a dollar." 10/13/10 RP 4. The court agreed with the State's theory of liability and ordered Mr. Graftenreed to pay restitution of \$11,089.96. CP 45.

D. ARGUMENT

THE STATE DID NOT PROVE THE AMOUNT OF
LOSS WHICH RESULTED FROM MR.
GRAFTENREED'S CRIMINAL ACTS

1. Restitution is a strictly statutory remedy authorized only for damages causally connected to the crime of conviction. "The authority to impose restitution is not an inherent power of the court, but is derived from statutes." State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). A restitution order is void when the trial court deviates from the parameters of the restitution statute. State v. Dauenhauer, 103 Wn.App. 373, 378, 12 P.3d 661 (2000); State v. Hefa, 73 Wn.App. 865, 866-67, 871 P.2d 1093 (1994).

RCW 9.94A.753(3) provides, in pertinent part, restitution:

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 is permitted only for loss that is causally

connected to the offense of conviction. State v. Kinneman, 155 Wn.2d 272, 286, 119 P.3d 350 (2005); State v. Woods, 90 Wn.App. 904, 907, 953 P.2d 835 (1998). Restitution may not be imposed for a “general scheme,’ or acts, ‘connected with’ the crime charged, or uncharged crimes unless the defendant enters into an express agreement.” Kinneman, 155 Wn.2d at 286 (quoting Woods, 90 Wn.App. at 907-08).

The prosecution bears the burden of establishing a sufficient causal connection by a preponderance of the evidence. State v. DeDonado, 99 Wn.App. 251, 256, 991 P.2d 1219 (2000).

2. A person is not “legally accountable” for the actions of another unless he is an accomplice as defined in RCW 9A.08.020, and thus, damages arising from a co-participant’s crime of which the defendant was not an accomplice are not be causally related to the defendant’s crime. As is clear from the caselaw set forth above, the causal connection requirement exists between the crime of conviction and restitution imposed. Kinneman, 155 Wn.2d at

286; Woods, 90 Wn.App. at 907-08. Thus, a defendant cannot be made to pay restitution arising from uncharged crimes or for crimes dismissed as a part of a plea bargain, unless the defendant specifically agrees.

A person is not “legally accountable” for the acts of another unless he is an accomplice. RCW 9A.08.020. A person cannot be convicted as an accomplice of a crime unless the State proves “that individual . . . acted with knowledge that he or she was promoting or facilitating *the* crime for which that individual was eventually charged.” State v. Cronin, 142 Wn.2d 568, 579, 14 P.3d 752 (2000)**Error! Bookmark not defined.** “The Legislature . . . intended the culpability of an accomplice not extend beyond the crimes of which the accomplice actually has ‘knowledge.’” State v. Roberts, 142 Wn.2d 471, 511, 14 P.3d 713 (2000). Similarly a defendant is not liable for the crimes of a coconspirator of which the defendant lacks specific knowledge. State v. Stein, 144 Wn.2d 236, 246, 27 P.3d 184 (2001). In reaching that result, Stein rejected the Pinkerton doctrine that a conspirator is liable for all foreseeable acts committed by a coconspirator in furtherance of the conspiracy. Stein, 144 Wn2d. at 246 (citing Pinkerton v. United States, 328 US. 640, 66 S.Ct. 1180, 90 L.Ed.2d 1489 (1946)).

Thus, absent proof that Mr. Graftenreed had either agreed to a conspiracy to damage property inside the home or acted with specific knowledge that he was facilitating that crime he could not be criminally liable to for those acts.

Despite the limitations placed on complicity liability in Stein, Cronin, Roberts, and RCW 9A.08.020, this Court in State v. Israel concluded a defendant could be required to pay restitution for acts of a coconspirator of which he was not convicted and of which he could not be convicted, due to his lack of knowledge. 113 Wn.App. 243, 300, 54 P.3d.1218 (2002), review denied, 149 Wn.2d 1013 (2002). Israel stated “one convicted of conspiracy should be ordered to pay restitution for any injuries caused by the conspiracy, regardless of the defendant’s knowledge or complicity.” Id. That conclusion misses the fundamental point of Stein, if the defendant lacks complicity or knowledge of the acts they are by definition not a part of the conspiracy and the resulting injuries cannot be deemed to have been “caused by the conspiracy.”

Further, Israel erroneously equates “criminal liability” with conviction alone, ignoring the fact that one of the principal aspects of criminal liability is the sentence or punishment which flows from it. Restitution is a part of that sentence. It is a basic component of

due process that if a person is not criminally liable for an act, he cannot be sentenced for the act.

Finally, Israel concluded that restitution was casually connected even while allowing that the defendant was not charged with the crimes that resulted in loss, and even acknowledging the State could not prove the defendant guilty of those crimes. To conclude the injuries are nonetheless causally connected begs the question causally connected to what? Certainly not the crime of conviction, as the court noted Mr. Israel could not have been convicted of those crimes.

The Court's conclusion ignores the repeated holding that a causal connection is more than just a general scheme or connected act. Kinneman, 155 Wn.2d at 286 (quoting Woods, 90 Wn.App. at 907-08). That limitation on restitution echoes the rejection in Roberts and Cronin of the "in for a dime in for a dollar" theory of accomplice liability. Yet that very phrase was the theme of the prosecutor's restitution argument in this case. The prosecutor responded to Mr. Graftenreed's argument, saying "I think the argument is . . . in for a dime, in for dollar. That's kind of the legal theory here." See 10/13/10 RP 4. The deputy prosecutor continued "I don't think a defendant gets to come in and say "I

agreed to do X, Y, and Z. My a partner in crime chose to do A, B, and C. I don't want to be responsible for that." Whatever the prosecutor wishes the law were, Roberts and Cronin plainly place just such a limit on accomplice liability.

A person is not "legally accountable for the conduct of another person" unless he is an accomplice to that person. RCW 9A.08.020. The imposition of restitution for the crimes of another is an effort to hold the defendant legally accountable. The defendant is legally required to pay restitution in full, and may be jailed for his failure to do so. RCW 9.94A.753. Even after the period of supervision has expired, a restitution order remains enforceable. Id. That legal accountability can only flow from a crime committed by the defendant or for which he was an accomplice.

If Mr. Graftenreed cannot be legally accountable for Mr. Hemphill's acts, those acts and the damage they caused are by definition not causally connected to the crime of conviction. It is no different from those instances in which a defendant pleads guilty to some, but not all crimes, without agreeing to pay restitution for the crimes which do not result in a conviction. Absent an agreement by the defendant, restitution is only available for criminal acts which result in a conviction.

The restitution in this case is not causally related to Mr. Graftenreed's convictions.

E. CONCLUSION

For the reasons above this Court must reverse the restitution order entered in this case.

Respectfully submitted this 31st day of May 2011.



GREGORY C. LINK – 25228
Washington Appellate Project – 91052
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 66305-4-I
v.)	
)	
ELDEN GRAFTENREED,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 31ST DAY OF MAY, 2011, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) () ()	U.S. MAIL HAND DELIVERY _____
[X] ELDEN GRAFTENREED 29525 125 TH AVE SE AUBURN, WA 98092	(X) () ()	U.S. MAIL HAND DELIVERY _____

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2011 MAY 31 PM 4:52

SIGNED IN SEATTLE, WASHINGTON THIS 31ST DAY OF MAY, 2011.

X _____ *grnt*

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710