

NO. 66759-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY RUSSELL,

Appellant.

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COURT OF APPEALS DIV I
STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE RONALD KESSLER

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

Restitution must be based on a causal connection between the crime committed and the victim's losses. The State presented evidence that the victim's door was damaged as a result of the victim throwing a crowbar at Russell as he was fleeing the residence after the burglary. Did the trial court properly rule that this damage was causally connected to Russell's burglary?

B. STATEMENT OF FACTS

1. PROCEDURAL FACTS

The appellant, Anthony Russell, was charged in King County Superior Court with one count of Residential Burglary on June 21 of 2010. CP 1. On November 1, 2010, pursuant to plea negotiations, the State moved to amend the information to one count of Burglary in the Second Degree. CP 8. That same day, Russell entered a plea of guilty to one count of Burglary in the Second Degree. CP 9-20.

The Felony Plea Agreement signed by Russell and his attorney, dated October 27, 2010, indicates that "Pursuant to RCW 9.94A.753, the defendant shall pay restitution in full to victim(s) on charged counts and agrees to pay restitution for all

losses, including for prop. damage / theft prior to 6-16-10.” CP 27.

In addition, Russell agreed to allow the court to consider the certification for determination of probable cause, and the prosecutor’s summary of the case for sentencing purposes. CP 27.

Russell was sentenced on November 12, 2010. By the time of the sentencing hearing Russell and his attorney had already received the restitution information. RP 12-13. At that time, the restitution for State Farm was in the amount of \$2,005.28. RP 13. That estimate was provided by State Farm on August 13, 2010 with an itemization of damages. CP 43-51. The total structural damage was for \$751.03, which included the cost to repair the door as a result of Mr. Kain throwing the crowbar at Russell to chase him out of his house and the crowbar hitting the door. CP 51.

On November 12, 2010, the court imposed a sentence within the standard range for the offense. RP 17-19. A restitution hearing was held on January 25, 2011. RP 23-30. At the hearing Russell originally objected to the amount of restitution on the basis Mr. Kain could not be specific as to what property was stolen. RP 23. Based on this objection, the court engaged in a colloquy limited to this issue. RP 24-25. The attorney for Russell asked several follow up questions limited to the issue of the stolen property alone.

RP 25-27. The State asked the court to order restitution based on the certification for determination of probable cause, which included evidence of the damage to the door, and the testimony of Mr. Kain.

RP 27-29. The court granted the State's request for restitution, finding that Mr. Kain was credible with respect to his testimony and that all of the documents submitted were within the context of the plea agreement. RP 29-30.

2. SUBSTANTIVE FACTS¹

The certification for determination of probable cause that Russell stipulated to for purposes of real and material facts, was signed on June 18, 2010 under penalty of perjury by King County Sheriff's Office Detective Chad Mulligan. CP 3-6. According to the certification for determination of probable cause, on June 17, 2010, the victim of the burglary, William Kain (William), returned to his house to change the locks as a result of a burglary that had happened in the previous days. When William approached the door he saw that the main door was open and there did not appear to be any damage. William approached the door to a room, which

¹ All facts in this section are taken from the Certification for Determination of Probable Cause. CP 3-6.

he had left open, and tried to open it. William found a white male later identified as Russell in the room. William and Russell engaged in a physical confrontation where Russell shoved William and according to the certification for determination of probable cause “the male ran out of the room and William grabbed a crowbar and chased after the male. As the male ran out of the house by the front door, William threw the crowbar toward the male. The male pulled the front door closed behind him, and as he did that, the crowbar hit the front door.” CP 3-6.

C. ARGUMENT

**THE TRIAL COURT PROPERLY EXERCISED
DISCRETION WHEN IT IMPOSED RESTITUTION FOR
THE DAMAGE TO THE DOOR**

The authority to impose restitution is derived from statute.

State v. Hiatt, 154 Wn.2d 560, 563, 115 P.3d 274 (2005).

“Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person ... unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record.” RCW 9.94A.753(5).

The restitution statute is to be interpreted broadly to carry out the Legislature's intention. State v. Hennings, 129 Wn.2d 512, 519, 919 P.2d 580 (1996). Restitution against a criminal defendant is proper when a causal connection exists between the crime and the injuries for which compensation is sought; in deciding whether a restitution order is within a trial court's statutory authority, courts use a "but for" factual test to evaluate the causal link between the criminal acts and a victim's damages. State v. Tobin, 161 Wn.2d 517, 527, 166 P.3d 1167, 1172 (2007). Funds expended by a victim as a direct result of the crime committed by the defendant can be a loss of property on which restitution is based. State v. Kinneman, 155 Wn.2d 272, 287, 119 P.3d 350 (2004); State v. Smith, 119 Wn.2d 385, 388-90, 831 P.2d 1082, 1083 (1992) (holding the expenditures by a bank for labor and supplies needed to unload, load and reset surveillance cameras following a burglary constitute an "injury to or loss of property" within the meaning of the restitution statute). Thus, "the trial court need only find that a victim's injuries were causally connected to a defendant's crime before ordering a defendant to pay restitution for the expenses which resulted." State v. Enstone, 137 Wn.2d 675, 682, 974 P.2d 828 (1999) (holding foreseeability of injury not required).

The trial court has discretion to determine the amount of restitution. State v. Dedonado, 99 Wn. App. 251, 255, 991 P.2d 1216 (2000). A reviewing court should reverse when it finds that a trial court's decision was an abuse of discretion and was "manifestly unreasonable, or exercised on untenable grounds or for untenable reasons." Dedonado, 99 Wn. App. at 256. Because restitution is an integral part of sentencing, the Courts have stated that in determining any sentence, including restitution, the sentencing court may rely on no more information than is admitted by the plea agreement. Id. Where the plea agreement stipulates that the facts in the certificate of probable cause are real facts for purposes of sentencing, they become facts for purposes of restitution. State v. Tindal, 50 Wn. App. 401, 402–03, 748 P.2d 695 (1988).

In the case at bar, the trial court did not abuse its discretion in finding a causal connection between the damage to the door and Russell's burglary. The certification for determination of probable cause detailed the circumstances under which the door was damaged after Russell burglarized Mr. Kain's residence. CP 3-6. As Russell ran out of the room, Mr. Kain grabbed a crowbar and chased after Russell. CP 4. As Russell ran out of the house by the front door, Mr. Kain threw the crowbar toward Russell. CP 4. As

Russell closed the door to get away the crowbar hit the front door. CP 4. Had it not been for Russell being inside Mr. Kain's residence, Mr. Kain would have not thrown the crowbar toward Russell in order to defend himself and his property, and the door would have not been damaged. The "but for" test is clearly established in this case.

Russell argues there are no facts in the record of the restitution hearing establishing the damage to any door in Mr. Kain's home. App. Brief 4. This argument fails because the trial court was not limited to Mr. Kain's testimony at the hearing. The court properly relied on the facts in the certification for determination of probable cause, as those were facts stipulated by Russell. Mr. Kain was present at the restitution hearing because Russell was contesting the amount of restitution on the basis the State could not ascertain what items were stolen from Mr. Kain's residence during the burglaries. RP 23-27. It was for this reason the court, and even defense counsel, limited their questions to the issue of the stolen property. RP 24-27. Even if there was no testimony to the damage of the door, the record through the facts stipulated by Russell clearly established the door was damaged as a result of Russell's actions.

Russell's argument rests on the fact that there was no apparent damage to the door as a result of the entry to the residence. App. Brief 5. Although it is true there was no damage to the doors when Russell forced himself inside the residence, Russell's actions caused the damage to the door as he was fleeing the scene. CP 4. The State did not contend the damage to the door was at the time when Russell went inside. Rather, the State established the damage was caused as Russell ran away. CP 4. Russell ponders in his brief: "was the door damaged as a result of the Mr. Russell's crime" and the answer is yes. Had it not been for him burglarizing Mr. Kain's residence, Mr. Kain would have not thrown the crowbar at Russell, which damaged the door. The certification for determination of probable cause established this fact, and the documentation provided by the insurance company for the repair of the door established the amount.

D. CONCLUSION

Based on the documents from the insurance company presented at the restitution hearing and the plea agreement entered into by Russell, in which he stipulated to the real facts contained in the certification for determination of probable cause, the court did

not abuse its discretion in ordering restitution for the damage to the door. The court found a causal connection between Russell's burglary and the restitution sought. Thus, the restitution order should stand.

DATED this 15th day of November, 2011.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to , the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. ANTHONY RUSSELL, Cause No. 66759-9-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Jill Carter
Jill Carter
Done in Seattle, Washington

11-15-11
Date

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