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NO. 68504-0-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

JONATHAN M. STRONG,

Appellant.

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

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APPELLANT'S REPLY BRIEF

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DIVISION ONE

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A. SUMMARY OF ARGUMENT IN REPLY

The real facts upon which any restitution award had to be causally connected revealed damage to a motorcycle only in the form of a missing license plate, removed ignition and scraped front fairing. However, the State sought and received an award of \$7,637.79 based on an unsworn victim impact statement and two-page, unsworn laundry list of replacement parts from a mechanic. The restitution order should be vacated and remanded for an award of restitution actually connected to the real facts at issue.

B. ARGUMENT IN REPLY

**Mr. Strong's unlawful possession of the motorcycle was causally connected to only minimal damage to the motorcycle; the restitution award should be similarly limited.**

As Mr. Strong argued in his opening brief, the trial court had limited authority to enter an award of restitution: it had to be based on easily ascertainable damages and actual expenses incurred through a causal relationship to Mr. Strong's possession of the motorcycle. RCW 9.94A.753(3); *State v. Hennings*, 129 Wn.2d 512, 519, 919 P.2d 580 (1996); *State v. Woods*, 90 Wn. App. 904, 907, 953 P.2d 834 (1998).

The State bore the burden of proving the amount of restitution by a preponderance of the evidence. *E.g.*, *State v. Acevedo*, 159 Wn.

App. 221, 229-30, 248 P.3d 526 (2011); *State v. Kinneman*, 122 Wn. App. 850, 860, 95 P.3d 1277 (2004), *aff'd*, 155 Wn.2d 272 (2005); *Woods*, 90 Wn. App. at 909. Over objection from Mr. Strong, the State failed to meet its burden here.

Mr. Strong agreed to pay all damage to the motorcycle related to “real facts” as per on his plea agreement. As the State concedes, the information and probable cause certification show damage only in the form of a missing license plate, a removed ignition, and scraping on the front fairing. Resp. Br. at 2. To ratchet up the restitution award, the State presented an unsworn victim impact statement and a two page mechanic’s list of proposed repairs, which contains no explanation for or relationship between the repairs and the damaged ignition, front fairing and missing license plate. CP 67-69. The only sworn evidence the court received was a one-page statement from the victim, which states the license plate was not recovered and the damage to his vehicle was limited to “all cowling/fairings scratched from being laid down some are broken, paint chipped off of tank, foot pegs are losing the rubber from being put on its side, engine covers are scratched up.” CP 66. The \$7,637.79 of listed repairs in the mechanic’s unsworn estimate

on its face fails to bear causal relation to the attested to paint chips and scratches. *Compare* CP 68-69 with CP 67.

The State claims the restitution award is supported by a preponderance of the evidence because the court asked questions at the hearing. Resp. Br. at 6. This is an overbroad view of the record. At the hearing, the court noted “I see that the ignition was completely removed, it was found in the house, and they go on to, frankly, other issues.” 3/14/12RP 13. The court then asked, “Is there anything in this [certification of probable cause] that talks about how long he had the motorcycle or anything more about the damage?” *Id.* After counsel noted the motorcycle appeared to have been in Mr. Strong’s possession for approximately one month, the court asked only “Is there anything else either of you want to add?” 3/14/12RP 13-14. No witnesses testified; the State presented neither the victim nor the mechanic who proposed \$7,637.79 in repairs to correct a missing license plate, a removed (but located) ignition, and a scratched fairing.

The State’s attempt to distinguish *State v. Dedonado* fails. In *Dedonado*, like here, the defendant pled guilty to taking a motor vehicle based on real facts set forth in the probable cause certification. 99 Wn. App. 251, 253, 991 P.2d 1216 (2000). Similar to the real facts

here, the certification alleged only damage to the ignition of the stolen vehicle and burglary from an electronics store. *Id.* Like here, the State presented a form signed under penalty of perjury stating “the property damage included a glass window for \$753.41 and an irreparable Adret Signal Generator that was replaced with an HP ESG 3000A for \$10,968.60.” *Id.* Remarkably like the State’s arguments here, in *Dedonado*, the State claimed the victim’s estimate was sufficient because it was signed under perjury, indicated that the damage to the generator was irreparable, and “there hasn’t been any showing from the defense that would challenge that in any way.” *Id.* at 253-54.; Resp. Br. at 3. As it should do here, this Court reversed the order of restitution because it was not possible to determine from the documentation whether all of the repairs to the van were related to the damaged ignition switch and whether the HP generator was a proper replacement of the Adret generator.

This case is remarkably similar to *Dedonado*, the repair estimate list does not make it possible to determine whether all \$7,637.79 in “repairs” is related to the removed ignition, scratched fairings and missing license plate. But a reasonable inference is that a new windshield, new mirrors, a new muffler, and new fuel tank (among

dozens of other parts) are not causally connected to the limited damage reported. *See State v. Dennis*, 101 Wn. App. 223, 227, 6 P.3d 1173 (2000) (“A causal connection is not established simply because a victim or insurer submits proof of expenditures.”); *State v Kisor*, 68 Wn. App. 610, 611, 844 P.2d 1038 (1993) (sentencing court abused its discretion and violated due process in ordering restitution based on “nothing more than a rough estimate of the costs” of replacing a police dog); *State v. Bunner*, 86 Wn. App. 158, 160, 936 P.2d 419 (1997) (reversing a restitution order where the only evidence was a summary report of medical expenditures from the Department of Social and Health Services).

Here, the bald victim statement and repair estimate does not amount to substantial credible evidence to establish the restitution amount. The State’s evidence did not establish a causal connection between Mr. Strong’s actions and the damages by a preponderance of the evidence. On that record, Mr. Strong should not be required to pay for a new driver seat, a new fender, a new clutch cover, new mirrors, and the countless other items listed on the unsworn, unattested mechanic’s estimate list. CP 68-69. Criminal restitution is not a windfall for the victim to rebuild undamaged portions of his

motorcycle. The trial court should have held the State to its burden, and this Court should vacate the restitution order.

C. CONCLUSION

Because the State failed to prove all the damage claimed was casually connected to the offense at issue, this Court should vacate the restitution order.

DATED this 13th day of December, 2012.

Respectfully submitted,



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	)	
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Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 13<sup>TH</sup> DAY OF DECEMBER, 2012, I CAUSED THE ORIGINAL **REPLY 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:

<input checked="" type="checkbox"/> DOUGLAS YOUNG, DPA KING COUNTY PROSECUTOR'S OFFICE APPELLATE UNIT 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
<input checked="" type="checkbox"/> JONATHAN STRONG 25270SE 356 <sup>TH</sup> ST. APT. K-204 AUBURN, WA 98092	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 13<sup>TH</sup> DAY OF DECEMBER, 2012.

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