

68504-0

68504-0

NO. 68504-0-I

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

STATE OF WASHINGTON,

Respondent,

v.

JONATHAN M. STRONG,

Appellant.

FILED
COURT OF APPEALS
DIVISION ONE
AUG 27 2017

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

APPELLANT'S OPENING BRIEF

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A. SUMMARY OF ARGUMENT

Though the State failed to prove a laundry list of estimated repair costs were causally connected to Jonathan Strong's conviction, the court imposed \$7,637.79 in restitution. The restitution order should be vacated and the case remanded for the court to set restitution only for damage causally connected to the incident at issue.

B. ASSIGNMENT OF ERROR

The trial court exceeded its statutory authority when it ordered restitution in an amount that was not supported by substantial evidence.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

A trial court's authority to impose restitution is limited by statute. The restitution statute generally limits restitution to damages causally related to the crime of conviction. The State bears the burden of proving claimed costs are causally connected to the offense. A restitution order is not supported by substantial evidence and should be vacated where it is based on a victim's bare assertions of damage without a showing the damage was caused by the incident at issue. Where the State offered only the victim's general allegation that his motorcycle "runs rough" together with a laundry list of estimated repair

costs after Mr. Strong's possession and the court imposed the full requested amount of restitution, should the order be vacated?

D. STATEMENT OF THE CASE

Mr. Strong pled guilty to one count possession of a stolen vehicle. CP 14, 23. He admitted to possessing a 1999 Kawasaki motorcycle belonging to Michael Rice as set forth in the information and probable cause certification. CP 23 (plea statement), 37 (plea agreement stipulating to real facts set forth in probable cause certification). Mr. Strong agreed to pay restitution for damage to the motorcycle. CP 37.

The certificate of probable cause indicated Mr. Strong and a co-defendant took the motorcycle by "breaking out" the ignition and driving it to Mr. Strong's garage where it remained until the police recovered it several weeks later. CP 29-30. When the police recovered the vehicle, the only damage noted was to the ignition and a missing license plate. CP 31.

The judgment and sentence provides for an award of restitution to be determined at a later date. CP 43. The State requested restitution to Michael Rice in the amount of \$7,637.79. Mr. Rice submitted a victim impact statement claiming the motorcycle "rides rough," "panels

[are] hanging off,” and the odometers do not work. CP 67. The State also submitted a repair estimate from Puget Sound Motorcycles containing itemization for 46 parts plus labor totaling \$7,637.79. CP 68-69. The listed repairs and prices include, but are not limited to: windshield (\$241.68), right mirror (\$86.62), left mirror (\$86.62), generator cover (\$140.70), clutch cover (\$173.95), muffler (\$888.94), and fuel tank (\$850.63). *Id.* On its face, the repair list far exceeds Mr. Rice’s three concerns. *Compare* CP 68-69 with CP 67. The repair list also far exceeds the ignition damage and missing license plated noted in the certification of probable cause. *Compare* CP 68-69 with CP 31.

Mr. Strong objected to the requested restitution because the State did not show all the estimated repair costs were causally connected to Mr. Strong’s possession of the motorcycle. CP 47-52; 3/14/12RP 5, 8. As Mr. Strong noted, the probable cause certification only mentions damage to the ignition, the repair of which is estimated at \$278, and a missing license plate. CP 47-48, 68. Moreover, the requested restitution amount far exceeded the cost to purchase a replacement motorcycle. CP 48-49, 52-61 (showing similar motorcycles for sale at price of \$2,000 to \$5,000).

Based solely on the State's documentation, the court imposed restitution in the full amount requested, \$7,637.79. CP 64.

E. ARGUMENT

The court lacked the authority to impose restitution for amounts not proved causally related to Mr. Strong's possession of the motorcycle.

1. Restitution ordered in a criminal case must be based on actual compensation for loss incurred and predicated on easily ascertainable amounts.

The authority of a court to order restitution following a criminal conviction is governed by statute. RCW 9.94A.753(3); *State v. Gray*, __ Wn.2d __, 280 P.3d 1110, 1112 (2012). RCW 9.94A.753(3) provides in relevant part, "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 or injury to persons, and lost wages resulting from injury." *State v. Hennings*, 129 Wn.2d 512, 519, 919 P.2d 580 (1996).

"A restitution order must be based on the existence of a causal relationship between the crime charged and proved and the victim's damages." *State v. Woods*, 90 Wn. App. 904, 907, 953 P.2d 834 (1998) (emphasis added) (quoting *State v. Blair*, 56 Wn. App. 209, 214-15, 783 P.2d 102 (1989); accord, e.g., *State v. Dedonado*, 99 Wn. App.

251, 256, 991 P.2d 1216 (2000); *State v. Johnson*, 69 Wn. App. 189, 191, 847 P.2d 960 (1993). A court's restitution order must be based on actual compensation for loss caused by the offense of conviction, not upon speculative claims, general equity concerns that apply in civil courts, or intangible loss. *See State v. Griffith*, 164 Wn.2d 960, 965, 195 P.3d 506 (2008); *Woods*, 90 Wn. App. at 907; *Johnson*, 69 Wn. App. at 191. The State must prove by a preponderance of the evidence that but for the defendant's crime, the loss would not have occurred. *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. Evidence of damages is sufficient only if it provides the trial court with a reasonable basis for estimating losses and requires no speculation or conjecture. RCW 9.94A.753(3); *State v. Kinneman*, 155 Wn.2d 272, 285, 119 P.3d 350 (2005); *State v. Fleming*, 75 Wn. App. 270, 274-75, 877 P.2d 243 (1994); *State v. Pollard*, 66 Wn. App. 779, 784-85, 834 P.2d 51, *review denied*, 120 Wn.2d 1015 (1992).

Restitution ordered as part of a criminal sentence is not a substitute for civil remedies. *See* RCW 9.94A.753(9) ("This section does not limit civil remedies . . . available to the victim [or] survivors

of the victim”). The criminal court is not a civil court with broad equity powers to craft a just resolution. *State v. Ewing*, 102 Wn. App. 349, 353-54, 7 P.3d 835 (2000). Instead, the court’s power to impose restitution is strictly statutory in nature and the court may not exceed the authority allotted by the Legislature. *Griffith*, 164 Wn.2d at 965.

2. There was insufficient proof of a causal connection between the restitution ordered and the offense.

As stated, restitution must be based on a causal connection between the crime and the victim’s damages, which connection the state must establish. *Dedonado*, 99 Wn. App. at 256. A causal connection is not established simply because a victim provides a list of expenditures for replacing property allegedly stolen or damaged by the defendant. *Id.* at 256-57; *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.”).

For instance, in *Dedonado*, the defendant pled guilty to taking a motor vehicle based on real facts set forth in the probable cause certification. 99 Wn. App. at 253. The certification alleged only damage to the ignition of the stolen vehicle and burglary from an electronics store. *Id.* At the restitution hearing, the State presented a form from the victim titled “Property Restitution Estimate” signed

under penalty of perjury, which stated that “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. Mr. Dedonado objected to the requested amount of restitution. *Id.*

The State claimed that the property damage estimate constituted sufficient evidence because it was signed by the victim and indicated that the damage to the generator was irreparable, and because “there hasn’t been any showing from the defense that would challenge that in any way.” *Id.* at 253-54. This Court reversed the order of restitution:

As pointed out by Dedonado at the hearing in the instant case, it is not possible to determine from the documentation provided by the State whether the HP generator was a proper replacement of the Adret generator. Similarly, it is not possible to determine from the documentation provided by the State whether all of the repairs to the van were related to the damaged ignition switch. The State did not meet its burden of proving the restitution amounts here by a preponderance of the evidence because the documentation it provided did not establish a causal connection between Dedonado’s actions and the damages.

99 Wn. App. at 257.

In *State v Kisor*, the defendant was convicted of harming a police dog. 68 Wn. App. 610, 611, 844 P.2d 1038 (1993). In support of the amount of restitution for replacing the dog, the State submitted an affidavit from the county risk manager stating that she “checked

with” the police department and canine training unit to determine the cost of the dog and attaching a canine college advertisement as proof that “12 weeks training is usual and customary for police dog handler training.” *Kisor*, 68 Wn. App. at 614 n. 2. On appeal, the court held the 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. *Id.* at 620. Other than the statement of the Risk Manager that she “checked” with the Tacoma police and the Spokane Canine Training Unit, there was no indication of how she obtained the cost estimates. *Id.*

Similarly, in *Pollard*, which involved the defrauding of banking institutions, this Court ruled that a police report that recorded what bank personnel stated the banks had lost, standing alone, did not amount to substantial credible evidence to establish the restitution amount. 66 Wn. App. at 786. Significant to that conclusion was not only that the police report was double hearsay, but also that the State could have substantiated the report with bank records or the testimony of bank personnel with “relative ease.” *Id.*; see also *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 victim claimed and was awarded \$7,637.79, an amount far exceeding the replacement value of the motorcycle, without any demonstration of causal connection. *Compare* CP 67-69; CP 64 *with* CP 53-61 (advertisements showing price to purchase motorcycle). The State provided an itemized repair list with estimated costs as well as a victim impact statement claiming the motorcycle “rides rough,” “panels [are] hanging off,” and the odometers do not work. CP 67-68. Mr. Strong objected to the claimed amount, arguing the lack of causal connection to the crime of possession of the stolen vehicle. CP 47-52. As Mr. Strong noted, the probable cause certificate, the facts upon which the plea was entered, only supported damage to the ignition. 3/14/12RP 5, 8; CP 47-48. Like in *Pollard*, the bald victim statement and extensive repair estimate does not amount to substantial credible evidence to establish the restitution amount. 66 Wn. App. at 786. Like the restitution orders vacated in *Kisor* and *Dedonado*, the order is based on “nothing more than a rough estimate of the costs” of repairing the victim’s motorcycle; the State’s documentation did not establish a

causal connection between Strong's actions and the damages. *Kisor*, 68 Wn. App. at 614; *Dedonado*, 99 Wn. App. at 257.

Rather than holding the State to its burden of proof, the court looked at the victim impact statement and the estimated repair list and found no reason to assume bias. 3/14/12RP 15. On that record alone, over Mr. Strong's objection, and without regard to the limited damage noted in the certification of probable cause, the court imposed the full amount of restitution requested—\$7,637.79. 3/14/12RP 16; CP 64. This amount is to pay for unexplained "repairs" to the windshield, front fender, front driver seat, muffler and fuel tank, among many other listed items; no damage to these items was listed in the certificate of probable cause or the victim's statement. *See* CP28-35, 67-69. The court abused its discretion because it failed to hold the State to its burden of proving all the alleged repairs based on causally-connected damage to the victim's motorcycle.

3. The restitution order should be vacated.

The remedy for the State's failure to prove the amount of restitution is to vacate the restitution order and remand to the sentencing court so that it can fix the proper amount of restitution. *Dedonado*, 99 Wn. App. at 257-58. The trial court is barred from

considering any new evidence on remand because to do so would conflict with the requirement under the Sentencing Reform Act that restitution must be set within 180 days of sentencing. RCW 9.94A.753(1); *Griffith*, 164 Wn.2d at 968 n.6.

Without any supporting documentation, the State failed to establish that Mr. Strong was responsible for the extensive damage claimed. Accordingly, this Court should reverse the restitution order and remand for the sentencing court to set a proper amount of restitution.

F. 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 27th day of August, 2012.

Respectfully submitted,



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Attorney for Appellant

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

STATE OF WASHINGTON,)
)
 Respondent,)
)
 v.)
)
 JONATHAN STRONG,)
)
 Appellant.)

NO. 68504-0-1

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DIVISION ONE

AUG 27 2012

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I, MARIA ARRANZA RILEY, STATE THAT ON THE 27TH DAY OF AUGUST, 2012, 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:

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<input checked="" type="checkbox"/> JONATHAN STRONG 25270 SE 356 TH ST APT K204 AUBURN, WA 98092	<input checked="" type="checkbox"/> U.S. MAIL <input type="checkbox"/> HAND DELIVERY <input type="checkbox"/> _____

SIGNED IN SEATTLE, WASHINGTON THIS 27TH DAY OF AUGUST, 2012.

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