

FILED

July 30, 2015
Court of Appeals
Division I
State of Washington

NO. 72698-6-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

EDDIE GRAY,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE ROGER ROGOFF
THE HONORABLE JOHN P. ERLICK

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

IAN ITH
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 477-9497

TABLE OF CONTENTS

	Page
A. <u>ISSUES PRESENTED</u>	1
B. <u>STATEMENT OF THE CASE</u>	2
1. PROCEDURAL FACTS	2
2. SUBSTANTIVE FACTS	3
C. <u>ARGUMENT</u>	4
1. THE COURT PROPERLY SET THE RESTITUTION AMOUNT	4
a. Relevant Facts	5
b. The Trial Court Properly And Judiciously Exercised Its Broad Discretion In Setting The Restitution Amount.....	10
c. The Court Did Not Shift The State's Burden .	17
d. The Remedy, If Any, Is Remand For A New Restitution Hearing	19
D. <u>CONCLUSION</u>	21

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

<u>State v. A.M.R.</u> , 147 Wn.2d 91, 51 P.3d 790 (2002).....	11, 20
<u>State v. Awadeh</u> , 72 Wn. App. 373, 864 P.2d 965 (1994).....	15
<u>State v. Camarillo</u> , 115 Wn.2d 60, 794 P.2d 850 (1990).....	17
<u>State v. Cosgaya-Alvarez</u> , 172 Wn. App. 785, 291 P. 3d 939 (2013).....	18
<u>State v. Dedonado</u> , 99 Wn. App. 251, 991 P.2d 1216 (2000).....	18, 19
<u>State v. Dennis</u> , 101 Wn. App. 223, 6 P.3d 1173 (2000).....	19
<u>State v. Fambrough</u> , 66 Wn. App. 223, 831 P.2d 789 (1992).....	11, 12
<u>State v. Fellers</u> , 37 Wn. App. 613, 683 P.2d 209 (1984).....	13, 16
<u>State v. Fleming</u> , 75 Wn. App. 270, 877 P.2d 243 (1994).....	13
<u>State v. Griffith</u> , 164 Wn.2d 960, 95 P.3d 506 (2008).....	20
<u>State v. Kisor</u> , 68 Wn. App. 610, 844 P.2d 1038 (1993).....	13, 14
<u>State v. Lohr</u> , 130 Wn. App. 904, 125 P.3d 977 (2005).....	13

<u>State v. Madsen</u> , 168 Wn.2d 496, 229 P.3d 714 (2010).....	11
<u>State v. Mark</u> , 36 Wn. App. 428, 675 P.2d 1250 (1984).....	12
<u>State v. R.G.P.</u> , 175 Wn. App. 131, 302 P.3d 885, <u>review denied</u> , 178 Wn.2d 1020 (2013).....	20
<u>State v. Rohrich</u> , 149 Wn.2d 647, 71 P.3d 638 (2003).....	12
<u>State v. Smith</u> , 33 Wn. App. 791, 658 P.2d 1250 (1983).....	11, 12
<u>State v. Smith</u> , 119 Wn.2d 385, 831 P.2d 1082 (1992).....	11
<u>State v. Steward</u> , 52 Wn. App. 413, 760 P.2d 939 (1988).....	12
<u>State v. T.A.D.</u> , 122 Wn. App. 290, 95 P.3d 775 (2004).....	13
<u>State v. Tobin</u> , 132 Wn. App. 161, 130 P.3d 426 (2006).....	13, 15, 16
<u>State v. Tobin</u> , 161 Wn.2d 517, 166 P.3d 1167 (2007).....	16

Statutes

Washington State:

RCW 13.40.020.....	11
RCW 13.40.190.....	11, 20

Other Authorities

Juvenile Justice Act of 1977.....	11, 12
-----------------------------------	--------

A. ISSUES PRESENTED

1. A juvenile court has broad discretion in determining the amount of restitution to a crime victim, so long as the court has a reasonable basis for determining the victim's loss. After hearing sworn testimony from a burglary victim, who attested to the value of specific stolen and damaged items, and reviewing itemized documentation from the victim's insurance company, the trial court ordered restitution for most items, but denied restitution for several others. Did the trial court properly exercise its discretion in determining the amount of restitution?

2. When restitution is contested, the State must prove the damages only by a preponderance of the evidence. After hearing the victim's sworn testimony, including cross-examination, and reviewing insurance documents, the trial court found the State's burden had been met as to most losses, and noted that the defense had not contested a causal connection between the damages and the crime. Did the trial court properly hold the State to its preponderance burden in determining the amount of restitution?

3. When a reviewing court finds insufficient evidence to determine the proper restitution amount, our Supreme Court has held that the proper remedy is remand for a new restitution hearing

so the defendant does not escape paying restitution. Here, the sole issue is sufficiency of evidence for the restitution amount. If this Court were to find the evidence insufficient, should the case be remanded for the trial court to determine the proper amount, so the defendant can pay restitution for his crime?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Eddie Gray was charged by Amended Information with Residential Burglary and Theft of a Firearm, alleging that he, together with another, on or about May 2, 2014, entered and remained unlawfully in the dwelling of Charles Oliver at 24424 26th Avenue South in Des Moines, King County, Washington, and stole Oliver's revolver. CP 19. After a two-day adjudicatory hearing, the juvenile court found Gray guilty of Residential Burglary but not guilty of Theft of a Firearm. CP 31. The court entered an Order on Disposition requiring nine months of supervision, 122 hours of community service and 30 days detention, and restitution to be determined at a future hearing. On October 30, 2014, the court held a restitution hearing.¹ The court made some oral conclusions but reserved entry of the order until November 20, 2014, when an

¹ The Hon. Roger Rogoff presided over the adjudicatory hearing. The Hon. John Erlick presided over the restitution hearing.

Order of Restitution was entered, without an oral record, requiring Gray to pay \$13,498.17 in restitution, joint and several with co-respondent Damon McVea.

Gray timely appealed.²

2. SUBSTANTIVE FACTS

On May 2, 2014, Aldrin Cornell was doing yardwork at his home in Des Moines when he noticed people inside the home of his next-door neighbor, Charles Oliver. 2RP 25-26.³ Cornell tried to call Oliver but got no answer, so he called 911. 2RP 30. When officers arrived, a maintenance man at a neighboring apartment complex said he had seen three teens flee over Oliver's fence and run into a specific apartment unit. 2RP 149; 3RP 64-67.

Oliver was at his uncle's funeral when he got his neighbor's message. 2RP 112. He rushed home to find it ransacked: The back sliding-glass door had been shattered; a television was pulled off the wall; items were scattered all over and drawers were upended on the floor; a handgun was missing and other guns had

² McVea timely filed a Notice of Appeal on December 17, 2014, under No. 72826-1-I, but submitted a Motion to Permit Voluntary Withdrawal of Appeal on July 14, 2015.

³ The State has numbered the verbatim record of proceedings as follows: 1RP (September 9, 2014; September 16, 2014); 2RP (September 17, 2014); 3RP (September 18, 2014; October 10, 2014); 4RP (October 30, 2014; November 5, 2014; December 11, 2014).

been moved around; handgun ammunition littered the floor; a multitude of jewelry, expensive clothes and shoes, and stashes of cash were gone. 2RP 114-27.

A short while later, police saw Eddie Gray leave the apartment to which the teens had fled. 2RP 157. With the consent of the apartment renter, Shameika Jones, the mother of co-respondent McVea, officers recovered Oliver's handgun, some ammunition, and some of his jewelry from inside. 2RP 162. Gray later told Jones that he had participated in the burglary and had taken some of the jewelry. 2RP 72-73. Gray's stepfather found some of Oliver's jewelry in Gray's room. 2RP 142; 3RP 14.

C. ARGUMENT

1. THE COURT PROPERLY SET THE RESTITUTION AMOUNT.

Gray contends that the trial court did not have a reasonable basis for determining Oliver's losses from the burglary and ransacking of his home because Oliver failed to augment his sworn testimony and insurance records with additional documents and was generally not credible. Gray also contends the trial court shifted the burden of proof when it noted that no one was claiming the items weren't stolen. However, the victim's sworn testimony and the extensive, itemized insurance records were more than

sufficient for the court to exercise its broad discretion and award restitution. The State's burden as to the restitution amount was not shifted by the court noting that a causal connection between the losses and the crime was not contested. The restitution order should be affirmed. If it is not, the remedy is remand for a new restitution order, not vacation of all restitution.

a. Relevant Facts.

At the restitution hearing, the State offered a Victim Impact Statement that included a 16-page report from Homesite Insurance documenting Oliver's claim and Homesite's payments. Ex. 1. The report specified more than two dozen items that were stolen or damaged, with Oliver's value estimates and Homesite's conclusions about actual value. Id. The list included many items of jewelry, including a lion's-head ring that both Oliver and Homesite valued at \$2,190. Id. It also included repair cost for a grandfather clock. Id. Additionally, Oliver claimed \$2,100.96 for rekeying five vehicles. Id. He also listed \$2,000 in cash that he had borrowed from a credit union and \$5,200 in cash that his wife had received in unemployment benefits. Id. The insurance forms carry notices in bold-face type that it is "a crime to knowingly provide false, incomplete or misleading information to an insurance company for

the purpose of defrauding the company,” with penalties including imprisonment. Id.

The insurance company determined the actual value of Oliver’s lost and damaged items to be \$23,690.13.⁴ Id. Homesite paid Oliver \$8,197.45 because the total loss exceeded his policy limits. Id. The State requested restitution of \$15,492.68 for Oliver and his wife, and \$8,197.45 for Homesite (totaling \$23,690.13).

Ex. 1; 4RP 64.

Oliver was sworn in. 4RP 5. He testified that the list of lost items he submitted to the insurance company was true, complete and accurate to the best of his knowledge, and the estimates for repairs or replacement of damaged items were accurate. 4RP 7-8.

Under cross-examination, Oliver was pressed for the sources of his estimates. For the jewelry and other merchandise, including suits and shoes, Oliver testified that he went to stores and also looked online to determine value, and his estimates were “really lowball.” 4RP 23. Much of the jewelry he got while traveling and at conferences, and he didn’t keep receipts and didn’t research the vendors because “I don’t go and buy something and look for it that it is going to be stolen.” 4RP 36. He noted that the insurance

⁴ \$21,886.11 for itemized property plus \$1,804.02 for repairing the glass door.

company had paid him based on his estimates, and "insurance would not pay just to be paying it." 4RP 22.

As for the cash requests, Oliver testified that the \$2,000 was the remainder of \$2,500 he had taken out from his credit union on a line of credit to buy a washer and dryer. 4RP 30-31, 43-44. He explained that he commonly takes out cash loans and then promptly repays them as a way to build and preserve his credit score. 4RP 45. When pressed about why he didn't have paperwork about the loan, Oliver said he was a "man of integrity." 4RP 13. "You act like I'm on trial, okay, that I have something to hide," he said. "I'm a victim, lady, okay?" 4RP 16.

As for the \$5,200 in cash, Oliver said his wife had been collecting unemployment and keeping the cash unbeknownst to him. 4RP 13. When pressed for paperwork, Oliver said the money was a point of friction in his marriage and he trusted his wife when she told him the amount. 4RP 14. When asked about the costs of rekeying vehicles, Oliver explained that he had given receipts to the insurance company, but got rid of the paperwork after the insurance claim was closed because the burglary was upsetting and he had wanted to "move on." 4RP 40-41.

Generally, Oliver made it clear that the entire episode was “making my life miserable” because his wife didn’t want to be home alone “because of what these clowns did.” 4RP 13. Oliver reiterated that he was swearing under penalty of perjury that everything he submitted to the insurance company was true and accurate. 4RP 39.

After Oliver testified, the prosecutor also emphasized that Oliver had testified under penalty of perjury, signed his Victim Impact Statement under penalty of perjury, and provided his “best estimates.” 4RP 54. The prosecutor noted that the restitution amount was fundamentally up to the court’s determination of Oliver’s credibility. 4RP 61.

The court commented that it was troubled by Oliver’s inability to provide documentation as to the credit-union loan and the unemployment money. 4RP 55, 58-59. But the court added that “I don’t want to say I don’t believe him.” 4RP 59. The Court noted that it gives “victims who make insurance claims the benefit of the doubt” because of the penalties for false claims. 4RP 59. But the lack of documentation as to the cash, and lack of the wife’s testimony about the unemployment, “brings into question some of

the information.” 4RP 59. The court also questioned the lack of receipts for the car keys. 4RP 62.

Gray’s attorney argued that the State had not met its burden for any of the restitution because Oliver was “squirrely” and had not provided receipts. 4RP 68. “So I think it calls into question all of his testimony about all of the items.” Id.

Nevertheless, the court found that “the State has carried its burden with respect to the vast majority of these items.” 4RP 73. The court noted that restitution is to “make the victims whole,” and the court’s goal is to “reach the right result based on the information provided.” 4RP 72-73. The court said it gave great weight to the fact that Oliver had signed his claim to the insurance company under penalty of perjury. 4RP 73. The Court also said, “I had no controverting evidence from either of the respondents saying we didn’t take this stuff.”

However, specifically as to the \$2,000 loan cash, the wife’s \$5,200 in unemployment cash, and the car rekeying, the court said that it would be “unfair of the respondents on this record to simply accept the representation without proper documentation.” 4RP 73-74. The court set the matter over for the State to provide additional documentation on those specific claims. 4RP 75. It also

ordered that restitution be set at \$1,299 for the lion's-head ring, instead of the \$2,190 Oliver had requested, based on a website the defense had presented showing a similar ring for \$1,299. 4RP 74; Ex. 3. The court reserved entering a final restitution order.

4RP 76.

On November 20, the court signed the Order of Restitution for \$13,498.17, with \$7,401.68 to Oliver and his wife and \$6,096.49 to Homesite. CP 45. There was no oral record. The final amount is consistent with subtracting \$2,000 for the loan cash, \$5,200 for the unemployment cash, and \$891 for the reduced value of the lion ring (totaling \$8,091) from Oliver's requested share of \$15,492.68; and \$2,100.96 for the auto rekeying from Homesite's requested share of \$8,197.45.

b. The Trial Court Properly And Judiciously Exercised Its Broad Discretion In Setting The Restitution Amount.

Essentially, Gray is asking this Court to vacate all restitution for Charles Oliver because the trial court should not have believed him. However, the trial court had substantial evidence from Oliver's sworn testimony and the insurance report, and the trial court's credibility determinations must not be disturbed on appeal.

A court's authority to impose restitution is purely statutory. State v. Smith, 119 Wn.2d 385, 389, 831 P.2d 1082 (1992). The Juvenile Justice Act of 1977 (JJA) mandates that in a dispositional order, the court "shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent." RCW 13.40.190(1)(a). "Restitution is mandatory for juvenile offenses." State v. A.M.R., 147 Wn.2d 91, 96, 51 P.3d 790 (2002). The JJA defines restitution as "financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury or loss of property" and other expenses. RCW 13.40.020(26). "The purposes of the (JJA)'s restitution provisions are to reimburse the victim for his loss and to hold the juvenile accountable for his conduct." State v. Smith, 33 Wn. App. 791, 797, 658 P.2d 1250 (1983).

A juvenile court's restitution decision is reviewed for abuse of discretion. State v. Fambrough, 66 Wn. App. 223, 224-25, 831 P.2d 789 (1992). Thus, the trial court's decision will stand unless it is "manifestly unreasonable." State v. Madsen, 168 Wn.2d 496, 504, 229 P.3d 714 (2010). A decision is "manifestly unreasonable" if the court adopts a view that no reasonable person would take and

arrives at a decision outside the range of acceptable choices.

State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003).

Restitution under the JJA is allowed for losses that are causally connected to the crimes charged. State v. Steward, 52 Wn. App. 413, 415, 760 P.2d 939 (1988). Once the fact of damage is established, the precise amount does not require mathematical certainty. Fambrough, 66 Wn. App. at 225. "Evidence of damage is sufficient if it affords a reasonable basis for estimating loss and does not subject the trier of fact to mere speculation or conjecture." State v. Mark, 36 Wn. App. 428, 434, 675 P.2d 1250 (1984). If the amount of damages is established by substantial credible evidence, no abuse of discretion will be found. Id. Under the JJA, the standard is preponderance of the evidence, not beyond a reasonable doubt or by clear and convincing evidence. Smith, 33 Wn. App. at 794-98.

In juvenile court, due process does not require a special restitution hearing. Fambrough, 66 Wn. App. at 225. A juvenile has no constitutional right to cross-examine and confront witnesses at a restitution hearing under the JJA. Id. The rules of evidence do not apply. Id. at 227. Unsworn documents and testimony are

admissible. State v. T.A.D., 122 Wn. App. 290, 294, 95 P.3d 775 (2004).

Thus, in determining the amount of restitution, trial courts have great discretion to rely on a broad range of information. Estimates are allowed. State v. Tobin, 132 Wn. App. 161, 174, 130 P.3d 426 (2006). The court has the “sound discretion” not to value items at the precise market value at the time of their theft. State v. Fleming, 75 Wn. App. 270, 275, 877 P.2d 243 (1994) (“Restitution is not a substitute for a civil lawsuit.”). The court may rely on hearsay. See State v. Kisor, 68 Wn. App. 610, 620, 844 P.2d 1038 (1993).

More specifically, a record from an insurance company showing it paid out on a victim’s claim “provides a non-speculative, non-conjectural, reasonable basis for estimating loss.” State v. Lohr, 130 Wn. App. 904, 910-11, 125 P.3d 977 (2005) (evidence sufficient where victim’s auto-insurance company paid the claim). And a juvenile court can set a restitution amount exclusively based upon the testimony of the victim. See State v. Fellers, 37 Wn. App. 613, 619, 683 P.2d 209 (1984) (juvenile court set value of stolen bicycle based only on the testimony of the victim’s father, who bought it).

In this case, the record reflects that the trial court exercised careful discretion: The court extensively weighed Oliver's testimony and asked him questions. The court weighed the detailed insurance records. The court then made a measured ruling that granted only part of the requested restitution. In fact, the court rejected nearly half – 43 percent – of the total requested amount.⁵ This wholly discredits the notion that the court acted arbitrarily or "inexplicably." See Brief of Appellant (BOA) at 10.

Gray compares this case to Kisor, but it is not even similar. 68 Wn. App. 610. There, the defendant killed a police dog. Id. at 612. The State requested restitution based on a hearsay affidavit by a county risk manager that appeared "to be nothing more than a rough estimate of the costs associated with purchasing a new animal and training it." Id. at 613, 620. Worse, there was "no indication of where [the affiant] obtained the figures." Id. Here, the burglary victim himself testified under oath about items he and his wife had purchased, and explained to the court that he researched values by going to stores and looking online, and had actually "lowballed" his estimates. And he was backed up by the itemized insurance record that showed that the company largely accepted

⁵ The total amount rejected was \$10,191.96.

his estimates, minus depreciation. Ex. 1. This is not a case of speculation.

Gray also points to State v. Awadeh as an example of unsubstantiated estimates. 72 Wn. App. 373, 864 P.2d 965 (1994). But there, the crime was music piracy, and the court set restitution for a trade association based on speculative lost record sales, and for police investigation and expenses based on a conclusory, ballpark figure without itemization. Id. at 379. Here, again, the victim himself testified to actual tangible losses from his home being ransacked and submitted itemization to his insurance company.

Gray proffers Tobin as the benchmark, but Tobin is greatly distinguishable. 132 Wn. App. 161. There, the adult defendant was convicted in a complex, extensive and years-long shellfish-poaching enterprise. The issue was whether a forensic accountant who estimated the value of stolen geoduck had a reasonable, non-speculative basis for the estimates. Id. at 174. The Court of Appeals held that a reasonable basis existed in that situation because the accountant looked at invoices and other records and conducted an extensive investigation. Id. at 175. Tobin did not establish a minimum standard for all restitution cases. Here, the

victim is simply an innocent homeowner whose house was burgled and ransacked. The juvenile court was not obliged to require a massive forensic accounting of Oliver's home, finances and possessions to arrive at reasonable restitution. That would completely frustrate the purpose of the restitution statutes. As our Supreme Court said in affirming the Court of Appeals in Tobin, courts should "not engage in overly technical construction that would permit the defendant to escape from just punishment," because the legislature has given the trial courts "broad powers of restitution." State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007) (review was limited to the inclusion of investigative, administrative, and resurveying costs in the restitution amount).

The better comparison here is to Fellers, where the juvenile court determined restitution for a stolen bike based only on the father's testimony about how much he paid for it. 37 Wn. App. at 619. The court found that the testimony alone, albeit undisputed, provided a reasonable basis to set the amount. Here, Oliver, who bought the merchandise, testified under oath and provided insurance records that largely agreed with his estimates. Oliver's testimony certainly was enough to reach the preponderance standard here.

Gray asserts that the trial court “plainly did not find Mr. Oliver credible.” BOA at 11. But the trial court plainly did: It awarded restitution and expressly found that “the State has carried its burden with respect to the vast majority of these items.” 4RP 73. The court also discussed its reliance on the insurance documentation vis-à-vis Oliver’s credibility. 4RP 59. Alternatively, Gray insists that Oliver’s failure to produce records for some of the items “should have led the court to question [his] veracity with regard to the other stolen items.” BOA at 10. But the court did not, and that was its prerogative. Credibility determinations are for the trier of fact and cannot be reviewed on appeal. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

The trial court weighed substantial evidence in this case, found the burden was met for most items, rejected requests it found lacking in documentary support, and judiciously exercised its broad discretion in setting the restitution amount.

c. The Court Did Not Shift The State’s Burden.

Gray additionally contends that the trial court shifted the burden of proof onto the defendant when it commented that it heard “no controverting evidence from either of the respondents saying we didn’t take this stuff.” BOA at 13; 4RP 73. The argument fails

because the comment addressed the fact that Gray had not contested a causal connection, not the value of the losses, which the State proved.

Where the State meets its burden of substantial credible evidence to support a reasonable basis for the restitution amount, the burden is not shifted. See State v. Cosgaya-Alvarez, 172 Wn. App. 785, 797, 291 P. 3d 939 (2013) (burden not shifted by requiring defense to provide information about interest rates, while the State provided ample documentation of loss). Gray cites State v. Dedonado, but there, the defendant contested the causal connection between an auto-repair invoice and the crime, and the trial court ruled that the defense needed to notify the State in advance. 99 Wn. App. 251, 257, 991 P.2d 1216 (2000) (trial court “improperly imposed that requirement”). But here, Gray is not contesting a causal connection, only the value of the items. The defendant in Cosgaya-Alvarez also relied on Dedonado to claim a shifted burden, and the Court of Appeals specifically found Dedonado inapplicable because the State had met its burden of proof as to the amount. Cosgaya-Alvarez, 172 Wn. App. at 797 (where State provided child-support documents to establish

restitution, “unlike Dedonado, the State carried its burden of proving the amount of restitution”).

Here, the trial court’s comment that Gray and his co-respondent were not “saying we didn’t take this stuff,” addressed the fact that a causal connection was not contested. Gray has conceded on appeal that the court was within its discretion to find a causal connection.⁶ The court’s comment did not shift the burden of proof as to the restitution amount. The State amply met that burden.

d. The Remedy, If Any, Is Remand For A New Restitution Hearing.

Gray lastly contends that if this Court were to find the trial court lacked a reasonable basis for the restitution amount, the remedy is complete vacation of the entire restitution order. However, the proper remedy would be remand for a new restitution order.

Gray cites State v. Dennis for the proposition that vacation without remand is the remedy when the State “has failed to present an adequate factual basis for a restitution demand.” BOA at 14; 101 Wn. App. 223, 229, 6 P.3d 1173 (2000). But in Dennis, the

⁶ “[I]t was within the court’s discretion to conclude that the State proved a causal link between the crime and the loss. However, the court should have obligated Mr. Oliver to prove the cost of repair.” BOA at 12.

issue was that “the State failed to establish the required causal connection.” 101 Wn. App. at 223. Eight years later, our Supreme Court held that where the issue was insufficient evidence of the restitution amount, the remedy was remand to properly determine the amount. State v. Griffith, 164 Wn.2d 960, 967-68, 95 P.3d 506 (2008).

Complete vacation of all restitution would conflict with the clear mandatory language of RCW 13.40.190, which requires restitution be imposed in juvenile cases. See A.M.R., 147 Wn.2d at 96 (juvenile court did not have discretion to award partial restitution based on inability to pay). See also State v. R.G.P., 175 Wn. App. 131, 137 n.6, 302 P.3d 885, review denied, 178 Wn.2d 1020 (2013) (permissive holdings before A.M.R. are “no longer tenable in light of the clear mandate supplied by the A.M.R. court.”).

Should this Court somehow find that the trial court lacked a reasonable basis to determine the amount of restitution, it should remand the case to the trial court to set a new amount.

D. CONCLUSION

For all the foregoing reasons, the State respectfully asks this Court to affirm Gray's restitution order.

DATED this 30th day of July, 2015.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: _____


IAN ITH, WSBA #45250
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorneys for the appellant, Richard Lechich at richard@washapp.org, containing a copy of the Brief of Respondent, in STATE V. EDDIE GRAY, Cause No. 72698-6-I consolidated with 72952-7-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.

U Brame
Name
Done in Seattle, Washington

7/30/15
Date 7/30/15