

FILED
Jul 31, 2015
Court of Appeals
Division I
State of Washington

No. 73025-8-I

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

STATE OF WASHINGTON,

Respondent,

v.

BRUNO M.,

Appellant.

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

BRIEF OF APPELLANT

KATHLEEN A. SHEA
Attorney for Appellant

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

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A. SUMMARY OF ARGUMENT

Bruno M. pled guilty to attempting to elude police. The trial court imposed \$74,948.55 in restitution for damage caused to several vehicles as a result of law enforcement's decision to physically stop the vehicle Bruno was driving by ramming their patrol cars into him. Because Bruno's act of eluding did not directly cause the property damage at issue, the trial court did not have authority to impose restitution and this Court should reverse.

B. ASSIGNMENTS OF ERROR

1. The trial court erred when it imposed restitution in the amount of \$74,948.55 against Bruno M. CP 98-99.

2. To the extent it is deemed a finding of fact, the trial court erred in making its conclusory statement at CP 121 at lines 2-4.

3. To the extent it is deemed a finding of fact, the trial court erred in making its conclusory statement at CP 121 at lines 4-5.

4. To the extent it is deemed a finding of fact, the trial court erred in making its conclusory statement at CP 121 at lines 5-6.

5. To the extent it is deemed a finding of fact, the trial court erred in making its conclusory statement at CP 121 at lines 6-7.

6. The court erred in denying Bruno M.'s motion for reconsideration. CP 121.

C. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

A trial court's order of restitution is authorized by statute only if a causal connection exists between the crime and the loss at issue. Our Supreme Court recently held legal causation is different in criminal law than in tort law, and requires that the defendant directly caused the harm. Is the trial court's order of restitution invalid where law enforcement's decision to ram their patrol cars into Bruno M.'s vehicle, and not Bruno M.'s attempt at eluding, was the direct cause of the damage?

D. STATEMENT OF THE CASE

A Renton police officer was driving his patrol car when he spotted a Mercedes SUV that had been reported stolen. CP

83. When the officer attempted to get close to the vehicle, the SUV sped up and moved away from him. CP 83. After the officer activated his lights and sirens, the SUV accelerated and ran a red light. CP 83. The officer decided to give chase, and multiple officers forcefully rammed their vehicles into the SUV before it was stopped. CP 84-5. At one point, the force of the patrol car colliding with the SUV pushed the SUV into a parked car. CP 85.

The driver of the SUV was identified as a teenager, Bruno M. CP 85. He was charged with one count of attempting to elude a police vehicle and one count of hit and run. CP 6. He pled guilty to the eluding charge and the State dismissed the hit and run charge. CP 65; 9/9/14 RP 5.

The State subsequently sought \$74,948.55 in restitution for the damage to the patrol cars, the SUV Bruno was driving, and the parked car. CP 11; 1/9/15 RP 29. Bruno challenged the trial court's authority to impose restitution because the damage was caused not by Bruno's attempt to elude, but by law enforcement's decision to intentionally and forcefully ram their vehicles into the SUV Bruno was driving. CP 74. Over

Bruno's objections, the trial court found the causal requirement was satisfied and ordered him to pay the full amount requested by the State. CP 98-99.

Bruno filed a motion for reconsideration as to the restitution awarded for the damages to the parked car. CP 102. The trial court denied this motion. CP 113.

E. ARGUMENT

The trial court lacked the authority to impose restitution because Bruno's act of eluding did not cause the damage to the vehicles.

- a. A restitution order is valid only if the costs imposed on the defendant are directly related to the charged crime.

The authority to impose restitution is not an inherent power of the court but is instead derived from statutes. *State v. Gray*, 174 Wn.2d 920, 924, 280 P.3d 1110 (2012). Pursuant to RCW 13.40.190(1)(a), in a juvenile case "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." Thus, a court's order of restitution is authorized by statute only if a causal connection exists between the crime and the loss at issue. *State v. Hiatt*, 154 Wn.2d 560, 565, 115 P.3d 274 (2005).

“[R]estitution may be ordered only for losses incurred as a result of the precise offense charged.” *State v. Woods*, 90 Wn. App. 904, 907, 953 P.2d 834 (1998) (quoting *State v. Miszak*, 69 Wn. App. 426, 428, 848 P.2d 1329 (1993)). It cannot be imposed for the general scheme or acts connected to the charged crime. *Id.* When the costs imposed on the defendant are not directly related to the crime of conviction, this Court has repeatedly reversed. *State v. McCarthy*, 178 Wn. App. 290, 297, 313 P.3d 1247 (2013).

When a respondent challenges the legal basis for an award of restitution, this Court does not defer to the trial court. *Id.* at 296; *see also State v. Oakley*, 158 Wn. App. 544, 552, 242 P.3d 886 (2010) (issue is properly addressed *de novo*); *State v. Tobin*, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007) (the application of an incorrect legal analysis constitutes an abuse of discretion).

- b. This Court should find restitution is not appropriate where the act was not the direct cause of the injury.

The trial court ordered Bruno to pay \$74,948.55 in restitution, relying in part on *Hiatt* to find a sufficient causal connection existed between the crime charged and the property

damage. CP 98, 116. However, although the court in *Hiett* found there was a sufficient causal connection under the facts of that case, the court did not determine whether principles of proximate cause apply in restitution cases. *See Hiett*, 154 Wn.2d at 566 (finding that a sufficient causal connection existed “[w]ithout deciding whether principles of proximate cause or the superseding cause apply in the criminal restitution context”).

Proximate cause is more commonly addressed in tort actions, and “consists of cause in fact and legal causation.” *Hertog, ex rel. S.A.H. v. City of Seattle*, 138 Wn.2d 265, 282, 979 P.2d 400 (1999). “Cause in fact concerns ‘but for’ causation, events the act produced in a direct unbroken sequence which would not have resulted had the act not occurred.” *Id.* In contrast, “[l]egal causation ‘rests on considerations of policy and common sense as to how far the defendant’s responsibility for the consequences of its actions should extend.’” *Id.* at 283 (quoting *Taggart v. State*, 118 Wn.2d 195, 226, 822 P.2d 243 (1992)).

Legal causation is intertwined with the question of duty, and this principle must be adjusted in the criminal context where

the laws serve a different purpose. *See Hertog*, 138 Wn.2d at 284; *State v. Bauer*, 180 Wn.2d 929, 936, 329 P.3d 67 (2014). In *Bauer*, the court determined that “legal cause” in criminal cases is different from, and narrower than, “legal cause” in tort cases. *Id.* at 940. In criminal law, it is typically not sufficient to prove merely that the defendant occasioned the harm. *Id.* at 937. “He must have ‘caused’ it in the strict sense.” *Id.* (internal citation omitted).

While *Bauer* did not involve an order of restitution, its holding suggests that restitution is not appropriate where the act was incapable of “causing injury *directly*.” *Id.* at 939 (emphasis added). Thus, courts should use this standard when determining whether a causal connection exists between a juvenile’s crime and any alleged loss of property.

- c. Bruno’s crime was not the direct cause of the damage to the vehicles.

Bruno was initially charged with one count of attempting to elude a police vehicle and one count of hit and run. CP 6. As part of the plea agreement, the hit and run charge was dismissed. 9/9/14 RP 5. Bruno did not agree to pay for restitution as to the hit and run as part of this agreement. CP 73; *see State v.*

Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008) (the only exception to the causal requirement is where the defendant has expressly agreed to pay restitution for crimes for which he was not convicted).

The trial court imposed restitution for the damage to the vehicle Bruno was driving, the damage to the police vehicles, and the damage to a parked car that occurred when a patrol car pushed the vehicle Bruno was driving into it. CP 98-99. None of this damage was directly caused by Bruno's attempting to elude. The crime of attempting to elude is committed by:

Any driver of a motor vehicle who willfully fails or refuses to immediately bring his or her vehicle to a stop and who drives his or her vehicle in a reckless manner while attempting to elude a pursuing police vehicle, after being given a visual or audible signal to bring the vehicle to a stop.

RCW 46.61.024(1).

The damage to the police vehicles, the parked car, and the vehicle driven by Bruno was not directly caused by Bruno's failure to stop for the police. Instead, this damage was the direct result of law enforcement's decision to pursue Bruno when other motorists and pedestrians were present, and intentionally ram into the SUV Bruno was driving. *See* CP 114-15.

In hit and run cases, this Court has found restitution may not be ordered for damage caused by the accident because the driver's fault in causing the accident is independent of the hit and run charge. *See, e.g., State v. Hartwell*, 38 Wn. App. 135, 141, 684 P.2d 778 (1984) (overruled on other grounds). Similarly, a driver's decision to elude police is independent of an officer's decision to cause damage by ramming into the vehicle. Officers are not required to physically stop vehicles that fail to obey a signal to stop. In fact, Renton police officers are instructed to exercise "[g]ood judgment and common sense" before pursuing a fleeing vehicle. CP 91. They should initiate a pursuit only under certain conditions and should consider several factors when determining whether to engage a vehicle in pursuit, invoke certain tactics, or terminate a pursuit. CP 91-92. These factors include the seriousness of the offense and the safety of the public, both of which weighed against engaging Bruno in a police chase. CP 92.

Law enforcement's decision to pursue Bruno and repeatedly slam into the vehicle, at one point forcing it into a parked car, is the direct cause of the loss of property at issue.

The crime committed by Bruno did not directly cause the loss and the trial court did not have the authority to impose restitution. *See Bauer*, 180 Wn.2d 939. This Court should reverse.

F. CONCLUSION

This Court should reverse and dismiss the order of restitution because the trial court lacked the statutory authority to impose it, as Bruno's actions were not the legal cause of the property damage.

DATED this 31st of July, 2015.

Respectfully submitted,



KATHLEEN A. SHEA (WSBA 42634)
Washington Appellate Project (91052)
Attorneys for Appellant

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 73025-8-I
v.)	
)	
B. M.,)	
)	
Juvenile Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 31ST DAY OF JULY, 2015, 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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KING COUNTY COURTHOUSE		VIA COA PORTAL
516 THIRD AVENUE, W-554		
SEATTLE, WA 98104		

[X] B.M.	(X)	U.S. MAIL
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RENTON, WA 98056	()	AGREED E-SERVICE
		VIA COA PORTAL

SIGNED IN SEATTLE, WASHINGTON THIS 31ST DAY OF JULY, 2015.

X _____ 

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