

FILED
October 23, 2015
Court of Appeals
Division I
State of Washington

NO. 73362-1-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

VIVIAN ONG,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JOHN P. ERLICK

BRIEF OF RESPONDENT

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A. ISSUE

Was the amount of restitution imposed by the trial court supported by substantial evidence?

B. STATEMENT OF THE CASE

1. PROCEDURAL HISTORY

The State charged Vivian Ong with attempted residential burglary, and probable cause was found on August 15, 2014. CP 1, 2. Ong entered a deferred disposition on December 17, 2014. CP 19. On March 26, 2015, the trial court imposed restitution in the amount of \$4,030.67. CP 33. The trial court ordered \$500 to Donna Youngblood and \$3,530.67 to Grange Insurance Association. CP 33. The amount ordered was joint and several with co-respondents: A.S., E.D.; and H.L.

2. SUBSTANTIVE FACTS

According to the certification for determination of probable cause, on May 28, 2014 at 4:04 p.m., a person called 911 to report that four juveniles were opening her neighbor's back gate. CP 1. The neighbor reported that the juveniles kicked the front door several times. CP 1. Police arrived and contacted the four

juveniles. CP 1. Vivian Ong was one of the four juveniles. CP 1. When asked about kicking the front door, all four juveniles denied ever kicking the door. CP 1. Police could not determine if a crime was committed and all four juveniles were released at the scene. CP 1. The homeowner, Donna Youngblood, called police on May 28, 2014 at 5:46 p.m. to report damage to the door frame of her front door, as well as some graffiti sprayed on the back of the house. CP 1. Youngblood reported to police that the doorframe was cracked. CP1. The neighbor identified Ong as one of the two juveniles who did the most kicking. CP 4.

Ong's request for a deferred disposition was granted on December 17, 2014, with a restitution hearing to be scheduled at a later date. CP 19. The court held the first restitution hearing on February 6, 2015. 1RP. The State requested \$5,116.91 in restitution, which included \$500 for Youngblood's insurance deductible. 1RP. The trial court awarded restitution for the graffiti damage, but declined to grant restitution for the damage to a fence. 1RP 40-43. Additionally, the court initially stated there was not sufficient evidence presented that the door itself, as opposed to the doorjamb, was damaged. 1RP 41. Ms. Youngblood did not testify at the first restitution hearing. The court left restitution open and

stated that written estimates from both sides for the replacement of the doorjamb would be accepted. 1RP 1. In sum, the court awarded restitution for damage from the graffiti, \$25 for the doorjamb, and the cost to replace and repair the doorjamb. 1RP 43.

The court held the second restitution hearing on March 26, 2015. 2RP 3. The State requested an amended total restitution amount of \$4,030.67, including \$2,318.16 for the replacement cost of the door. 2RP 52. Ms. Youngblood testified at the restitution hearing that as she unlocked the door to her home the door handle was broke, not broke off, but loose. 2RP 14. Ms. Youngblood testified that "the door frame was all cracked." 2RP 14. Ms. Youngblood testified that she had purchased the door six years prior for a couple thousand dollars. 2RP 17. Ms. Youngblood testified that there was no significant damage to the door prior to the incident. 2RP 19. Ms. Youngblood testified that when she arrived home she could see footprints on the front of the door and the door handle. 2RP 19. Ms. Youngblood described the damage to the doorframe. 2RP 20. Ms. Youngblood testified that there were cracks in the door where the footprints were, but not as much cracking as in the doorjamb. 2RP 31. Ms. Youngblood testified

that the door and the doorjamb were one unit. 2RP 18.

Ms. Youngblood also testified that her neighbor had to glue and clamp her door to make it manageable until the door was replaced.

2RP 15. Ms. Youngblood testified that the door could not be replaced in sections because it is a single unit. 2RP 18. At the time of the second restitution hearing, the replacement door unit had been ordered. 2RP 23-25. The court noted that door may be repairable, but in order for Ms. Youngblood to be made whole she should not have to live with a door that has been clamped and glued together. 2RP 69. The court ruled that based on all the testimony and consideration of all the exhibits, that court was ordering restitution in the total amount \$4,030.67. 2RP 70.

C. ARGUMENT

The amount of the restitution order was supported by a preponderance of the evidence and was causally connected to the crime. In 1977, the Washington State Legislature enacted the Juvenile Justice Act ("JJA") with a number of important purposes in mind, including holding a "juvenile offender accountable for his or her criminal behavior" and providing "restitution to victims of crime." RCW 13.40.010(2)(c) and (h). Guided by these purposes, the

Legislature passed a law requiring courts to order 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). Courts have discretion to determine the amount, terms, and conditions of restitution, including ordering a juvenile offender to make payments over a 10 year period, and potentially 10 more years if the restitution remains outstanding. Id. Moreover, when a juvenile respondent is granted a deferred disposition, "[p]ayment of restitution... shall be a condition of community supervision," RCW 13.40.127(5) (emphasis added).

The authority to impose restitution in a juvenile case is purely statutory. State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). RCW 13.40.190(1) requires the respondent "to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent" and makes all participants in the crime "jointly and severally responsible for the payment of restitution."

Here, it is important to note that the respondent is not alleged to have committed a crime, but has in fact been found guilty by way of deferred disposition for one count of attempted burglary.

"Restitution may be ordered only for losses incurred as a result of the precise offense." State v. Keigan, 120 Wn. App. 604, 607, 86 P.3d 798 (2004). "A restitution award must be based on a causal relationship between the offense charged and proved and the victim's losses or damages." Id. To determine whether there is a causal link, the court must use the "but for" test. Id. at 608. Restitution is also appropriate for any damage that was a foreseeable consequence of the respondent's criminal acts. State v. Tettters, 81 Wn. App. 478, 480, 914 P.2d 784 (1996). But for the respondents' attempting to enter the victim's home unlawfully, the damage would not have occurred. Thus, there is a causal connection between the offense of attempted residential burglary and Ms. Youngblood's damages.

The State has provided sufficient evidence showing the victim's loss as a result of the offense. The State is not required to prove the loss beyond a reasonable doubt or by clear and convincing evidence. State v. Bennett, 63 Wn. App. 530, 821 P.2d 499 (1991). Rather, the State need only prove the damages by a preponderance of the evidence. State v. Griffith, 164 Wn.2d 960, 965, 195 P.2d 506 (2008). The State also does not have to prove the amount of restitution with mathematical certainty.

State v. Fambrough, 66 Wn. App. 223, 831 P.2d 789 (1992). The victim need only present evidence that affords a reasonable basis for establishing the loss and does not subject the trier of fact to mere speculation or conjecture. Bennett, 63 Wn. App. at 535. "Precise determination is not required." Id. In State v. Smith, the court properly determined the amount of loss by relying on the testimony of the victim and his brother, ordering restitution in the amount of \$30,370.00. 33 Wn. App. 791, 798, 658 P.2d 1250 (1983). The court reasoned that the testimony was sufficient to afford a reasonable basis for the amount of loss. Id. Here, too, the evidence presented is enough to establish a loss. The State provided documentation for the cost to replace the door and the victim testified under the penalty of perjury. The appellant's reliance on Griffith, 164 Wn.2d 960, 195 P.3d 506, is misplaced. Griffith pled guilty to possessing \$250-\$1,500 worth of stolen property, not burglary. The court ruled that testimony that Griffith brought stolen items to the coin company did not support the court's finding that Griffith possessed \$11,500 worth of the victim's unrecovered property. Furthermore, Griffith did not agree to pay for the victim's loss in the burglary. Here, the court heard testimony from the victim and saw the actual cost to replace the door.

Ms. Youngblood testified that there was damage to the door and provided documentation for the replacement cost of the door. Ms. Youngblood should not be denied the replacement cost of the door because the cost of a potential repair was not investigated by the insurance company. In State v. Dedonado, 99 Wn. App. 251, 991 P.2d 1216 (2000), the court noted that the causal connection between Dedonado's actions and the damages was an issue of material fact and was disputed. Id. The court stated that an evidentiary hearing was required to determine whether a generator was properly replaced and whether other damage was properly attributed to Dedonado. Id. In Dedonado, the court stated a causal connection is not established simply because a victim or insurer submits proof of expenditures for replacing property stolen or damaged by the person convicted. Here, documentation was provided to the court, and two restitution hearings were conducted prior to restitution being ordered for replacement cost of the door; the court did not just review estimates.

One of the main goals of the JJA is to provide restitution to victims and ensure that victims are made whole for damages caused by the respondent's actions. RCW 13.40.010. The victim

in this case did not ask to be victimized by the respondent and simply seeks to be made whole.

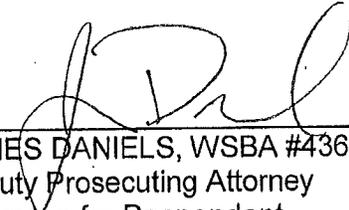
D. CONCLUSION

The State showed a causal connection between the offense and the resulting damages. The State proved damages by a preponderance of the evidence, therefore, the State asks this Court to affirm the restitution order.

DATED this 23rd day of October, 2015.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Mary T. Swift, the attorney for the appellant, containing a copy of the Brief of Respondent, in STATE V. VIVIAN ONG, Cause No. 73362-1-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.


Name _____ Date 10-23-15
Done in Seattle, Washington