

No. 75002-0-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

BRIAN DAVID BEASLEY,

Appellant.

FILED

September 14, 2016
Court of Appeals
Division I
State of Washington

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

OPENING BRIEF OF APPELLANT

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TABLE OF CONTENTS

A. INTRODUCTION 1

B. ASSIGNMENTS OF ERROR 1

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR..... 2

D. STATEMENT OF THE CASE..... 3

1. Factual Background- Vehicle Stolen Containing Ski Lift Ticket3

2. Restitution Hearing – Victim’s REI Shopping Spree 5

E. ARGUMENT 6

1. The court violated the sentencing statute and constitutional due process by ordering restitution without requiring the State to prove by sufficient evidence the connection between the victim’s losses and Mr. Beasley’s actions. 6

a. The sentencing statute required the State to prove the damages that resulted from Mr. Beasley’s criminal act.7

b. The sentencing statute and constitutional due process required the State to present reliable, refutable evidence to prove the actual amount of Mr. Neideigh’s loss. 8

c. The State did not present sufficient evidence to support the restitution amount. 11

d. The restitution order should be vacated. 14

2. The Sixth Amendment bars the court from imposing restitution based on loss that was not found by a jury 15

3. The Washington Constitution guarantees a jury determination of damages 22

F. CONCLUSION..... 23

TABLE OF AUTHORITIES

Washington Supreme Court

<u>Sofie v. Fibreboard Corp.</u> , 112 Wn.2d 636, 771 P.2d 711, <u>amended</u> , 780 P.2d 260 (1989).....	22, 23
<u>State v. Ford</u> , 137 Wn.2d 472, 973 P.2d 452 (1999)	10, 13
<u>State v. Hunley</u> , 175 Wn.2d 901, 287 P.3d 584 (2012)	8, 9
<u>State v. Kinneman</u> , 155 Wn.2d 272, 119 P.3d 350 (2005)	7
<u>State v. Mendoza</u> , 165 Wn.2d 913, 205 P.3d 113 (2009).....	10, 13
<u>State v. Schultz</u> , 138 Wn.2d 638, 980 P.2d 1265 (1999).....	8
<u>State v. Strasburg</u> , 60 Wash. 106, 110 P. 1020 (1910)	22
<u>State v. Strauss</u> , 119 Wn.2d 401, 832 P.2d 78 (1992)	9
<u>State v. Suleiman</u> , 158 Wn.2d 280, 143 P.3d 795 (2006).....	21
<u>State v. Tobin</u> , 161 Wn.2d 517, 166 P.3d 1167 (2007)	7

Washington Court of Appeals

<u>State v. Cosgaya-Alvarez</u> , 172 Wn. App. 785, 291 P.3d 939 (2013)	7
<u>State v. Dedonado</u> , 99 Wn. App. 251, 991 P.2d 1216 (2000)...	9, 12, 13, 14
<u>State v. Dennis</u> , 101 Wn. App. 223, 6 P.3d 1173 (2000).....	12, 14
<u>State v. Edelman</u> , 97 Wn. App. 161, 984 P.2d 421 (1999).....	16
<u>State v. Hotrum</u> , 125 Wn. App. 681, 87 P.3d 766 (2004).....	8
<u>State v. Kisor</u> , 68 Wn. App. 610, 844 P.2d 1038 (1993)	10, 13
<u>State v. Mark</u> , 36 Wn. App. 428, 675 P.2d 1250 (1984)	9

<u>State v. Pollard</u> , 66 Wn. App. 779, 834 P.2d 51 (1992)	8, 9, 10, 13
<u>State v. Serio</u> , 97 Wn. App. 586, 987 P.2d 133 (1999).....	8

United States Supreme Court

<u>Allyene v. United States</u> , __ U.S. __, 133 S.Ct. 215, 186 L.Ed.2d 314 (2013) 17	
<u>Apprendi v. New Jersey</u> , 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000).....	15, 16, 20
<u>Blakely v. Washington</u> , 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004).....	15, 18, 20, 21
<u>Booker v. United States</u> , 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005).....	17, 19
<u>Cummings v. Missouri</u> , 71 U.S. (4 Wall.) 277, 18 L.Ed. 356 (1866).....	22
<u>Oregon v. Ice</u> , 555 U.S. 160, 129 S. Ct. 711, 172 L. Ed. 2d 51 (2009)....	15
<u>Pasquantino v. United States</u> , 544 U.S. 349, 125 S.Ct. 1766, 161 L.Ed.2d 619 (2005).....	16
<u>Southern Union Co. v. United States</u> , __ U.S. __, 132 S.Ct. 2344, 183 L.Ed. 2d 318 (2012).....	15, 16, 21
<u>Townsend v. Burke</u> , 334 U.S. 736, 68 S.Ct. 1252, 92 L.Ed. 1690 (1948) .	9

Washington Constitution

Article I, section 3.....	9
Article I, section 21.....	22, 23

United States Constitution

U.S. Const. Amend. VI.....	15, 17
U.S. Const. Amend. XIV	9

Statutes

RCW 9.94A.753..... 7, 13, 17, 19, 23

A. INTRODUCTION

In January 2015, Brian Beasley stole an unlocked Ford Explorer from a driveway in Kirkland. The owner, Robert Neideigh, immediately reported the car stolen and filled out a police report at his home. The owner mentioned no loss of personal property in his police report, other than a lift ticket from a local ski resort, which he stored in his glove compartment, along with an extra ignition key. Neither did the owner mention any missing property when the vehicle was recovered a few weeks later. Mr. Beasley later pled guilty to possession of a stolen motor vehicle.

More than a year later, the vehicle owner claimed for the first time that he had left almost \$3,000 in high-end sporting equipment in his unlocked vehicle, and demanded full restitution. Following a telephonic hearing, the trial court examined the owner's estimates from an REI catalogue, rather than receipts, and awarded the owner \$2,968.25 in restitution. Mr. Beasley is still stunned.

B. ASSIGNMENTS OF ERROR

1. The court erroneously ordered restitution despite insufficient evidence that the alleged losses were causally connected to the incident as required by statute.

2. The court improperly imposed restitution, contrary to the requirements of due process under the Fourteenth Amendment and article I, section 3.

3. Mr. Beasley had a right to a jury determination of disputed restitution under the Sixth Amendment and article I, section 21.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. If the defendant disputes the amount of restitution requested in a criminal case, the State must present substantial evidence to prove the victim's actual damages. This evidence must be reliable and refutable, to comport with due process. The State presented insufficient evidence to prove the losses claimed by the complainant -- which differed substantially from those claimed a year earlier -- were caused by the actions of Mr. Beasley. Was restitution awarded in violation of the statute, as well as in violation of constitutional due process?

2. Does the Sixth Amendment right to a jury determination of facts essential to punishment, as well as the Washington Constitution's "inviolable right" to a jury trial on damages, require contested restitution be determined by a jury?

D. STATEMENT OF THE CASE

Brian Beasley pled guilty to two counts of possession of a stolen motor vehicle, in exchange for a standard range sentence on August 13, 2015. CP 20-54, 55-62; RP 6-14.¹ Under the terms of his plea agreement, Mr. Beasley agreed to pay restitution, in an amount “to be determined.” RP 10.

1. Factual Background- Vehicle Stolen Containing Ski Lift Ticket

When the Ford Explorer was stolen on January 7, 2015, the owner, Robert Neideigh, promptly called the Kirkland Police Department. CP 73-77 (Police Report). Officer Christenson interviewed Mr. Neideigh at his home. Id. at 76; RP 48. Mr. Neideigh told the officer he typically left the car unlocked; he also stated that he “leaves a spare key in the glove box.” CP 76.

On the section of the police report called “vehicles as property,” the stolen car is listed and described -- a 2012 Ford Explorer. CP 74. On the section of the police report called “general property,” the only item claimed by Mr. Neideigh is a document -- one Steven’s Pass Season Pass. CP 75. In the narrative portion of the report, Officer Christenson again noted that the ski pass was the only item of personal

¹ Only one car, the Ford Explorer, is at issue on appeal. CP 73-77.

property in the car, and that Mr. Neideigh stated that he would call to have the pass cancelled. CP 76.

The officer wrote that Mr. Neideigh had his statement read back to him, that he provided his signature, and that the officer cautioned Mr. Neideigh to lock his vehicle in the future, and “not to leave keys or any other belongings inside the vehicle.” CP 76-77. Mr. Neideigh did not mention anything to the officer about losing any other belongings, beyond the lift ticket.

Three weeks later, on January 29, 2015, the vehicle was recovered. CP 36-37. Mr. Neideigh was again personally contacted by Kirkland officers. RP 48. He again failed to report or mention any personal property that might have been taken from inside his car. RP 59. Nor did he make an insurance claim for any lost property or file a subsequent police report for stolen property. Id.

On August 13, 2015, Mr. Beasley pled guilty to possession of Mr. Neideigh’s stolen Ford Explorer. RP 6-14; CP 20-54.

Six months later, on February 24, 2016, the State produced an email transmission, purportedly from Mr. Neideigh. RP 23-24; CP 81-87 (email from August 21, 2015). For the first time, the State claimed that Mr. Neideigh stated he lost high-end sporting equipment, clothing,

electronics, and other personal items, which were allegedly stored inside the unlocked vehicle. RP 23-24. The claimed replacement value of these items was estimated to be \$2,968.25. RP 82-87 (including attached pages of online REI catalogue).

Mr. Beasley objected to this restitution claim, made one year following the car theft. RP 22-23. The court agreed it was problematic that the State did not seem to “connect the dots” between the stolen vehicle and this email purportedly from Mr. Neideigh, claiming almost \$3,000 in missing luxury items. RP 27. This was particularly troubling, considering the contrast with Mr. Neideigh’s original police report, as the court noted, where “the only thing that was noted as being missing was a Stevens Pass lift ticket[.]” RP 24.

2. Restitution Hearing – Victim’s REI Shopping Spree

The court permitted the State to continue the restitution hearing, in order to locate Mr. Neideigh. RP 27. On March 3, 2016, Mr. Neideigh did not appear for the continued hearing. The State argued it need not produce Mr. Neideigh to testify in person, maintaining the rules of evidence do not apply at a post-verdict hearing. RP 33.

Mr. Beasley argued he had a due process right to an evidentiary hearing and objected to Mr. Neideigh’s testimony being taken

telephonically without a showing of unavailability. RP 39-40. The court permitted Mr. Neideigh to testify telephonically – over objection -- at the restitution hearing on March 3, 2016, where he stated under oath that the sporting equipment listed in his email had all been in his unlocked car on the night it was stolen. RP 45-60. He also estimated the age of each item and where he had obtained it. RP 51-57. Although Mr. Neideigh alleged that several of the items had been purchased online in the year before the theft, the State did not produce any receipts or other proof of purchase. RP 61.

Following the restitution hearing, the court found by a preponderance of the evidence that the items listed “were in fact taken out of the car,” and “that it’s reasonable to provide replacement value.” RP 66-67. Mr. Beasley objected, and now appeals from the order setting restitution in the amount of \$2,968.25. CP 78, 88-89; RP 67.

E. ARGUMENT

- 1. The court violated the sentencing statute and constitutional due process by ordering restitution without requiring the State to prove by sufficient evidence the connection between the victim’s losses and Mr. Beasley’s actions.**

When a defendant disputes the amount of restitution requested by the State, the court must require the State to present substantial

evidence to prove its allegations. Due process requires that the evidence be reliable and refutable; not only must the court rely on the State's representations, but the accused has relied on the facts stipulated to in the police reports, before entering a plea and agreeing to pay restitution. RP 9-13. Here, Mr. Beasley disputed the State's allegation that Mr. Neideigh should be compensated for personal property that he belatedly claimed was left in his unlocked car. Because the restitution award rests on insufficient evidence, it must be reversed.

a. The sentencing statute required the State to prove the damages that resulted from Mr. Beasley's criminal act.

The court's authority to impose restitution is statutory, and is found in the Sentencing Reform Act. State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007); RCW 9.94A.753. Restitution is meant to be both punitive and compensatory. State v. Cosgaya-Alvarez, 172 Wn. App. 785, 790-91, 291 P.3d 939 (2013); State v. Kinneman, 155 Wn.2d 272, 279-80, 119 P.3d 350 (2005).

Restitution is a criminal sanction that is "strongly punitive" in its purpose. Kinneman, 155 Wn.2d at 280. It is part of the sentence that may not be imposed absent affording the accused the fundamental

right to due process of law. State v. Hotrum, 125 Wn. App. 681, 683, 87 P.3d 766 (2004).

Determining the accurate sentence to impose, including restitution, may not be based on mere assertions or unproved allegations. See State v. Hunley, 175 Wn.2d 901, 910, 287 P.3d 584 (2012). Because restitution is part of the “quantum of punishment,” the same due process rights attach as to other contested parts of punishment, including being proven to the correct legal standard. State v. Schultz, 138 Wn.2d 638, 643-44, 980 P.2d 1265 (1999); State v. Serio, 97 Wn. App. 586, 987 P.2d 133 (1999).

Here, Mr. Beasley disputed the causation between the \$2,968.25 in damages that the State sought to collect on behalf of Mr. Neideigh, and the car theft committed by Mr. Beasley. RP 27-28. Thus, the State was required to prove that amount by a preponderance of the evidence. Tobin, 161 Wn.2d at 524.

b. The sentencing statute and constitutional due process required the State to present reliable, refutable evidence to prove the actual amount of Mr. Neideigh’s loss.

Setting the restitution amount is an integral part of the sentencing proceeding that must be performed with the same care and deliberation as other aspects of the sentencing decision. State v.

Pollard, 66 Wn. App. 779, 784-85, 834 P.2d 51 (1992). Evidence admitted at a sentencing hearing must meet due process requirements, such as providing the defendant an opportunity to refute the evidence presented; the evidence must also be reliable. State v. Strauss, 119 Wn.2d 401, 418-19, 832 P.2d 78 (1992) (citing Townsend v. Burke, 334 U.S. 736, 741, 68 S.Ct. 1252, 92 L.Ed. 1690 (1948)); see also Hunley, 175 Wn.2d at 910.

The amount of restitution awarded must be based upon sufficient evidence. State v. Dedonado, 99 Wn. App. 251, 256, 991 P.2d 1216 (2000). While the claimed loss need not be established with specific accuracy, evidence is sufficient if it affords a reasonable basis for estimating loss. Id. “Although the Rules of Evidence do not apply at restitution hearings, the evidence presented to the trial judge must nevertheless be sufficient to support a finding of restitution in the amount ordered.” Pollard, 66 Wn. App. at 784.

In addition, restitution proceedings must comply with principles of constitutional due process. Pollard, 66 Wn. App. 779, 784-85; Const. art. I, § 3; U.S. Const. amend. XIV. The Due Process Clause places the burden on the State to ensure that the record before the court is adequate to support a court’s sentencing decision. State v. Mendoza,

165 Wn.2d 913, 920, 205 P.3d 113 (2009). Due process requires that the court's decision be based upon information bearing "some minimal indicium of reliability *beyond mere allegation*." Id. (internal quotation marks and citations omitted). A defendant may not be sentenced on the basis of information that is false, lacks minimum indicia of reliability, or is unsupported by the record. State v. Ford, 137 Wn.2d 472, 481, 973 P.2d 452 (1999). Any action taken by the sentencing judge that fails to comport with due process requirements is constitutionally impermissible. Id.

The Due Process Clause requires the court's restitution award be based upon evidence that is reliable and refutable. Pollard, 66 Wn. App. at 784-85. If the State relies upon hearsay statements, the record must be adequate to provide the defendant with a sufficient basis to rebut the State's evidence. State v. Kisor, 68 Wn. App. 610, 620, 844 P.2d 1038 (1993). By the same token, "the record must permit a reviewing court to determine exactly what figure is established by the evidence." Pollard, 66 Wn. App. at 785.

These basic principles of fairness were violated in this case because the State did not present sufficient reliable and refutable evidence to prove the actual amount of loss.

c. *The State did not present sufficient evidence to support the restitution amount.*

According to the above well-established principles, the State was required to present sufficient reliable evidence to prove the amount in personal property Mr. Neideigh actually lost as a result of the theft of his vehicle.

At best, the State's evidence was inconsistent as to the restitution award; at worst, it was wildly contradictory. Mr. Neideigh could not adequately explain his failure to inform Kirkland Police Officer Christenson of his thousands of dollars of allegedly missing equipment in January 2015 when he filed his police report. RP 45-46. He first testified that he never even personally spoke to a police officer. RP 45-46. When confronted with undeniable evidence that the officer came to his home, Mr. Neideigh could only say, "Oh my gosh – oh yeah, yeah – if they say so." RP 48. He finally admitted to meeting with an officer twice – and neither time did he mention that he was missing \$2,968.25 in sports and electronics equipment. RP 48. Mr. Neideigh never called the police precinct, never filed a follow-up complaint, and never filed an insurance claim. *Id.* at 59. A year later, he suddenly sought restitution for a laundry list of luxury items with an

REI shopping list attached, rather than receipts, to prove ownership.

CP 79-87.

This required in-person testimony at an evidentiary hearing, to permit adequate cross-examination and confrontation. See Dedonado, 99 Wn. App. 256-57 (a causal connection is not established simply by submitting proof of expenditures); see also State v. Dennis, 101 Wn. App. 223, 227, 6 P.3d 1173 (2000) (summary of expenses is insufficient to show causal connection).

The State's evidence was insufficient, because it provided Mr. Beasley insufficient opportunity to refute, rebut, or confront it. The State failed to produce actual receipts, invoices, or any other corroborative evidence to support the allegations regarding the amount of loss, or that these goods were actually in his vehicle at the time it was stolen. CP 79-87. The State also failed to sufficiently connect the six pages from Mr. Neideigh's email, including the REI shopping list, to the event on January 7, 2015, or to show how the purchase of any of these new luxury goods would be necessitated by Mr. Beasley's actions.

The State's evidence was also insufficient because it consisted merely of telephonic testimony, with no indication the witness was

unavailable. RP 39 (citing CrR 43). This provided Mr. Beasley insufficient opportunity for confrontation, to which he is entitled. See, e.g., Pollard, 66 Wn. App. at 784-85. There was also insufficient evidence of actual ownership, such as receipts or invoices, despite the fact that Mr. Neideigh testified to most of the purchases being recently made from online vendors. RP 51-57.

As discussed, it is the State's burden to prove the amount of restitution, and that it was causally related to the defendant's actions. E.g., Dedonado, 99 Wn. App. at 256; Tobin, 161 Wn.2d at 524; RCW 9.94A.753. For a court to impose restitution without requiring the State to present sufficient evidence to support the allegations, or offering the defense sufficient opportunity to confront them, is a violation of constitutional due process. Mendoza, 165 Wn.2d at 920; Ford, 137 Wn.2d at 481; Pollard, 66 Wn. App. at 784-85; Kisor, 68 Wn. App. at 620; Dedonado, 99 Wn. App. at 256-57 (also holding the State must show the insurer did not pay for items of greater or lesser value, but must show the actual loss).

In Dedonado, this Court reversed, where a crime victim submitted proof of expenditures for replacement, noting: “[s]uch expenditures may be for items of substantially greater or lesser value

than the actual loss.” 99 Wn. App. at 257. Although it is not conceded the victim here suffered any loss whatsoever, beyond his originally-claimed ski pass, this Court should hold, as it did in Dedonado, that the evidence was insufficient to prove causation, or amount of loss. RP 61-62 (court observes the State failed to produce receipts or invoices, despite the fact that Neideigh testified many items were purchased online during past two years).

d. The restitution order should be vacated.

When the record is inadequate to support a restitution award, the Court must vacate the restitution order. Dedonado, 99 Wn. App. at 257; Dennis, 101 Wn. App. at 229 (noting that if the State has failed to produce sufficient evidence to support a restitution award within the 180-day time period after sentencing, crime victims may pursue civil remedies against offenders). In Dennis, this Court noted, “the State must not be given a further opportunity to carry its burden of proof after it fails to do so following a specific objection.” 101 Wn. App. at 229.

Because the record is inadequate to sustain the restitution award, the order should be vacated.

2. The Sixth Amendment bars the court from imposing restitution based on loss that was not found by a jury.

The Sixth Amendment's right to a jury guarantees the right to have a jury find every fact essential to punishment beyond a reasonable doubt. U.S. Const. amend. VI; Apprendi v. New Jersey, 530 U.S. 466, 476, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); Blakely v. Washington, 542 U.S. 296, 298, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004).

It is unconstitutional for a legislature to remove from the jury the assessment of facts that increase the prescribed range of penalties to which a criminal defendant is exposed. It is equally clear that such facts must be established by proof beyond a reasonable doubt.

Apprendi, 530 U.S. at 490 (internal citations omitted). This rule preserves the "historic jury function" of "determining whether the prosecution has proved each element of an offense beyond a reasonable doubt." Oregon v. Ice, 555 U.S. 160, 163, 129 S.Ct. 711, 172 L.Ed.2d 51 (2009). Concluding the historical function of the jury included determining the value of a financial penalty or fine, the Supreme Court has recently made clear that criminal fines are subject to the rule of Apprendi. Southern Union Co. v. United States, __ U.S. __, 132 S.Ct. 2344, 2354, 183 L.Ed.2d 318 (2012).

Restitution is punishment imposed for a conviction. Kinneman, 155 Wn.2d at 280; see also Pasquantino v. United States, 544 U.S. 349, 365, 125 S.Ct. 1766, 161 L.Ed.2d 619 (2005) (“The purpose of awarding restitution in this action is not to collect a foreign tax, but to mete out appropriate criminal punishment for that conduct”); Edelman, 97 Wn. App. at 166 (“restitution is part of an offender’s sentence and is primarily punitive in nature”).

In Southern Union, the defendant corporation was subject to a \$50,000 fine for each day it was in violation of the Resource Conservation and Recovery Act. 132 S.Ct. at 2349. The defendant argued that imposition of anything more than \$50,000, one day’s fine, required a jury finding of the duration of the violation. Id. The Supreme Court agreed. Id. at 2357. In doing so, the Court rejected any effort to distinguish between the punishment of incarceration and financial punishments. Id. at 2352-53. The Court noted the “core concern” of Apprendi is the reservation to the jury of “the determination of facts that warrant punishment.” Id. at 2350 (citing Ice, 555 U.S. at 170). “That concern applies whether the sentence is a criminal fine, or imprisonment or death.” Southern Union, 132 S. Ct. at 2350. The Court specifically recognized Apprendi applies where the

punishment is based upon “the amount of the defendant’s gain or the victim’s loss.” Southern Union, 132 S. Ct. at 2350-51. That is precisely how restitution is determined under RCW 9.94A.753.

The Supreme Court held in Kinneman that restitution did not trigger the Sixth Amendment’s protections. 155 Wn.2d at 282. It reasoned that because the statute does not set a maximum amount, even though restitution is a mandatory part of punishment under RCW 9.94A.753, the court does not exceed the statutory maximum when it imposes restitution. Id. It found RCW 9.94.753 was “more like the advisory Federal Sentencing Guidelines after Booker v. United States, 543 U.S. 220, 245, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005).” Id. at 281.

Alleyne v. United States, _ U.S. _, 133 S.Ct. 2151, 2160, 186 L.Ed.2d 314 (2013) undermines Kinneman’s reasoning. “A fact increasing either end of the range produces a new penalty and constitutes an ingredient of the offense” that must be proved beyond a reasonable doubt. Id. Alleyne overturned prior cases that had limited the reasoning of Apprendi to factual questions that increase the statutory maximum and not those that simply raise the minimum. Id. at 2158. The Kinneman Court focused on the notion that no jury finding would be required unless restitution exceeded the maximum allowed by

statute, without regard to the increase in minimum punishment triggered by restitution. Alleyne holds that “[a] fact that increases a sentencing floor, thus, forms an essential ingredient of the offense” that must be proven as an element of the offense. Id. at 2161.

Kinneman also reasoned that a judge has discretion in determining the amount of restitution, but the judge has no discretion to omit restitution. 155 Wn.2d at 282. Nothing in the statute would permit a judge to impose anything less than the actual damages proved in a nonextraordinary case.

A judge’s discretion to decline to impose restitution in “extraordinary circumstances” is irrelevant to the inquiry. There is no published case explaining what “extraordinary circumstances” might mean. The SRA affords judges the ability to impose a sentence below the standard range based upon mitigating circumstances without a jury finding. But the discretion to depart downward does not change the mandatory requirement of a jury finding when additional facts are alleged as a basis for an upward departure, as made plain by Blakely. The discretion to impose a lesser sentence does not determine whether the Sixth Amendment applies to facts which increase the sentence.

In addition, when Booker concluded the federal guidelines were advisory, it did not mean a court had discretion in limited cases to deviate from an otherwise required sentence, or that certain provisions afforded courts discretion within the guidelines. See Booker, 543 U.S. at 245; Kinneman, 155 Wn.2d at 281. Instead, what the Court meant by advisory was that the sentencing court was not bound by the statute in any manner. Booker, 543 U.S. at 245. That is not the case with RCW 9.94A.753.

RCW 9.94A.753 requires restitution be imposed in all but the undefined “extraordinary circumstances.” Indeed, in any case in which the victim receives benefits from the crime victims’ compensation fund the trial court has no discretion at all and must impose restitution. RCW 9.94A.753(7). The SRA’s mandate of restitution is not “advisory” but rather mandatory, and creates a mandatory minimum amount based on factual findings made by a judge and explicitly tied to the particular factual findings the judge is required to make. See Southern Union, 132 S.Ct. at 2349. Thus restitution in Washington resembles criminal fines in the federal sentencing scheme.

Kinneman erroneously concluded that the absence of a maximum in RCW 9.94A.753 avoids any Sixth Amendment

implications. Restitution is permissible only if the State proves “easily ascertainable damages for injury to or loss of property” by a preponderance of the evidence. Hughes, 154 Wn.2d at 154. To use the lexicon of Apprendi, the “maximum” permitted by RCW 9.94A.753 is \$0 unless there is a determination of “easily ascertainable damages.” Moreover, the statute sets an additional cap when it provides “restitution shall not exceed double the amount of the offender’s gain or the victim’s loss from the commission of the crime.” RCW 9.94A.753(3).

Whether the judge's authority to impose an enhanced sentence depends on finding a specified fact (as in *Apprendi*), one of several specified facts (as in *Ring [v. Arizona*, 536 U.S. 584 (2002)], or any aggravating fact (as here), it remains the case that the jury's verdict alone does not authorize the sentence. The judge acquires that authority only upon finding some additional fact.

Blakely, 542 U.S. at 305. The fact that the State bears the burden of proving the amount of restitution illustrates that a court may not impose any amount absent an additional factual determination. Because that factual determination results in an increase in punishment it must be made by the jury.

Before a court may impose any amount of restitution, the Sixth and Fourteenth Amendments require the State prove damages resulting

from the loss or injury to a jury beyond a reasonable doubt. Southern Union, 132 S.Ct. at 2350-51.

A jury finding is not necessary where a defendant pleads guilty and stipulates to the relevant facts. Blakely, 542 U.S. at 310; State v. Suleiman, 158 Wn.2d 280, 289, 143 P.3d 795 (2006). Such a stipulation must include the factual basis for the additional punishment and stipulate that record supports such a determination. Suleiman, 158 Wn.2d at 292. Here, Mr. Beasley pled guilty to possession of a stolen motor vehicle, including the lost personal property alleged by the complainant in the police report. CP 55-62. The plea does not include any specific value of the victim's loss, although at the time of the plea, the victim had mentioned only the missing ski lift ticket. CP 73-77. Mr. Beasley agreed to pay restitution in an amount to be determined, but he did not stipulate to other losses incurred or waive his right to a jury trial under Blakely. Suleiman, 158 Wn.2d at 289.

Mr. Beasley did not waive his right to a jury determination of damages, and the stipulated facts to which he pled did not extend to such unstipulated and unknown damages.

3. The Washington Constitution guarantees a jury determination of damages.

Article I, section 21 of the Washington Constitution provides:

The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

The assurance that the right “shall remain inviolate” requires a jury determination of damages.

Washington has consistently looked to the jury to determine damages as a factual issue, especially in the area of noneconomic damages. This jury function receives constitutional protection from article 1, section 21.

Sofie v. Fibreboard Corp., 112 Wn.2d 636, 648, 771 P.2d 711, amended, 780 P.2d 260 (1989). “The constitution deals with substance, not shadows. Its inhibition was leveled at the thing, not the name.” State v. Strasburg, 60 Wash. 106, 116, 110 P. 1020 (1910) (quoting Cummings v. Missouri, 71 U.S. (4 Wall.) 277, 325, 18 L. Ed. 356 (1866)). “In other words, a constitutional protection cannot be bypassed by allowing it to exist in form but letting it have no effect in function.” Sofie, 112 Wn.2d at 660. Thus, the Sofie Court reasoned the jury’s function as fact finder could not be divorced from the

ultimate remedy provided. “The jury’s province includes determining damages, this determination must affect the remedy. Otherwise, the constitutional protection is all shadow and no substance.” Id. at 661.

In Sofie, the Court held the Legislature could not remove that traditional function from the jury by means of a statute that capped noneconomic damages. Similarly, nothing permits the legislative effort to remove this damage-finding function from the jury simply by terming such damages restitution. Restitution is limited to damages causally connected to the offense. RCW 9.94A.753. The damages at issue are no different from the damages at issue in Sofie, the value of the loss suffered as a result of the acts of another. To preserve “inviolable” the right to a jury trial, Article I, section 21 must afford a right to a jury determination of such damages.

If Mr. Beasley’s restitution order is not vacated due to insufficient evidence, he is entitled to a new hearing at which he has the right to a jury trial and the State must prove the restitution requested beyond a reasonable doubt.

F. CONCLUSION

Because the State did not present sufficient evidence to prove the amount of restitution, the restitution order must be reversed.

Alternatively, Mr. Beasley is entitled to a jury trial on the alleged personal property losses.

Respectfully submitted this 14th day of September, 2016.

s/ Jan Trasen

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Washington Appellate Project - 91052
Attorneys for Appellant

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 75002-0-I
)	
BRIAN BEASLEY,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 14TH DAY OF SEPTEMBER, 2016, 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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516 THIRD AVENUE, W-554		
SEATTLE, WA 98104		
[X] BRIAN BEASLEY	()	U.S. MAIL
(NO CURRENT ADDRESS)	()	HAND DELIVERY
C/O COUNSEL FOR APPELLANT	(X)	RETAINED FOR
WASHINGTON APPELLATE PROJECT		MAILING ONCE
		ADDRESS OBTAINED

SIGNED IN SEATTLE, WASHINGTON THIS 14TH DAY OF SEPTEMBER, 2016.

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