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Division I
State of Washington

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WASHINGTON STATE
SUPREME COURT

Supreme Court No.:
Court of Appeals No.: 73025-8-I

92876.2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BRUNO M.,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER AND THE DECISION BELOW

Bruno M. requests this Court grant review pursuant to RAP 13.4(b) of the decision of the Court of Appeals, Division One, in *State v. Bruno M.*, No. 73025-8-I, filed January 19, 2016. A copy of the opinion is attached as Appendix A.

B. ISSUE PRESENTED FOR REVIEW

In *State v. Bauer*, this Court held that legal causation is defined more narrowly in the criminal context than in tort law, and requires that the defendant directly caused the harm. The Court of Appeals rejected Bruno M.'s argument that the analysis in *Bauer* applies when determining whether a causal connection exists between the crime and the loss at issue when considering the State's request for restitution. Where the Court of Appeals' holding contravenes this Court's decision in *Bauer*, and raises an issue of substantial public interest, should this Court grant review? RAP 13.4(b)(1), (4).

C. 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. The Court of Appeals affirmed the trial court's order of restitution. Slip Op. at 9.

D. ARGUMENT IN FAVOR OF GRANTING REVIEW

This Court should grant review because the Court of Appeals' opinion is contrary to this Court's decision in *State v. Bauer* and raises an issue of substantial public interest.

- a. Under *State v. Bauer*, restitution is not appropriate where the act was not the direct cause of the injury.

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." 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. *State v. Hiatt*, 154 Wn.2d 560, 565, 115 P.3d 274 (2005).

The trial court ordered Bruno to pay \$74,948.55 in restitution, relying in part on this Court's decision in *Hiett* to find a sufficient causal connection existed between the crime charged and the property damage. CP 98, 116. However, although in *Hiett* the Court found there was a sufficient causal connection under the facts of that case, it 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”).

Recently, this Court addressed proximate cause in the criminal context in *State v. Bauer*, finding a defendant must be held to be both the actual cause and the legal, or proximate, cause of the result. 180 Wn.2d 929, 935, 329 P.3d 67 (2014). “Cause in fact” requires that there be a physical connection between the act and the jury. *Id.* at 936 (citing *State v. Dennison*, 115 Wn.2d 609, 624, 801 P.2d 193 (1990)). Legal causation, on the other hand, “involves a determination of whether liability *should* attach as a matter of law given the

existence of cause in fact.” *Bauer*, 180 Wn.2d at 936 (internal citations omitted) (emphasis original).

Because legal causation is intertwined with the question of duty, this principle must be adjusted in the criminal context where the laws serve a different purpose. *See Hertog*, 138 Wn.2d at 284; *Bauer*, 180 Wn.2d at 936. In *Bauer*, this 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).

In his opening brief, Bruno M. explained that because he did not directly cause the damage to the vehicles, the trial court did not have the authority to order restitution. However, the Court of Appeals rejected this argument. Slip Op. at 4, n. 15. It found such reliance was misplaced because *Bauer* did not involve an order of restitution. Slip Op. at 4, n. 15.

This distinction was made an error. 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). A court must therefore should use this standard when determining whether a causal connection exists between a juvenile’s crime and any alleged loss of property.

- b. The trial court did not have the authority to order restitution where Bruno’s crime was not the direct cause of the damage to the vehicles.

Applying the standard in *Bauer*, reversal of the restitution order is required. 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.

This Court should accept review to address whether *Bauer* applies when considering a restitution order and if so, whether the trial court had authority to impose restitution in this matter.

E. CONCLUSION

This Court should grant review of the Court of Appeals opinion affirming the order of restitution.

DATED this 18th day of February, 2016.

Respectfully submitted,



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APPENDIX A

COURT OF APPEALS, DIVISION I OPINION

January 19, 2016

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

STATE OF WASHINGTON,)
) No. 73025-8-1
 Respondent,)
)
 v.)
)
 BRUNO MOLINA,) UNPUBLISHED OPINION
)
 Appellant.) FILED: January 19, 2016

2016 JAN 19 AM 8:41
COURT OF APPEALS
STATE OF WASHINGTON

VERELLEN, A.C.J. — A trial court may order restitution if the State proves that the victim's "loss or damage" would not have occurred "but for" the crime.¹ "Washington does not require proof of proximate cause as that term is used in tort law."² Bruno Molina pleaded guilty to one count of attempting to elude police vehicles. The trial court ordered restitution for "damage" to several patrol cars, a parked car, and a stolen car driven by Molina after he led police officers on a high-speed chase. Had Molina not attempted to elude police vehicles, officers would not have rammed the stolen car that in turn collided with a parked car. We conclude Molina's conduct in attempting to elude police vehicles was a "but for" cause of the damages.

We affirm the trial court's restitution order.

¹ RCW 13.40.190(1)(a).
² State v. Harris, 181 Wn. App. 969, 971, 327 P.3d 1276 (2014).

FACTS

The material facts are undisputed. When a police officer saw Molina driving a stolen car, the officer activated his overhead lights and siren. Molina sped away. He exceeded the speed limit, ran red lights and stop signs, and drove into oncoming traffic. In an effort to disable Molina's car, an officer rammed Molina's car and caused it to momentarily stop. Molina regained control and sped away.

Multiple officers joined the pursuit. An officer rear-ended Molina's car, causing it to hit several parked cars. Molina regained control and sped away. Another officer slammed into Molina's car but was unable to stop him. Finally, an officer disabled Molina's car by ramming into it.

The State charged Molina with one count of attempting to elude a police vehicle and one count of hit and run. Molina pleaded guilty to attempting to elude a police vehicle, and the State dismissed the hit and run charge. The State sought restitution for damages caused during the police pursuit. Over defense objection, the trial court imposed restitution of \$74,948.55 for damages to three patrol cars, the stolen car, and one parked car. The trial court denied Molina's motion for reconsideration.

Molina appeals the order of restitution.

ANALYSIS

Molina challenges the trial court's restitution order. He contends he did not directly cause any loss or damage to property as a result of his conviction for attempting to elude a police vehicle. We disagree.

We review a restitution order for abuse of discretion.³ A trial court abuses its discretion if its restitution order is not authorized by statute.⁴

A trial court's authority to impose restitution is statutory.⁵ Restitution applies if a crime results in any "loss or damage" to property.⁶ Restitution is allowed only for property losses or damages that are causally connected to the crime for which the defendant is convicted.⁷ "Losses are causally connected if, but for the charged crime, the victim would not have incurred the loss."⁸

A defendant can be held liable for losses resulting from charged criminal acts, even if the offense of conviction does not require or take into account those losses.⁹ State v. Hielt is instructive.¹⁰ There, after two juveniles jumped from a stolen car, the driver and another passenger crashed into a truck and a storefront. The three passengers were convicted of taking a motor vehicle without permission. The juveniles who jumped, along with the driver and the passenger who remained in the car, were ordered to pay restitution for damages resulting from the crash.

³ State v. Landrum, 66 Wn. App. 791, 795, 832 P.2d 1359 (1992).

⁴ State v. Horner, 53 Wn. App. 806, 807, 770 P.2d 1056 (1989).

⁵ State v. Deskins, 180 Wn.2d 68, 81, 322 P.3d 780 (2014).

⁶ RCW 13.40.190(1)(a).

⁷ State v. Griffith, 164 Wn.2d 960, 965-66, 195 P.3d 506 (2008).

⁸ Id. at 966.

⁹ See, e.g., State v. Thomas, 138 Wn. App. 78, 83, 155 P.3d 998 (2007) (defendant convicted of driving under the influence, but acquitted of vehicular assault, was properly ordered to pay restitution for passenger's injuries); Landrum, 66 Wn. App. at 799-80 (restitution for victim's sex abuse counseling was proper even though defendants pleaded to lesser charges of fourth degree assault).

¹⁰ 154 Wn.2d 560, 115 P.3d 274 (2005).

The Supreme Court affirmed the restitution order. The court applied a “but for” test to determine the causal link between the conviction and the damage: but for taking the car, the crash and the resulting damage to the car and to the property would not have occurred.¹¹ The court concluded that the damage would not have occurred but for taking the car.¹²

Molina pleaded guilty to attempting to elude a police vehicle. The \$74,948.55 restitution order was based on the damage to the stolen car, the patrol cars, and a parked car. Similar to Hiett, but for Molina’s attempt to elude police vehicles, officers would not have needed to disable Molina’s car, which resulted in the damage to the cars.

Foreseeability is not required for a restitution order.¹³ But even if it were, the damages sustained here to the police cars, the stolen car, and a parked car “were a foreseeable consequence” of Molina’s conduct.¹⁴ To the extent Molina suggests the loss or damage to property was not proximately caused by his conduct, he cites no authority for a proximate cause standard.¹⁵

¹¹ Id. at 566.

¹² Id.

¹³ State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007); State v. Enstone, 137 Wn.2d 675, 677, 974 P.2d 828 (1999).

¹⁴ Hiett, 154 Wn.2d at 564.

¹⁵ Molina’s reliance on State v. Bauer, 180 Wn.2d 929, 329 P.3d 67 (2014), is misplaced. In an entirely different context, the Bauer court held “‘legal cause’ in criminal cases differs from, and is narrower than, ‘legal cause’ in torts cases in Washington.” Id. at 940. The Bauer court did not address the causal relationship required for restitution.

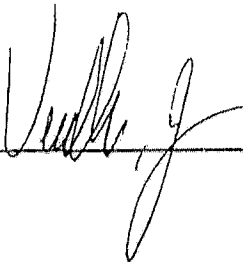
Molina's reliance on State v. Hartwell is unavailing.¹⁶ There, the defendant was convicted of hit and run for leaving the scene of an accident and was ordered to pay restitution for the victims' injuries. The Hartwell court reversed the restitution order because the victim's injuries occurred before the defendant left the scene of the accident: "Had Hartwell stayed at the scene, thereby not committing the offense, the injuries presumably would have been the same."¹⁷ Unlike Hartwell, Molina's attempt to elude police vehicles set in motion the events that caused the officers to ram Molina's car into a parked car.

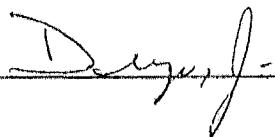
CONCLUSION

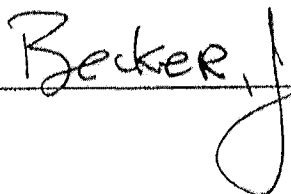
We conclude the damages to several police cars, a parked car, and the stolen car driven by Molina were causally connected to Molina's attempt to elude police vehicles.

We affirm the trial court's restitution order.

WE CONCUR:







¹⁶ 38 Wn. App. 135, 684 P.2d 778 (1984), overruled on other grounds, State v. Krall, 125 Wn.2d 146, 881 P.2d 1040 (1994).

¹⁷ Id. at 140.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 73025-8-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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Date: February 18, 2016