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REC'D

SEP 30 2009

King County Superior Court
Appellate Unit

NO. 63659-6-I

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

STATE OF WASHINGTON,

Respondent,

v.

R.T.,

Appellant.

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

The Honorable Ronald Kessler, Judge

OPENING BRIEF OF APPELLANT

DAVID B. KOCH
Attorney for Appellant

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COURT OF APPEALS DIVISION
STATE OF WASHINGTON
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A. ASSIGNMENT OF ERROR

The trial court lacked authority to order appellant to pay restitution.¹

Issue Pertaining to Assignment of Error

The State charged appellant with possessing a stolen vehicle. Another individual found in the car admitted stealing and driving the car to the location where it was found. Where appellant was only convicted of possession, and did not drive the car to the location, was the trial court authorized to order restitution for the cost of towing the vehicle from that location?

B. STATEMENT OF THE CASE

The King County Prosecutor's Office charged R.T. with one count Possession of a Stolen Vehicle, in violation of RCW 9A.56.068 and 9A.56.140. CP 1.

According to the certification for determination of probable cause, the car in question – a white 1993 Honda Civic – was stolen on February 11, 2009. CP 2. On February 15, 2009, a Seattle Police officer came upon the car in a parking lot at Hamilton View Point Park after park hours. There were four occupants, including

¹ The court's restitution order is attached to this brief as an appendix.

R.T., who was sitting in the driver's seat. One of the other occupants, Allen Bunma, admitted he had stolen the car.² The steering column was torn apart, and police found the punched ignition and a crowbar on the floor at Bunma's feet. CP 2.

R.T. received a deferred disposition, based on stipulated facts, allowing the case to be dismissed if she met certain requirements within a 12-month period. CP 14-19. Restitution was to be determined at a subsequent hearing. CP 18.

The State initially sought \$1,496.36 for repairs and other costs associated with theft of the car. CP 6. The defense objected to any restitution, pointing out that because R.T. had only been convicted based on her presence in the car on the night of February 15, 2009 in the park – and was not charged with taking or even driving the car – she could not be held responsible for damages that occurred prior to that time. CP 6-11.

By the time of the restitution hearing, the State largely agreed with defense counsel's arguments, conceding that R.T. could not be held responsible for the vast majority of costs associated with theft of

² In a written statement to police, Bunma indicated that he had driven R.T. and the others to the park and then switched seats with R.T. after their arrival, allowing her to sit in the driver's seat. CP 7.

the car. The lone exception, according to the State, was a "towing fee" for \$164.88, the amount the owner paid to have the car towed from the park. RP 3.

The defense objected, arguing that because R.T. did not drive the car to the park, and only exercised control over the car after it had been placed in the parking lot, there was no but/for causation between R.T.'s crime and the victim's losses. RP 4-7. The court rejected the defense position finding, "The need to tow a vehicle is a foreseeable consequence of possessing a stolen vehicle, and I think it's appropriate to impose the restitution." RP 9; CP 20-21.

R.T. timely filed her Notice of Appeal. CP 22-24.

C. ARGUMENT

THE SUPERIOR COURT LACKED AUTHORITY TO ORDER RESTITUTION.

RCW 13.40.190, the juvenile restitution statute, provides:

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. . . . If the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution. . . .

RCW 14.40.190(1) (emphasis added).

Trial courts are authorized to order restitution only "for

losses or damage resulting from the precise offense charged." State v. Fleming, 75 Wn. App. 270, 277, 877 P.2d 243 (1994); State v. Miszak, 69 Wn. App. 426, 428, 848 P.2d 1329 (1993)(citing State v. Johnson, 69 Wn. App. 189, 191, 847 P.2d 960 (1993)). There must be a causal relationship between the proved offense and the victim's losses – but/for causation – and trial courts are not authorized to order restitution for acts merely connected to a charged crime. State v. Hiatt, 154 Wn.2d 560, 566, 115 P.3d 274 (2005); State v. Tettters, 81 Wn. App. 478, 480, 914 P.2d 784 (1996); State v. Tindal, 50 Wn. App. 401, 403, 748 P.2d 695 (1988).

An order of restitution is reviewed for an abuse of discretion. Fleming, 75 Wn. App. at 274. This Court will find an abuse of discretion where the trial court's decision is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." State v. Pollard, 66 Wn. App. 779, 785, 834 P.2d 51, review denied, 120 Wn.2d 1015 (1992). The trial court abused its discretion here.

R.T.'s precise offense was possession of a stolen vehicle. The only evidence is that she temporarily possessed the vehicle, i.e., exercised control over it, while it was stationary in the parking

lot. By the time she exercised that control, Bunma had already deposited the car in the lot. Towing would have been necessary regardless whether she temporarily changed seats with Bunma. In other words, the act that led to the towing expense preceded R.T's crime.

“In examining the causal relationship between the crime and the loss, it is clear that if the loss or damage occurs before the act constituting the crime, there is no causal connection between the two.” See State v. Hunotte, 69 Wn. App. 670, 675, 851 P.2d 694 (1993). Two cases demonstrate this principle. In State v. Teters, 81 Wn. App. at 479, the defendant was arrested for possessing a stolen car one week after it had been stolen. In State v. Woods, 90 Wn. App. 904, 908, 953 P.2d 834 (1998), the defendant was arrested one month after the car was stolen. Although neither defendant was charged with stealing a car, both were ordered to pay restitution for the loss of personal property inside the vehicle when stolen. And in both cases the restitution orders were reversed. Teters, 81 Wn. App. at 481 (a defendant may not be required to pay for any loss that occurred before the criminal act for which he was convicted); Woods, 90 Wn. App. at 908 (“Even

assuming that Woods did steal the vehicle . . . she cannot be required to pay restitution for other uncharged offenses . . .).

In State v. Hiatt, 154 Wn.2d 560, 565-66, 115 P.3d 274 (2005), the Washington Supreme Court cited approvingly to Letters and Woods. In Hiatt, the defendants were convicted of taking a motor vehicle without permission for riding in a stolen car after someone else had stolen it. Hiatt, 154 Wn.2d at 562-63. Both defendants argued that because they were only in the vehicle after it was stolen and before it was crashed, they should not be held liable for damages resulting from the initial theft or later accident. Hiatt, 154 Wn.2d at 564.

The Supreme Court held that “an individual’s actual conduct does not determine the extent of his responsibility for restitution; instead, all acts which form the crime are imputed, for restitution purposes, to any participant.” Hiatt, 154 Wn.2d at 277. For the crime of taking a motor vehicle without permission, “taking the vehicle is an act which is necessary to commit the crime and is thus imputed to a knowing and voluntary rider who is, by statute, equally guilty with the person taking or driving the vehicle.” Hiatt, 154 Wn.2d at 565. Citing the Legislature’s intent to impose restitution for foreseeable consequences caused by a defendant’s

criminal act (but/for causation), the Supreme Court held both defendants responsible for damages caused prior to and after their occupancy of the car. Hiett, 154 Wn.2d at 564-66.

Notably, the Hiett Court contrasted the charge in that case (taking a motor vehicle without permission) with Teters and Woods, where the defendants had merely been charged with possession of the stolen vehicle: “On review, the Court of Appeals properly held in both cases that the defendant’s subsequent possession of the stolen vehicle was not necessarily related to, or a but for cause of, the loss of the personal property in the vehicles.” Hiett, 154 Wn.2d at 566; see also State v. S.T., 139 Wn. App. 915, 919, 921, 163 P.3d 796 (2007) (sufficient causal connection if, but for defendant’s acts, victim would not have suffered expense; distinguishing a “mere possessory crime” such as that in Teters from taking a motor vehicle without permission).

Because R.T. was charged only with possessing the Honda, and there is no indication she took the car or drove it, she cannot be held responsible for the cost of towing the stolen car when it had already been placed in the parking lot prior to her offense. In short, like Teters and Woods, R.T.’s subsequent possession of the vehicle was not a but for cause of the victim’s expense. Towing

would have been required with or without R.T.'s additional act of possession.

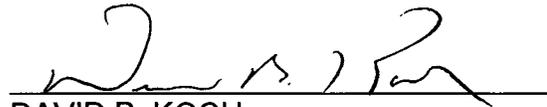
D. CONCLUSION

Because there is no demonstrated causal connection between R.T.'s offense and the victim's loss, the restitution order must be stricken.

DATED this 30th day of September, 2009.

Respectfully submitted,

NIELSEN, BROMAN & KOCH

A handwritten signature in black ink, appearing to read "David B. Koch", written over a horizontal line.

DAVID B. KOCH
WSBA No. 23789

Attorneys for Appellant

APPENDIX

45

FILED
KING COUNTY WASHINGTON
MAY 15 2009
SUPERIOR COURT
BY JOVELITA V. AVILA
DEPUTY CLERK

ORIGINAL

**SUPERIOR COURT FOR THE STATE OF WASHINGTON
FOR KING COUNTY JUVENILE DEPARTMENT**

STATE OF WASHINGTON
Plaintiff

Tegoro, Rochelle
Respondent

2/19/1993
DOB

In Custody Out of Custody

NO 098002357
ORDER ON
 CONTINUANCE OF _____
 REVIEW OF _____
 OTHER Restitution
 Commencement date _____
 Expiration date _____
 Clerk's Action Required

Persons appearing Deputy Prosecuting Attorney Mauney, JPC _____
Counsel for respondent Warden, parent(s), Other _____

I FINDINGS

1.1 The respondent was present was not present presence waived

1.2 A continuance is requested by _____ agreed upon by the parties

Reason for current continuance request _____

The new speedy trial expiration date is _____ Respondent agrees to waive from _____ to _____
 see attached

Number of witnesses _____ Length of trial _____

1.3 Case was called for trial respondent did/did not appear witnesses failed to appear

1.4 OTHER The state requests restitution in the amount of \$16488.
The court finds ^{the taxpayer} ~~affairs~~ is a ~~direct~~ ^{foreseeable consequence of} ~~consequence~~ ~~between~~ ~~and~~ ~~the~~ ~~cost~~ ~~of~~ ~~returning~~ ~~the~~ ~~vehicle~~.
possessing a stolen vehicle

13

II ORDER

- 21 The court's order dated 4/17/09 is hereby amended as follows the respondent shall pay restitution in the amount of \$164.88 (per attached addendum), joint + several with Allen Burma (098 002349). Payments shall be made at a rate of \$25.00 per month, with the first payment due 6/15/09.
- 22 Matter may be rediverted upon agreement of all parties
- 23 Respondent has been financially screened
- 24 Matter is hereby dismissed as a completed diversion
- 25 The hearing set for _____ is stricken
- 26 The next court appearance is set for _____ at _____ am/pm in Court _____ for a hearing
- 27 It is further ordered _____

28 Case is dismissed with without prejudice Prosecutor had probable cause to file

5-15-09
Date

[Signature]
 Judge Commissioner

RONALD KESSLER

Presented by [Signature]
Attorney for State
WSBA # 38720
JPC _____

[Signature]
Attorney for Pero
WSBA # 33197
Respondent _____

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 63659-6-I
)	
R.T.,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 30TH DAY OF SEPTEMBER 2009, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] R.T.
C/O SELIA TESORO
412 E. NOVAK LANE
KENT, WA 98032

SIGNED IN SEATTLE WASHINGTON, THIS 30TH DAY OF SEPTEMBER 2009.

x. *Patrick Mayovsky*

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