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NO. 66535-9-I

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

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STATE OF WASHINGTON,

Respondent,

v.

SLAVIK POTAPCHUK,

Appellant.

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

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BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred in entering a restitution order making Slavik jointly liable for losses caused by a robbery committed by others.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

A sentencing court may impose restitution only for loss or damage caused by the crime in question. Here, several adults robbed two people of over \$4,500 in cash and personal items. Slavik was convicted of rendering criminal assistance because he rode in a car with the robbers after the incident and accepted \$200 of the \$3,000 in cash the robbers had taken from the victims. Did the trial court err in holding Slavik jointly liable with the robbers for the full amount of damages, and by resting its decision on the notion that the victim would be more likely to be paid if more defendants were liable, rather than requiring a causal connection?

C. STATEMENT OF THE CASE

On May 2, 2009, 17-year-old Slavik Potapchuk was told by several of his adult friends that they were going to be fighting with some people and he should watch. His adult friends drove him and two other friends, including Maksim Mayba, to a house in Kent. The three waited in a wooded area by a path. CP 3-4.

A little while later, Ian Plunkett and Michael Woo walked down the path, followed by Slavik's friends Victor Pavlovich and Oleg Sadokha. CP 2-4. In short order, Sadokha, Pavlovich, and Mayba pointed guns at Woo and Plunkett, and robbed them of personal items and \$3,000 in cash. CP 3-5. Slavik stayed behind in the bushes and saw one of the victims remove money from his pocket and throw it on the ground as he lay there. CP 4. Slavik "did not want to become involved so he turned around and did not see much of what occurred after that." CP 4. Slavik eventually left with his friends, who gave him \$200 of the \$3,000 they had obtained during the robbery. CP 4-5.

Sadokha, Pavlovich, and Mayba were charged with first-degree robbery. CP 1-2. At first, Slavik was also charged with robbery, but the State amended the information to allege only first-degree rendering criminal assistance as to Slavik. CP 8-11. Slavik pled guilty, and admitted to rendering criminal assistance. CP 12-33. Given that Slavik had no criminal history, the prosecutor agreed to recommend 364 days in jail. CP 16, 31, 33. Restitution was to be determined. CP 16, 30.

At the restitution hearing, Slavik argued that although the State was seeking over \$4,500 in restitution, the co-defendants

who committed the robbery should be responsible for that amount. Indeed, the court had already imposed \$4,578.85 in restitution on two of the defendants. 12/16/10 RP 2. But Slavik did not commit robbery, either as principal or as an accomplice. He agreed to pay \$200 in restitution because the robbers had given that amount to him. But he argued that the rest of the amount taken from the victims should be paid by the other defendants, because there was no causal connection between Slavik's crime and the damages. 12/16/10 RP 3-4.

The court agreed that Slavik's participation in this incident was "minimal," but rejected the argument that this was relevant to the restitution inquiry. 12/16/10 RP 5. The court said:

I don't want to penalize or arguably penalize someone, i.e. an innocent victim, by limiting the amount of restitution to various defendants because some of them aren't going to pay. You know that and I know that. So if it's jointly and severally, then they have a much higher chance of getting something back up.

12/16/10 RP 6. The court imposed restitution of \$4,578.85. The obligation is joint and several with Sadokha, Pavlovich, and Mayba. CP 40.

Slavik appeals. CP 41-42.

D. ARGUMENT

THE RESTITUTION ORDER SHOULD BE REVERSED BECAUSE THE TRIAL COURT IMPOSED RESTITUTION ON SLAVIK FOR LOSS CAUSED BY A ROBBERY COMMITTED BY OTHERS.

a. The sentencing court may impose restitution only for loss caused by the crime charged, not for loss that occurs before the act constituting the crime. RCW 9.94A.753(5) authorizes a sentencing court to order restitution when a person “is convicted of an offense which results in injury to any person or damage to or loss of property.” The authority conferred by the statute is “limited to ordering restitution for those losses causally connected to [the defendant’s] crime.” State v. Acevedo, 159 Wn. App. 221, 229, 248 P.3d 526 (2011). Losses are causally connected if the victim would not have incurred the loss “but for” the crime. Id. at 230.

“The trial court cannot impose restitution based on a defendant’s ‘general scheme’ or acts ‘connected with’ the crime charged, when those acts are not part of the charge.” State v. Oakley, 158 Wn. App. 544, 552, 242 P.3d 886 (2010) (internal citations omitted). Rather, “restitution 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). “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.” Id. at 909; accord Acevedo, 159 Wn. App. at 230.

The question of whether the loss is causally connected to the crime for which the defendant was convicted is a question of law that this Court reviews de novo. Acevedo, 159 Wn. App. at 229-30.

b. The trial court erred in imposing restitution on Slavik for loss caused by a robbery committed by others. Here, the trial court erred in ordering over \$4,500 in restitution, where only \$200 was causally connected to Slavik’s crime. The multi-thousand-dollar loss was caused by the robbery committed by others, and those others were properly held liable for it. Slavik’s crime occurred after the robbery which caused the loss. See RCW 9A.76.050 (definition of rendering criminal assistance is helping someone who “has committed” a crime avoid apprehension); CP 21 (Slavik stated in guilty plea, “I rendered criminal assistance to those persons Oleg Sadokha, Victor Pavlovich, and Maksim Mayba, who I knew participated in a robbery”). But again, “it is clear that if the loss or damage occurs before the act constituting the crime, there is no

causal connection between the two.” Woods, 90 Wn. App. at 909; Acevedo, 159 Wn. App. at 230. The trial court committed legal error by ignoring the causation requirement and making Slavik jointly liable simply because it would make it more likely for the victim to be paid. 12/16/10 RP 6.

In Acevedo, this Court reversed a restitution order under similar circumstances. There, a thief stole a car and damaged it. The defendant then bought the car in a damaged condition, because he wanted the parts. The defendant was found guilty of possessing a stolen vehicle. Acevedo, 159 Wn. App. at 224-26.

The sentencing court held the defendant and the thief jointly and severally liable for \$6,000 in restitution. Id. at 226. This Court reversed because the evidence showed that the thief, not the defendant, caused the loss:

[N]o evidence shows that the Acura would not be stripped “but for” Mr. Acevedo’s possession of it. The State, then, failed to show a causal connection between Mr. Acevedo’s crime and the damage to Mr. Wold’s Acura. We reverse the restitution order and remand for further proceedings.

Id. at 231; see also Woods, 90 Wn. App. at 908-909 (restitution order reversed where defendant possessed stolen car but loss of items in car was caused by the earlier theft of the car).

Similarly here, the evidence showed that the robbers, not Slavik, caused the loss. No evidence showed that the victims would have been stripped of over \$4,500 in cash and personal items "but for" the fact that Slavik later sat in the car with the robbers and accepted \$200. The State failed to prove a causal connection between Slavik's crime and the victims' loss. This Court should reverse and remand for reduction of the restitution order to \$200.

E. CONCLUSION

For the reasons set forth above, Slavik Potapchuk respectfully requests that this Court reverse the restitution order and remand for entry of a \$200 restitution order.

DATED this 20<sup>th</sup> day of June, 2011.

Respectfully submitted,

  
Lila J. Silverstein – WSBA 38394  
Washington Appellate Project  
Attorneys for Appellant

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DIVISION ONE**

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STATE OF WASHINGTON,	)	
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	)	NO. 66535-9-I
v.	)	
	)	
SLAVIK POTAPCHUK,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 20<sup>TH</sup> DAY OF JUNE, 2011, 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:

<input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
<input checked="" type="checkbox"/> SLAVIK POTAPCHUK 23629 97 <sup>TH</sup> AVE S KENT, WA 98031	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 20<sup>TH</sup> DAY OF JUNE, 2011.

X \_\_\_\_\_ 

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