

NO. 66657-6-I

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

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STATE OF WASHINGTON,

Respondent,

v.

ADAM R. STEVENS,

Appellant.

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BRIEF OF RESPONDENT

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## **I. ISSUES**

Whether the trial court exceeded its statutory authority in ordering defendant to pay restitution for all of the victims' losses contained in the police reports when defendant agreed to pay for the losses contained in the police reports in his plea agreement?

## **II. STATEMENT OF THE CASE**

### **A. SUBSTANTIVE FACTS.**

On March 12, 2010, at approximately 1:20 p.m., Lake Stevens Police Officer Aukerman observed a pick-up truck partially blocking the southbound lane in the 800 block of State Route 9. Officer Aukerman observed two males running towards the pick-up from the wooded area on the eastside of the roadway; both were wearing dark clothing, one was carrying a backpack. The male carrying the backpack crossed State Route 9 and got into the pick-up. Due to traffic, the other male was unable to cross. CP 70.

Officer Aukerman was aware that there had been recent residential burglaries in the area. He stopped the pick-up, contacted the driver and passenger, and requested another officer look for the second male. The driver, Nicole Goettler, lived a few blocks from the location of the stop; Officer Thomas went to Goettler's residence. A witness advised that a male matching the

description of the second male had just entered Goettler's residence. Adam Stevens was located hiding in a camper on the property; he had two backpacks in his possession. Officer Thomas located property belonging to Robert and Pamela Williams in Stevens' possession. Police contacted the Williams; they learned that their residence had been burglarized. CP 70-71.

**B. PROCEDURAL FACTS.**

On April 8, 2010, Adams Stevens was charged with residential burglary for unlawfully entering the Lake Stevens dwelling of Robert and Pamela Williams on March 12, 2010, with intent to commit a crime of theft. CP 73.

On May 26, 2010, Stevens entered a guilty plea to the charged residential burglary; agreeing that the affidavit of probable cause could be considered in determining the factual basis. As part of the plea agreement, Stevens agreed to pay restitution to the Williams for both the charged and the uncharged crimes contained in the Lake Stevens police records 10-00616. The State agreed to not file additional charges of possession for stolen property arising from the Lake Stevens police records 10-00616. CP 52-69.

Stevens was sentenced on July 19, 2010. The court imposed a standard range sentence of 63 months. In his victim

impact statement, Robert Williams listed \$66,956 of stolen or damaged property. There was a question as to whether Mr. Williams had included items stolen in a prior offense. The issue of restitution was reserved; Stevens waived his right to be present at the restitution hearing. 2RP 5-8, 23, 30-31; CP 41-51, 197-202.

A restitution hearing was held on January 10, 2011. The State requested \$34,609.50 in restitution; Stevens argued that the victims were still aggregating losses from different burglaries and questioned whether the police were still holding some of the unrecovered items. No evidence was offered to support his argument. The court found that Stevens had agreed to pay restitution for losses identified in the Lake Stevens police records 10-00616 and entered a restitution order for \$34,609.50; \$8,213.59 to State Farm Insurance and \$26,395.91 to the Williams for uncovered losses. In the Restitution Order the court set a hearing for modification on January 25, 2011, to address the issues raised by Stevens. The discovery in the matter, containing the Lake Stevens police records 10-00616, was submitted to the court. 3RP 2-16, 19-28, 30-32; CP 18-29; 116-196.

At the January 25, 2011 hearing, because mathematical errors had been discovered in the previous calculations of the

Williams' loss, the State requested the restitution order be amended to \$70,220.01; \$7,167.36 to State Farm Insurance (reducing the previous amount by \$1,046.23 for items that had been recovered) and \$63,052.65 to the Williams for items not covered by insurance. Stevens maintained his objections to the restitution order, but offered no evidence in support thereof. The court found that the discovery in the matter reflected one reported burglary of the Williams' residence in the Lake Stevens police records 10-00616, and that the stolen items contained in the police records added up to \$34,609.50. The court concluded that under the terms of the plea agreement Stevens was "reasonably on the hook" for the \$34,609.50 claimed in the Lake Stevens police records 10-00616. The court entered an amended restitution order of \$33,563.27, reducing the amount to State Farm Insurance by the amount of the recovered items. 4RP 3-4, 7-8, 11-13, 15-16; CP 16-17, 74-115.

### **III. ARGUMENT**

Stevens argues that the trial court exceeded its statutory authority in ordering him to pay restitution for all of the victims' losses contained in the police records.

A trial court's restitution order is reviewed for abuse of discretion. State v. Hunotte, 69 Wn. App. 670, 674, 851 P.2d 694 (1993). The court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds or reasons. State v. Enstone, 137 Wn.2d 675, 679-80, 974 P.2d 828 (1999). "Generally, the choice, interpretation, and application of a statute are matters of law reviewed *de novo*." State v. Johnson, 96 Wn. App. 813, 816, 981 P.2d 25 (1999).

A trial court's authority to impose restitution is purely statutory. RCW 9.94A.753; State v. Smith, 119 Wn.2d 385, 389, 831 P.2d 1082 (1992); State v. Davidson, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). "The legislature has expressed 'a strong desire that offenders must pay restitution to the victims of their crimes.'" State v. Tobin, 132 Wn. App. 161, 175, 130 P.3d 426 (2006). "[T]he restitution statute is to be interpreted broadly." State v. Israel, 113 Wn. App. 243, 299, 54 P.3d 1218 (2002). "Statutes authorizing restitution should not be given 'an overly technical construction which would permit the defendant to escape from just punishment.'" Davison, 116 Wn.2d at 922; State v. Johnson, 69 Wn. App. 189, 193, 847 P.2d 960 (1993). However, the court may not exceed the authority granted under the controlling statute.

State v. Martin, 137 Wn.2d 149, 155, 969 P.2d 450 (1999). A restitution order is void if statutory provisions are not followed. State v. Duback, 77 Wn. App. 330, 332, 891 P.2d 40 (1995).

Under RCW 9.94A.753(5) a judge must order restitution whenever a defendant is convicted of an offense which results in damage to or loss of property. State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008). Where the trial court has authority to order restitution, it has discretion to determine the amount of restitution. Davison, 116 Wn.2d at 919. Its discretion will only be overturned for an abuse of discretion. Davison, 116 Wn.2d at 919. A court abuses its discretion when the restitution decision is 'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.' Enstone, 137 Wn.2d at 679-680.

The amount of restitution must be based "on easily ascertainable damages." RCW 9.94A.753(3). While the claimed loss "need not be established with specific accuracy," it must be supported by "substantial credible evidence." Griffith, 164 Wn.2d at 965. "Evidence supporting restitution 'is sufficient if it affords a reasonable basis for estimating loss and does not subject the trier of fact to mere speculation or conjecture.'" State v. Hughes, 154 Wn.2d 118, 154, 110 P.3d 192 (2005). Restitution is allowed only

for losses that are “causally connected” to the crimes charged, unless the defendant “expressly agrees to pay restitution for crimes for which [defendant] was not convicted.” Griffith, 164 Wn.2d at 965; State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007); State v. Woods, 90 Wn. App. 904, 908, 953 P.2d 834 (1998). Losses are causally connected if, but for the charged crime, the victim would not have incurred the loss. Tobin, 161 Wn.2d at 524. “In determining whether a causal connection exists, we look to the underlying facts of the charged offense, not the name of the crime to which the defendant entered a plea.” State v. Landrum, 66 Wn. App. 791, 799, 832 P.2d 1359 (1992).

In the present case, Stevens entered a plea agreement in which he agreed to pay restitution as set forth in the appendix attached to the agreement. CP 61, 69. Washington courts have recognized that a plea agreement is in the nature of a contract. State v. Hunsicker, 129 Wn.2d 554, 559, 919 P.2d 79 (1996); State v. Hall, 104 Wn.2d 486, 490, 706 P.2d 1074 (1985). The court has referred to the plea agreement as a “binding agreement between the defendant and the State” once a plea is accepted by the trial court. Hunsicker, 129 Wn.2d at 559. Stevens’ agreement was

made in exchange for the State not filing additional charges. CP 63. That condition was satisfied here.

“A plea bargain is a binding agreement between the defendant and the State which is subject to the approval of the court.” Hunsicker, 129 Wn.2d at 559; State v. Schaupp, 111 Wn.2d 34, 40, 757 P.2d 970 (1988); RCW 9.94A.431. Since the restitution sought in this case included uncharged counts, Stevens’ agreement to pay restitution was necessary before the court could order it. See RCW 9.94A.753(5). Under the circumstances here, Stevens’ agreement constitutes a promise to pay restitution in the amount reflected in the Lake Stevens police records 10-00616. “When restitution is ordered, a trial court determining the amount of restitution may either rely on a defendant’s admission or acknowledgment of the amount of restitution or it may determine the amount by a preponderance of evidence.” Hunsicker, 129 Wn.2d at 558-559; State v. Ryan, 78 Wn. App. 758, 761, 899 P.2d 825 (1995). The crimes contained in the Lake Stevens police records 10-00616 occurred on March 12, 2010; the residential burglary of the Williams’ home and the possession of Williams’ stolen property. The trial court properly determined that Stevens

was responsible for the losses reflected in the Lake Stevens police records 10-00616.

**IV. CONCLUSION**

For the reasons stated above, the court should deny the appeal.

Respectfully submitted on October 12, 2011.

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