

NO. 66859-5-1

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

STATE OF WASHINGTON,

Respondent,

v.

RONALD THOMPSON,

Appellant.

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

BRIEF OF APPELLANT

LILA J. SILVERSTEIN
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COURT OF APPEALS
STATE OF WASHINGTON
LILA J. SILVERSTEIN

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A. ASSIGNMENT OF ERROR

The trial court erred in entering a restitution order making Mr. Thompson liable for damage to a vehicle not causally connected to the crime of theft of a motor vehicle.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

A sentencing court may impose restitution only for loss or damage caused by the crime in question. As relevant to this appeal, Ronald Thompson was convicted of theft of a motor vehicle after admitting in his guilty plea that he stole Tammy Beauvais's Toyota Camry. Mr. Thompson did not oppose restitution for the costs Ms. Beauvais and her insurance company incurred when she had to rent a car while her vehicle was missing, but he did oppose restitution for repairs to the vehicle because he did not admit damaging it and causing damage is not an element of the charged crime. Did the trial court err in imposing restitution for repairs to the car?

C. STATEMENT OF THE CASE

Ronald Thompson pled guilty to one count of possession of a stolen vehicle and three counts of theft of a motor vehicle. CP 8, 33. A contested restitution hearing was set for counts two and four. 2/23/11 RP 2-10. The State proposed a total restitution amount for

the two counts of \$17,967.47. Supp. CP ____, sub no. 40 ("Restitution Status Sheet"). Of this total, \$14,874.51 was for loss and damage associated with count two, the theft of Martin Martinez's vehicle. Restitution Status Sheet at 1-2. The amount was high because Mr. Thompson had not only stolen the car, but had crashed it. Mr. Thompson admitted to damaging the car in an accident, and did not contest restitution for repairs. CP 5; 2/23/11 RP 4-6.

Count four involved the theft of Tammy Beauvais's Toyota Camry. CP 2, 17. The State requested a total of \$1,498.63 to repay Ms. Beauvais and her insurance company for the costs of renting a car while her own car was missing. Restitution Status Sheet at 22- 26. Mr. Thompson did not object to this amount. 2/23/11 RP 2-3. The State also requested a total of \$1,594.33 for repairs to Ms. Beauvais's car. Restitution Status Sheet at 6. Mr. Thompson objected to this amount because he did not admit causing any damage to Ms. Beauvais's car, and repairs are not causally related to the crime of theft of a motor vehicle. CP 5; 2/23/11 RP 3-4. The court nevertheless ordered restitution for both rental costs and repair costs. 2/23/11 RP 10; CP 41-42.

Mr. Thompson appeals the restitution order. CP 43-46.

D. ARGUMENT

THE RESTITUTION ORDER SHOULD BE REVERSED BECAUSE THE TRIAL COURT IMPOSED RESTITUTION ON MR. THOMPSON FOR DAMAGE NOT CAUSED BY THE CRIME CHARGED.

a. The sentencing court may impose restitution only for loss caused by the crime charged. 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). “A causal connection is not established simply because a victim or insurer

submits proof of expenditures.” State v. Dennis, 101 Wn. App. 223, 227, 6 P.3d 1173 (2000).

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 Mr. Thompson for damage to the Toyota Camry because it was not causally connected to the crime of theft of a motor vehicle. The trial court ordered Mr. Thompson to pay a total of \$14, 874.51 for damage to the Honda Pilot involved in count two, and Mr. Thompson did not challenge that amount because he admitted to crashing the car after taking it. CP 41-42; 2/23/11 RP 4-6. Mr. Thompson also did not challenge \$1,498.63 in restitution associated with the theft of the Toyota Camry as charged in count four, because Ms. Beauvais had to rent a car while hers was missing. 2/23/11 RP 2. But Mr. Thompson did object to the prosecutor’s request for an additional \$1,594.33 in restitution to pay for repairs to the Camry, because Mr. Thompson did not admit and the State did not prove that he caused any damage to that car. 2/23/11 RP 2-4. The trial court nevertheless ordered restitution for

repairs to the Camry, in addition to ordering restitution for the uncontested losses. CP 41-42; 2/23/11 RP 10.

The trial court erred in ordering \$3,092.96 in restitution for count four, where only \$1,498.63 was causally connected to Mr. Thompson's crime. Mr. Thompson pled guilty to theft of a motor vehicle. His statement as to count four was, "On June 1, 2010, in King County, WA, I exerted unauthorized control over a 2006 Toyota Camry, with intent to deprive the owner of it." CP 17. Mr. Thompson properly agreed to pay restitution for the rental expenses incurred by Ms. Beauvais while Mr. Thompson had her car, because those expenses were causally connected to the charge of theft of a motor vehicle. But he was not charged with or convicted of damaging the vehicle and should not have been liable for any repairs. 2/23/11 RP 3. Ms. Beauvais admitted she may have left her car unlocked and she was missing her spare keys. CP 5. Thus, as Mr. Thompson pointed out, anyone could have damaged the car. 2/23/11 RP 3.

Oakley is instructive. There, the defendant drove his "distinctively loud car" to a rival's house, got out, and fired a gun. Oakley, 158 Wn. App. at 547. The rival and his brothers ran to their backyard, and the defendant and his friends tracked them down

and engaged them in a fist fight. Id. at 548. The defendant and his friends then drove away, and crashed into a neighbor's car and garage door three blocks away. Id.

The defendant was convicted of three counts of second-degree assault and one count of attempted drive-by shooting. Id. at 549. The sentencing court ordered restitution for the car and garage door the defendant had damaged. Id. This Court reversed the restitution order because there was no causal connection between the crimes charged and the damage. Id. at 553. Restitution may not be ordered for damage that is merely "connected with" an underlying crime. Id.

Dauenhauer, on which the Oakley court relied, is similarly illuminating. State v. Dauenhauer, 103 Wn. App. 373, 12 P.3d 661 (2000). There, the defendant was convicted of three counts of second-degree burglary after stealing items from three storage units at Yakima Secure Storage. Id. at 374-75. The manager of the storage facility had called the police when he saw the defendant's suspicious vehicle. Id. at 375. The police responded, and the defendant accelerated through two fences, ran a stop sign, and collided with another person's truck. Id. The sentencing court

ordered the defendant to pay restitution not just for the stolen items but also for the damage to the fence and the vehicle. Id. at 379.

This Court reversed the portion of the restitution order that applied to the fence and the truck. The Court noted, “A defendant may not be required to pay restitution beyond the crime charged or for other uncharged offenses absent a guilty plea with an express agreement as part of that process to pay restitution for crimes for which the defendant was not convicted.” Id. at 378 (citing Woods, 90 Wn. App. at 980). The trial court improperly imposed restitution for acts merely “connected with” the charged crimes, and reversal was required. Id. at 379-80.

As in the above cases, the State here failed to show a causal connection between Mr. Thompson’s crime and the damage to Ms. Beauvais’s Camry. Nor did Mr. Thompson expressly agree to pay restitution for crimes for which he was not convicted. He agreed to pay for “any losses from or damage to stolen vehicles,” but this was not an express waiver of the causation requirement. CP 26. In context, the “damage” section of this statement clearly refers to Mr. Martinez’s vehicle, not Ms. Beauvais’s. Mr. Thompson agreed that the facts set forth in the probable cause certification were real and material facts for purposes of sentencing. CP 26.

But the probable cause certification includes only an admission by Mr. Thompson that he damaged Mr. Martinez's car; there is no admission whatsoever that he damaged Ms. Beauvais's car. CP 4-5.

In Hahn, this Court reversed a restitution order where the State's evidence did not adequately connect the victims' expenditures to the crimes. State v. Hahn, 100 Wn. App. 391, 996 P.2d 1125 (2000). The defendant had assaulted two people and caused serious injuries, and the State submitted medical reports identifying "numerous medical services rendered [to the victims] either on the date of the crime or shortly thereafter." Id. at 400. But there was "no statement linking the charged amounts to any particular symptoms or treatments." Id. at 399-400. This Court held the State failed to prove a causal connection between the specific expenditures and the charged crimes. Id. at 400.

Here, the State submitted a "Restitution Estimate" filled out by the car's owner and a document from Farmers Insurance detailing the work performed on the car. Restitution Status Sheet at 4-21. But as in Hahn, there is no statement linking the charged amounts to particular damages, and no explanation of a link

between Mr. Thompson's crime and the work performed. As in Hahn, the evidence is insufficient to support the restitution imposed.

c. The remedy is vacation of the portion of the restitution order pertaining to repairs of the Camry. In Dennis, this Court explained that where the State fails to establish a causal connection between the defendant's actions and the restitution amount, the proper remedy is to vacate the relevant portions of the restitution order. Dennis, 101 Wn. App. at 229-30 (citing State v. Dedonado, 99 Wn. App. 251, 991 P.2d 1216, 1219 (2000)). The State is not entitled to a second opportunity to carry its burden of proof. Id. at 229. This Court should reverse and remand for reduction of the restitution amount to \$16,373.14.

E. CONCLUSION

For the reasons set forth above, Ronald Thompson respectfully requests that this Court reverse and remand for vacation of the portion of the restitution order relating to repairs to the Toyota Camry.

DATED this 8th day of September, 2011.

Respectfully submitted,


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Attorney for Appellant

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DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 66859-5-I
)	
RONALD THOMPSON,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 8TH DAY OF SEPTEMBER, 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:

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