

NO. 66859-5-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

RONALD THOMPSON,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE JOAN DUBUQUE

BRIEF OF RESPONDENT

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**A. ISSUE PRESENTED**

Thompson pled guilty to stealing a car belonging to Tammy Beauvais. Thompson agreed to pay restitution for damage to the car and agreed to the facts as set forth in the certification for determination of probable cause. Subsequently, Thompson was ordered to pay for the damages to Beauvais's car that did not exist prior to its theft. Thompson contends that there was no causal connection between his theft of the car and the damages to it and therefore the trial court erred in ordering restitution for the damages to Beauvais's car. Should this court agree that: (1) Thompson agreed to pay for all damages to the car; and (2) there is a causal connection between the theft and the damages?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

The State agrees with the statement of procedural facts as set forth by the Appellant with one addition. At the restitution hearing on February 23, 2011, the State offered information from the victim Beauvais and victim Martinez as proof that there was no damage to the cars prior to Thompson's theft. 2/23/11 RP 8; Supp. CP \_\_\_ (sub #45 [Order to File Attached Letters]).

## **2. SUBSTANTIVE FACTS**

On April 5<sup>th</sup>, 2010, victim Baker reported her 2002 silver Volkswagen as stolen. CP 4. On April 16, 2010, a witness reported a suspicious silver Volkswagen near her residence and took photos of the occupants. CP 4. Police looked at the photos and identified Ronald Thompson as one of the occupants of the Volkswagen. CP 4. Officers did not locate Thompson at the time. CP 4.

On May 24<sup>th</sup>, 2010, police responded to an accident involving a 2010 Honda Pilot. CP 4. Witnesses reported that a white male fled the scene when the vehicle flipped on its side. CP 4. The owner of the vehicle, Martinez, stated that he had left his vehicle unlocked, with the keys in it, on the street near his house. CP 4. Martin reported the vehicle as stolen. CP 4.

On May 30<sup>th</sup>, 2010, Creeden reported his 1996 Lexus as stolen. CP 4. The car had been left unlocked, in front of his house, with a possible key in the vehicle. CP 4.

On June 1, 2010, Tammy Beauvais reported her gold 2006 Toyota Camry as stolen. CP 4-5. The car had been on the street in front of her residence. CP 5. Beauvais reported that she wasn't sure if her car was unlocked and said she was missing spare keys to the vehicle. CP 5.

Also on June 1, 2010, detectives observed victim Creeden's 1996 Lexus pass them. CP 5. Detectives were unable to make contact with the driver prior to losing sight of the Lexus. CP 5. The Lexus was later observed, unoccupied and parked on a hill. Officers set up surveillance. CP 5. During the surveillance, Ronald Thompson returned to the Lexus and used a coat to open the door. CP 5. He was arrested and at the time was in possession of Toyota keys. CP 5.

After being read his Miranda warnings, Thompson admitted to stealing the Lexus, the Honda Pilot and Ms. Beauvais's Camry. CP 5. He led officers to Beauvais's Camry. CP 5. The Toyota keys that he had at the time of arrest belonged to the Camry. CP 5.

C. **ARGUMENT**

THOMPSON AGREED TO PAY FOR ALL DAMAGES TO MS. BEAUVAIS'S CAR AS PART OF THE PLEA AGREEMENT AND THOSE DAMAGES WERE CAUSALLY CONNECTED TO THOMPSON'S THEFT OF THE VEHICLE.

- a. The Sentencing Court Has The Duty To Impose Restitution For Loss Resulting From The Charged Crime And Has The Duty To Impose Restitution For Any Damages That The Defendant Has Agreed To As Part Of His Plea Agreement.

RCW 9.94A.753(5) provides:

(5) Restitution **shall** be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution **shall** be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement. [emphasis added]

Under RCW 9.94A.753(5), a court shall order restitution unless extraordinary circumstances exist that make it inappropriate.

However, the court's authority to order restitution under RCW

9.94A.753(5) is limited to restitution for those losses that are

causally connected to defendant's crime. State v. Acevedo, 159

Wn. App. 221, 229, 248 P.3d 526 (2011) (citing State v. Griffith, 164 Wn.2d 960, 965-66, 195 P.3d 506 (2008)). In Acevedo, the court looked at whether a defendant charged with possessing a stripped vehicle could be ordered to pay restitution for the full value of the car before it was stolen. Id. Acevedo argued that the State did not show that he stole or stripped the car and therefore he should only be liable for the value of the car as he possessed it. Id. The court looked at whether the loss was causally connected to the crime for which the defendant was convicted the court reviewed the issue under a de novo standard. Id. (citing State v. Johnson, 96 Wn. App. 813, 816, 981 P.2d 25 (1999) (proper application of a statute is a question of law)).

In State v. Oakley, 158 Wn. App. 544, 551-52, 242 P.3d 886 (2010), the court discussed the standard of review for restitution issues. It stated that a trial court derives its authority to order restitution from statute rather than any inherent power. Id. A trial court's authority to order restitution under the statute is reviewed de novo. Id. But “[w]hen the particular type of restitution in question is authorized by statute, imposition of restitution is generally within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion.” Id. at 552

(citing State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991).

Therefore, although the court initially reviews the trial court's authority to order restitution under a de novo standard, once the court finds that the restitution is causally connected to the crime, and therefore authorized by statute, any further review of the court's restitution order is under an abuse of discretion standard.

b. The Trial Court Properly Found That The Damages To Ms. Beauvais's Car Were Due To Thompson's Theft Of The Car.

Thompson agreed to pay for all damages resulting from his crime spree. As part of his signed plea agreement, he agreed, "[p]ursuant to RCW 9.94A.753, the defendant shall pay restitution in full to the victim(s) on charged counts and agrees to pay restitution for any losses from or damage to stolen vehicles in probable cause cert SPD #2010-17961 and King County cause #10-1-03480-0 SEA (Bothell 10-4737). CP 26. Based upon Thompson's agreement, the court was authorized under RCW 9.94A.753(5) to order restitution for Ms. Beauvais's car and this court should uphold the restitution order.

However, Thompson argues that he did not expressly agree to pay restitution for crimes for which he was not convicted and that he did not waive the causation requirement. Thompson argues that he agreed to pay for damages to the crashed Honda Pilot because he admitted to damaging the Pilot but that he should not be required to pay for damages to Beauvais's Camry because he did not admit to damaging it. He argues there is no connection between his theft of Beauvais's car and the subsequent damage that Ms. Beauvais discovered after the recovery of her car.

The court determines whether a causal connection exists by looking at the facts underlying the defendant's crime. Griffith, 164 Wn.2d at 966. Losses are causally connected if the victim would not have incurred the loss but for the crime. Id. There is no causal connection if the loss or damage occurred before the act constituting the crime. State v. Woods, 90 Wn. App. 904, 909, 953 P.2d 834 (1998).

A sufficient causal connection exists if, "but for the criminal acts of the defendant, the victim would not have suffered the damages for which restitution is sought." State v. Landrum, 66 Wn. App. 791, 799, 832 P.2d 1359 (1992). The court looks to the underlying facts of the charged offense, not the name of the crime

to which the defendant entered a plea. Id. This determination rests on an examination of facts admitted by the plea agreement or admitted, acknowledged, or proved in a trial or at sentencing.

State v. Dedonado, 99 Wn. App. 251, 256, 991 P.2d 1216 (2000).

If the defendant disputes material facts pertinent to restitution, the sentencing court must ignore the disputed facts or hold an evidentiary hearing where the State bears the burden of proving the damage by a preponderance of the evidence. Id.

Here, the facts in the certification for determination of probable cause and the documents submitted at the restitution hearing, establish a clear causal connection between the theft and the damage. Thompson pled guilty to theft of Beauvais's car. CP 8-32. As part of his plea he also agreed that the facts as set forth in the certification for determination of probable cause were real and material for purposes of sentencing. CP 26. The certification establishes that Ms. Beauvais's car was taken June 1, 2010, and reported stolen the same day. CP 4-5. Defendant was also apprehended by police later on June 1, 2010, and he led them to Ms. Beauvais's car. CP 5. He admitted to stealing the vehicle and had the keys with him. CP 5. There are no facts showing the existence of any intervening acts. Thompson's situation is much

different from a defendant convicted of possession of a stolen vehicle that had been missing for days, weeks or months after it was reported stolen. Beauvais reported her car missing on the same day that Thompson admitted to stealing it. He had the keys and led officers to the car.

Moreover, at the restitution hearing, Thompson did not object to the letter from Beauvais. 2/23/11 RP 2-10.

Ms. Beauvais's letter to the court, signed under penalty of perjury, indicated that the damages to her car did not exist prior to the theft. 2/23/11 RP 8, Supp. CP \_\_\_\_ (Sub. # 45 [Order to File Attached Letters]). All facts clearly establish that but for the theft, Thompson would not have occupied the car, driven it from its location and it would not have sustained physical damage. Accordingly, a sufficient causal connection exists between Thompson's theft and the physical damage to Beauvais's car. Furthermore, Thompson's argument that he did not admit to damaging the car and therefore should not be liable for it, is without merit or legal support.

Thompson argues that State v. Dauenhauer, 103 Wn. App 373, 12 P.3d 661 (2000), is illuminating for this court. In Dauenhauer, the court invalidated a restitution order for a collision

that occurred after a burglary. Id. at 379. But Dauenhauer is not similar to this case.

In Dauenhauer, the defendant drove away from the scene of a burglary with police in pursuit. Though he crashed through fences, ran a stop sign and collided with another driver, he was not charged with eluding police or any traffic violation. Id. at 375. The court reversed the order of restitution because the acts that caused the damage were not part of the charged burglary. Id. at 379. The court stated, "restitution cannot be imposed based on the defendant's 'general scheme' or acts 'connected with' the crime charged, when those acts are not part of the charge." Id. at 378. Here, unlike Dauenhauer, the only acts of Thompson's at issue are those that constituted the precise theft for which he pled guilty. There is no general scheme or acts that are not connected to the charge.

**D. CONCLUSION**

For the reasons set forth above, the respondent respectfully requests that this court uphold the restitution order of the trial court. Thompson clearly agreed to pay restitution for damages to

Beauvais's car and the damages were a direct cause of his theft of the car.

DATED this 7 day of November, 2011.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

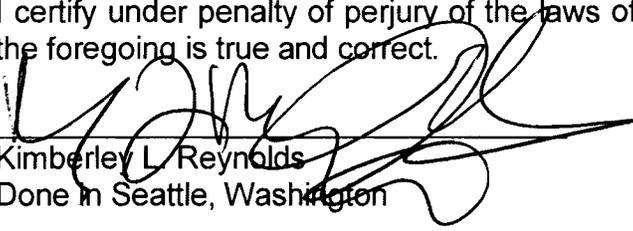


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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Silva Silverstein, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. RONALD THOMPSON, Cause No. 66859-5-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

  
\_\_\_\_\_  
Kimberley L. Reynolds  
Done in Seattle, Washington

11/7/11  
Date

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