

NO. 67717-9-I

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

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STATE OF WASHINGTON,

Respondent,

v.

JONATHAN W. GRANTHAM,

Appellant.

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BRIEF OF RESPONDENT

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## **I. ISSUES**

The defendant stole a car and crashed it into a fence. He pleaded guilty to taking a motor vehicle without permission. Did the court abuse its discretion in ordering the defendant to pay restitution for the damage to the fence?

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

The defendant, Jonathan W. Grantham, pleaded guilty to taking a motor vehicle. CP 97-113. In the plea agreement, the defendant agreed that the court could consider the affidavit of probable cause in imposing sentence. CP 106 ¶ 2.

According to that affidavit, on the evening of July 26, 2010, Tina Monroe (the defendant's mother) parked her car. At 6:00 the next morning, she received a call from the defendant. "He told her that he had taken her car from Everett and had a bad accident, probably totaling the vehicle. He apologized and told her to call Sequim to see where the vehicle was." CP 114-15.

Shortly before, at around 5:45 a.m., Clallam County Deputy Sheriffs had found the car. "The vehicle had left the road in Happy Valley and mowed down 200 feet of fence, coming to rest against a rock." CP 115.

The defendant was charged with taking a motor vehicle. This charge was based on both taking the vehicle without permission and riding in it with knowledge that it was unlawfully taken. CP 118. In pleading guilty, the defendant made the following agreement with regard to restitution:

Pursuant to statute, the defendant agrees to pay restitution in full as follows:

Charged crimes

Uncharged crimes, RCW 9.94A.735(3)

LAW ENFORCEMENT AGENCY	INCIDENT NO.	VICTIM
Everett PD	#DD 10-15781	Tina Monroe
Clallam Co. S.O.	#2010-12837	James Diedrichs & Tina Monroe

CP 109.

The State sought restitution for the damages to both the stolen car and the fence. (Only the damages to the fence are at issue in this appeal.) The State presented documentation that James Diedrichs and his insurance company had paid \$1096.86 to repair the fence. CP 72-77. The defendant argued that restitution for these repairs was improper, because restitution cannot be imposed for the crime of hit-and-run. CP 84-85. The trial court

ruled that the plea agreement allowed the imposition of restitution for those damages. Rest. hg. RP 5. It entered an order requiring the defendant to pay restitution in the amount sought by the State. CP 44. The defendant has appealed this order. CP 1.

### III. ARGUMENT

#### **THE DAMAGE TO THE FENCE WAS THE DIRECT RESULT OF THE CHARGED CRIME.**

This appeal involves the trial court's award of restitution. "Restitution shall be ordered whenever the offender is convicted of an offense which results in ... damage to or loss of property ... unless extraordinary circumstances exist which make restitution inappropriate. . ." RCW 9.94A.753(5). "A trial court's order of restitution will not be disturbed on appeal absent abuse of discretion." State v. Tobin, 161 Wn.2d 517, 523 ¶ 12, 166 P.3d 1167 (2007). Restitution is allowed for crimes that are causally connected to the crime charged. Foreseeability is not required. Rather, the test is one of "but for" causation. *Id.* at 524 ¶ 15.

In a juvenile case, the Supreme Court dealt with a situation similar to the present case. State v. Hiett, 154 Wn.2d 560, 115 P.3d 274 (2005). Like the present case, Hiett was a prosecution for taking a motor vehicle. A third party stole a car. He invited two juveniles to ride in it. When a police officer began following them,

the two juveniles jumped out the car. The third party attempted to elude the officer. The pursuit ended when he crashed into a Les Schwab store. The juvenile court required the passengers to pay restitution for damages to the store, even though they had left the car before the chase began. Id. at 562-63 ¶¶ 2-3.

The Supreme Court affirmed the award of restitution. “[B]ut for the taking of the automobile without permission, the crash and resulting damage to ... the Les Schwab property would not have occurred.” Id. at 566 ¶ 12. Although Hiett involved the juvenile restitution statute, the Supreme Court has cited it in the context of adult restitution. Tobin, 161 Wn.2d at 524 ¶ 15.

The present case provides an even stronger basis for restitution than Hiett. There, the property damage occurred after the juveniles had left the stolen car. Here, the defendant himself was driving the stolen car at the time of the damage. His conviction was based on both taking the car and riding in it. CP 97, 118. If the defendant had not taken the car, he would not have driven it into a fence. Similarly, if he had not ridden in the stolen car, he would not have driven it into the fence. The damages to the fence were the direct result of the defendant’s crime of taking a motor vehicle. Consequently, the court was not merely authorized but

required to impose restitution for those damages (unless it found extraordinary circumstances that made restitution inappropriate).

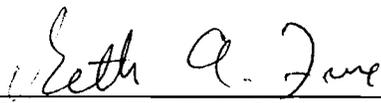
The trial court based the restitution order on the defendant's agreement. Rest. hg. RP 5. This step in the analysis was unnecessary. Regardless of the defendant's agreement, RCW 9.94A.735 authorized the court to order restitution for damage resulting from the charged crime. The plea statement specifically warned the defendant of this possibility. CP 98 ¶ 6(e). Whether or not the defendant remained at the scene of his collision, the damage to the fence was directly caused by his acts of taking and driving in the stolen car. The award of restitution was proper.

#### **IV. CONCLUSION**

The restitution order should be affirmed.

Respectfully submitted on January 24, 2012.

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By:   
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AFFIDAVIT OF MAILING

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 25<sup>th</sup> day of January, 2012, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope directed to:

THE COURT OF APPEALS - DIVISION I  
ONE UNION SQUARE BUILDING  
600 UNIVERSITY STREET  
SEATTLE, WA 98101-4170

WASHINGTON APPELLATE PROJECT  
1511 THIRD AVENUE, SUITE 701  
SEATTLE, WA 98101

containing an original and one copy to the Court of Appeals, and one copy to the attorney for the appellant of the following documents in the above-referenced cause:

BRIEF OF RESPONDENT

I certify under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office this 25<sup>th</sup> day of January, 2012.

A handwritten signature in black ink, appearing to read "Diane K. Kremenich", written over a horizontal line.

DIANE K. KREMENICH  
Legal Assistant/Appeals Unit