

NO. 39114-7

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

RONALD STEEN, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Linda CJ Lee

No. 08-1-04326-8

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**BRIEF OF RESPONDENT**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court properly exercise its discretion to impose restitution that was causally connected to defendant's crime?

B. STATEMENT OF THE CASE.

1. Procedure

On January 15, 2009, RONALD STEEN, hereinafter "defendant," entered an Alford<sup>1</sup> plea to one count of unlawful possession of a stolen vehicle. CP<sup>2</sup> 3-11; RPP 9. In accordance with his statement of defendant on plea of guilty, the court reviewed the State's declaration for determination of probable cause<sup>3</sup> (declaration) to find a factual basis to support his guilty plea. CP 3-11; RPP 8.

The court accepted defendant's guilty plea and imposed a low-end, standard-range sentence of 43 months in custody, together with standard fines and restitution to be paid by later order of the court. CP 15-27; RPP

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<sup>1</sup> *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L.Ed.2d 162 (1970). *Alford* was adopted in Washington State by *State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976).

<sup>2</sup> Citations to Clerk's Papers will be to "CP." Citation to the verbatim report of proceedings for defendant's plea hearing will be to "RPP" and the restitution hearing will be to "RPR."

<sup>3</sup> The declaration has been designated as CP 2. The State has attached a copy as Appendix A.

12-13. The court set a contested restitution hearing, as defendant did not agree with the restitution amount provided by the State. RPP 10, 13.

At the restitution hearing, the State acknowledged that the original restitution request of \$3,064.64, as submitted by the victim, was inappropriate for defendant's conviction. RPR 2. The State noted that both parties agreed to the cost of detailing the interior and an enzyme treatment for damage imposed by defendant's dog. RP 2. The State conceded that the cost of a trip permit and new license plates were not appropriate for restitution. RPR 7.

Defendant contested the imposition of costs for damage to the car's ignition and impound fees. CP 44-64; RPR 3. Defendant was not contesting the amounts requested, but whether specific items would be recoverable as a matter of law. RPR 3. The court ultimately held that there was a reasonable causal connection between the damage to the ignition and the impound fee. RPR 8. The court imposed restitution in the amount of \$ 537.49<sup>4</sup>. CP 38-39; RPR 9.

Defendant filed a timely notice of appeal. CP 40.

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<sup>4</sup> The total restitution comprised of detailing/enzyme treatment - \$ 190.75; impound costs - \$ 227.39; ignition repair - \$ 119.35.

2. Facts

The facts of the underlying crime are set forth in Appendix A.

C. ARGUMENT.

1. THE COURT DID NOT ABUSE ITS DISCRETION  
WHEN IT IMPOSED RESTITUTION FOR DAMAGE  
THAT WAS CAUSALLY CONNECTED TO  
DEFENDANT'S CRIME.

RCW 9.94A.753 allows a court to impose restitution in criminal cases. 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 ... unless extraordinary circumstances exist.” RCW 9.94A.753(5). This statute must be broadly interpreted to accomplish the legislature’s purpose, which is to require the defendant to face the consequences of his criminal conduct. See *State v. Tobin*, 132 Wn. App. 161, 173, 130 P.3d 426 (2006), *aff’d*, 161 Wn.2d 517, 166 P.3d 1167 (2007); *State v. King*, 113 Wn. App. 243, 299, 54 P.3d 1218 (2002). A trial court’s restitution order is reviewed for abuse of discretion. *State v. Enstone*, 137 Wn.2d 675, 679, 974 P.2d 828 (1999). A trial court abuses its discretion when it exercises it in a manifestly unreasonable manner or on untenable grounds. *Id.* at 679-80.

When determining restitution, the sentencing court may rely upon information that is admitted by the plea agreement, or admitted or

acknowledged by evidence presented at the sentence or restitution hearing. *State v. Woods*, 90 Wn. App. 904, 907, 953 P.2d 834 (1998). If a defendant disputes a material fact related to restitution, the sentencing court must either not consider those facts or hold an evidentiary hearing where the State must prove the restitution amount by a preponderance of the evidence. *Id.*

- a. As defendant failed to object to the court's review of the declaration for determination of probable cause below, he cannot raise this issue for the first time on appeal.

A defendant may raise an issue for the first time on appeal if the issue involves a “manifest error affecting a constitutional right.” RAP 2.5(a)(3). To preserve an error not of constitutional magnitude, a party must specifically object at trial and allow the trial court to rule on the issue. *State v. Rasmussen*, 70 Wn. App. 853, 859, 855 P.2d 1206 (1993).

Under the real facts doctrine, ‘[i]n determining any sentence, the trial court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing.’ RCW 9.94A.530(2).

Here, defendant claims that the sentencing court violated the real facts doctrine when she reviewed the declaration to find a causal connection between defendant’s crime and the damage to the victim’s car. *See* Appellant’s Opening Brief at 8. While the State acknowledges that

defendant did enter an *Alford* plea, he agreed that the court could review the declaration for a factual basis to support his plea. RPP 8. He did not object to the court's use of the document at sentencing. RPP 10-13. He had the opportunity to object to the court's use of the document at the restitution hearing and failed to do so. RPP 8-9.

It should be noted that defendant specifically did not contest the amount the State was seeking for the ignition damage and the cost of towing. RPP 3. Instead, defendant's sole contention was that the court could not impose restitution as a matter of law. RPP 3. The court reviewed the case law defendant provided and listened to the arguments of both parties before considering whether restitution was appropriate as a matter of law. RPP 7-8. Then she reviewed the declaration, without objection by defendant, for the facts which would establish a causal connection. RPP 8-9. As defendant failed to object to the court's use of the declaration, he has failed to preserve this issue on appeal.

Moreover, defendant acknowledged that the court would use the facts set forth in the declaration for sentencing purposes. During defendant's plea hearing, the following exchange took place between the court and defendant:

COURT:	Would you agree, sir, that I can look at the Declaration of Probable cause in order to find the facts I need to support your plea?
DEFENDANT:	Yes, I do.
...	
COURT:	And you understand that even though you

maintain your innocence, by pleading guilty today, it will be as if you admitted all the facts that were charged against you?

DEFENDANT: Yes, ma'am.

COURT: So you'll have the same sentence as if you admitted the facts?

DEFENDANT: Yes, ma'am.

RPP 8. While defendant may not have admitted the facts in the declaration as true, he clearly acknowledged the facts in the declaration. Defendant understood that the court would consider those facts for both the plea and sentencing, just as if he had admitted them. As restitution is part of a defendant's sentence, the court did not abuse its discretion when it considered the facts as set forth in the declaration.

- b. Restitution was appropriate where the victim's damages were causally related to defendant's crime.

RCW 9.94A.753 provides in part that "[r]estitution . . . shall be based on easily ascertainable damages for injury to or loss of property[.]" Restitution may be ordered only for losses incurred as a result of the precise offense charged. *State v. Miszak*, 69 Wn. App. 426, 428, 848 P.2d 1329 (1993). The restitution ordered must be causally connected to the defendant's crime. *Enstone*, 137 Wn.2d at 682-83. "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); *State v. Harrington*, 56 Wn. App. 176, 179-80, 782 P.2d 1101 (1989).

Essentially, the State must prove a “but for” causal connection between the defendant’s criminal conduct and the victim’s harm. *State v. Enstone*, 137 Wn.2d 675, 682-83, 974 P.2d 828 (1999).

In *State v. Hiett*, 154 Wn.2d 560, 566, 115 P.3d 274 (2005), the defendants were guilty of taking, rather than subsequently possessing, an automobile. The Court held that, but for the taking of the vehicle, as opposed to mere possession, the personal property inside would not have gone missing. *Id.* The order of restitution for the lost personal property was therefore authorized by statute. *Id.*

In *State v. Tettters*, the defendant was convicted of possession of stolen property in the third degree for his possession of a stolen car. 81 Wn. App. 478, 479, 914 P.2d 784 (1996). The victim submitted her damages, including damage to the vehicle and loss of personal property taken from the vehicle. *Id.* at 480. The court held that because no evidence had been presented to suggest that the defendant was in possession of the vehicle either from the time it was taken, or when the lost items were taken from the vehicle, the necessary causal relationship between the defendant’s possession of the stolen vehicle and the victim’s loss of personal property taken from the vehicle had not been established. *Id.* at 481.

Similarly, in *State v. Woods*, 90 Wn. App. 904, 911, 953 P.2d 834 (1998), the court found the State’s attempt to relate back the defendant’s possession of the stolen vehicle to the date of the theft to be ineffective,

and held that the defendant could not be made to pay restitution for items taken from the vehicle when it was stolen a few weeks before.

In contrast, in *State v. Harrington*, 56 Wn. App. 176, 782 P.2d 1101 (1989), the court affirmed the restitution award in a possession of stolen property case where the defendant admitted to illegal possession of the vehicle during the entire time the victim was out of possession, and it was undisputed that the damage to the car occurred during that time.

As a preliminary matter, in this case the parties disagree to the appropriate standard of review on appeal. Defendant asserts that this court should engage in *de novo* review of the lower court's restitution order. See Appellant's Opening Brief at 10. Defendant cites *State v. Davidson*, 116 Wn.2d 917, 809 P.2d 1374 (1991), and *State v. Duback*, 77 Wn. App. 330, 332, 891 P.2d 40 (1995) to support his argument that *de novo* review is appropriate. Defendant's reliance on these cases is misplaced. In *Davidson*, the court reviewed whether an employer could be considered a victim under the restitution statute and, if so, whether wages paid to an employee injured by the defendant could be considered damages. 116 Wn.2d at 919. In *Duback*, the court held that the restitution statute required restitution to be set within 60 days of sentencing, and failure to follow the statutory timeliness provisions rendered the restitution order void. 77 Wn. App. at 332-33.

Both of these cases suggested the appellate court reviews whether the claimed restitution is allowed under the statute as a matter of law and

did not relate the lower court's findings of causal connection. Here, the restitution requested related to injury to property and monetary damage to the rightful owner based on defendant's crime. As damage to the property owner is specifically authorized under the statute, *de novo* review is not appropriate and the abuse of discretion standard applies.

Here, the sentencing court did not abuse its discretion when it determined that there was a causal relation between defendant's crime and the damage incurred by the victim. The court specifically found that defendant was using a house key in the ignition of the car. RPR 8. This finding was supported the declaration and was never contested by defendant. Appendix A. Under a preponderance of the evidence standard, it was reasonable for the court to infer that but for defendant's use of a house key in the ignition; the car would not have been damaged.

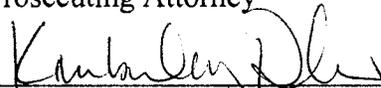
In addition, the impound fee was directly related to defendant's crime of possessing the stolen car. But for defendant's unlawful possession, the car would not have been towed. The towing charges that resulted after defendant's arrest were a direct consequence of his unlawful possession of the car and were properly awarded as restitution. That defendant was not blocking traffic is irrelevant. Defendant drove a stolen vehicle in public and was pulled over and arrested. The officer was not obligated to abandon the car in a stranger's driveway for defendant's convenience.

D. CONCLUSION.

As the sentencing court did not abuse its discretion when it imposed restitution for damages incurred by the victim as a result of defendant's possession of the stolen vehicle, the State respectfully requests this Court to affirm the restitution imposed as part of defendant's sentence.

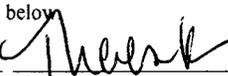
DATED: DECEMBER 22, 2009

MARK LINDQUIST  
Pierce County  
Prosecuting Attorney

  
KIMBERLEY DEMARCO  
Deputy Prosecuting Attorney  
WSB # 39218

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

12-24-09   
Date Signature

## **APPENDIX “A”**

*Declaration for Determination of Probable Cause filed 9/17/08*

September 17 2008 9:48 AM

KEVIN STOCK  
COUNTY CLERK

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-04326-8

vs.

RONALD EDWARD STEEN,

DECLARATION FOR DETERMINATION OF  
PROBABLE CAUSE

Defendant.

JAMES S. SCHACHT, declares under penalty of perjury:

That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police report and/or investigation conducted by the PIERCE COUNTY SHERIFF, incident number 082601060;

That the police report and/or investigation provided me the following information;

That in Pierce County, Washington, on or about the 16th day of September, 2008, the defendant, RONALD EDWARD STEEN, committed POSSESSION OF A STOLEN VEHICLE as follows:

According to the report referred by the Pierce County Sheriff the incident took place at 15213 103<sup>rd</sup> Avenue Court East in Puyallup. Deputy Matthew Smith reported that he was on patrol and saw the defendant driving a 1992 dark blue Honda Accord. He checked the license plate and learned that the vehicle had been reported stolen by victim W. Bergstrom to Seattle Police Department. He stopped the defendant and made contact with him.

Deputy Smith detained the defendant and advised him of his *Miranda* rights. He asked about the car and the defendant claimed that he was borrowing it. The ignition to the car was found to have been damaged. A house key was used to start it but the engine continued running with the key out of the ignition. In addition Deputy Smith found a set of shaved keys in the car. Such keys are reportedly commonly used by car thieves to defeat vehicle ignition systems. Also in the car were syringes in a glasses case.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: September 17, 2008

PLACE: TACOMA, WA

/s/ JAMES S. SCHACHT  
JAMES S. SCHACHT, WSB# 17298

DECLARATION FOR DETERMINATION  
OF PROBABLE CAUSE -1

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