

NO. 45375-4-II

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

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STATE OF WASHINGTON,

Respondent,

v.

MARYANN REHAUME,

Appellant.

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

The Honorable Stephen Warning, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The court erred in finding that the expense of the state auditor attending trial to assist the prosecutor was appropriately included in the restitution award.

2. The court erred in labeling witness costs, investigator expenses, and sheriff's service fees as restitution.

3. The court erred in finding that the loss resulting from the County's failure to negotiate cashier's checks was caused by appellant's criminal activity.

Issues pertaining to assignments of error

1. Appellant was convicted of theft and misappropriation of accounts belonging to Cowlitz County. The court ordered restitution of the amounts proven in the theft charges and the amount spent on the investigatory audit. It also ordered appellant to reimburse the County for expenses incurred in the prosecution, and it stated in its order that all sums awarded to the County were designated restitution. Did the court exceed its authority in including prosecution costs in the order of restitution?

2. The Cowlitz County Sheriff's Department took custody of several deposits appellant submitted to the treasurer's office, including over \$15,000 in cashier's checks. Rather than substituting copies for the

checks and negotiating them, the County held the checks in evidence and permitted them to expire. Where the loss associated with the outdated checks was not the result of appellant's crime, must the order of restitution for that loss be vacated?

B. STATEMENT OF THE CASE

1. Procedural History

On December 14, 2011, appellant Maryann Rehaume was charged in Cowlitz County Superior Court with eight counts of second degree theft, one count of third degree theft, and one count of misappropriation of accounts by a public officer. CP 1-7; RCW 9A.56.040; RCW 9A.56.050; RCW 42.20.070. The information alleged that the second degree thefts and the misappropriation constituted major economic offenses supporting an exceptional sentence. CP 1-7; RCW 9.94A.535(3)(d). An amended information was filed on January 15, 2013, clarifying the appointment of a special deputy prosecuting attorney and omitting surplus language. CP 16-21.

The case proceeded to jury trial before the Honorable Stephen Warning, and the jury returned guilty verdicts and affirmative findings on the aggravating factors. CP 125-43. The court imposed an exceptional sentence of 36 months on the second degree theft and misappropriation

counts and a suspended sentence of 364 days on the third degree theft. CP 155-56. Following a restitution hearing, the court imposed a total of \$59,146.03 restitution. CP 163-65. Rehaume filed this timely appeal of the restitution order. CP 166.

2. Substantive Facts

Maryann Rehaume was convicted of eight counts of second degree theft, one count of third degree theft, and one count of misappropriation of accounts by a public officer committed between 2007 and 2010 while she worked as the non-department head secretary for the Cowlitz County Probation Department. CP 154; RP 43. Her job duties included supervising the cashiers, processing financial collection data, and preparing deposits of collected funds for transmission to the County Treasurer's office. RP 43-46. Rehaume was placed on administrative leave on January 6, 2011, when a discrepancy in accounts was discovered. RP 49-51.

On January 10, 2011, Rehaume's attorney delivered to the County Treasurer's office 28 deposits from the Probation Department which had not previously been submitted. RP 77-79, 157. The total amount of the deposits was \$50,333.81, with \$35,022.25 in cash and the remainder in cashier's checks. RP 81, 419. The Cowlitz County Sheriff's Office took custody of the deposits and placed them in evidence pending the

investigation. RP 74, 171. Although the cashier's checks in the deposits expired if not negotiated within 90 days, the original checks were not replaced with copies so that they could be negotiated. Thus, by the time Rehaume was convicted in February 2013, the checks had expired. RP 708-10.

The State Auditor's office conducted an investigatory audit of the Probation Department's records. RP 293. Sherrie Ard, a fraud auditor from the State Auditor's office, testified as an expert witness at trial. RP 290, 295. She also assisted the special prosecutor during the entire trial as the lead investigator, pursuant to ER 615. See RP 10-11, 705. The State Auditor's office charged Cowlitz County \$26,730.58 for the audit and \$6186.40 for the trial time. CP 164.

The State presented evidence at trial that on January 6, 2011, Rehaume asked her father in law, Robert Rehaume, for money, saying she was in trouble and needed his help. RP 107. He gave her a cashier's check for \$31,000. RP 108-09. Robert Rehaume was living in Arizona at the time of trial, and the Cowlitz County Prosecutor's Office spent \$1325.22 for airfare, transportation, lodging and subsistence so that he could testify. CP 164; RP 671.

Following Rehaume's conviction, the State sought restitution for the amount proven in the theft charges, fees paid by the Prosecutor's

Office for service of subpoenas, the costs of securing Robert Rehaume's presence at trial, the amount billed to Cowlitz County by the State Auditor's office for the cost of the audit, the amount billed for Sherry Ard's attendance and testimony at trial, and the amount of the outdated cashier's checks held in evidence. Supp. CP (Sub. No. 76, Declaration of Special Deputy Prosecutor Regarding Restitution, filed 2/22/13); Supp. CP (Sub. No. 79, Supplemental Declaration of Special Deputy Prosecutor Regarding Restitution, filed 3/1/13).

Defense counsel argued that the sheriff's service fees and the costs incurred in securing Robert Rehaume's presence were costs associated with going to trial which should have been included in the Judgment & Sentence as legal financial obligations rather than in a restitution award. RP 697. Counsel also challenged inclusion of the \$6186.40 billed by the State Auditor's office for Ard's attendance at trial. RP 698. Further, counsel argued that because an audit of the County's financial affairs is statutorily required at least once every three years, the State had not shown what part of the audit done in this case was causally related to Rehaume's crimes. RP 699-701.

The court found that the State had met its burden of proving the amount of expenses incurred by the County and that the money would not have been expended but for Rehaume's criminal activity. CP 163. The

court found it was appropriate to award restitution for the cost of the audit and that “such costs reasonably include the expense of State Auditor Sherrie Ard attending the trial at the prosecutor’s side throughout as investigating assistant.” CP 163-64. The court ordered restitution as follows:

\$9006.28 for the thefts proven at trial  
\$786 for subpoena service fees  
\$1325.22 for securing Robert Rehaume’s testimony  
\$26,730.58 for the audit  
\$6186.40 for Ard’s time spent at trial  
\$15,111.55 for outdated cashier’s checks

CP 164. The court directed the County to make reasonable efforts to negotiate the cashier’s checks and deduct any recovered amount from Rehaume’s restitution obligation. CP 164. Finally, the court stated that “[s]ince all monies ordered herein are to be paid to Cowlitz County, the Court labels them all restitution for accounting convenience.” CP 165.

C. ARGUMENT

1. THE COURT ERRED IN ORDERING REHAUME TO PAY THE COSTS OF PROSECUTION AS RESTITUTION.

The sentencing court’s authority to impose restitution is derived wholly from statute. The court has no inherent power to order restitution. State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008); State v. Oakley, 158 Wn. App. 544, 551, 242 P.3d 886 (2010), review denied, 171

Wn.2d 1021 (2011). A trial court's restitution order is reviewed for an abuse of discretion, and application of an incorrect legal analysis or other error of law is an abuse of discretion. State v. Tobin, 161 Wn.2d 517, 523, 166 P.3d 1167 (2007).

Restitution is awarded to the victim of a crime who suffered damage to or loss of property as the result of the crime. RCW 9.94A.753(5). The costs of prosecution do not fall within this category, however. These expenses are instead statutorily designated as costs, which the court may require the defendant to pay. RCW 10.01.160 (court may order defendant to pay as costs expenses specially incurred in prosecuting defendant). Witness costs, investigator expenses, and sheriff service fees are examples of court costs which may be recouped under RCW 10.01.160. State v. Earls, 51 Wn. App. 192, 197-198, 752 P.2d 402 (1988), overruled on other grounds by State v. Curry, 118 Wn.2d 911, 915-16, 829 P.2d 166 (1992); State v. Baggett, 103 Wn. App. 564, 571-72, 13 P.3d 659 (2000) (expert witness fees properly included in order for costs), review denied, 143 Wn.2d 1011 (2001). In fact, there are blanks on the judgment and sentence form where these expenses can be included in the award of court costs. CP 157-58.

Here, in addition to ordering Rehaume to reimburse Cowlitz County for the amount stolen and the cost of the audit, the court ordered

her to reimburse \$786 spent for subpoena service fees, \$1325.22 spent to bring the out of state witness to trial, and \$6186.40 paid for Ard's presence at trial as investigative assistant and expert witness. The court then stated that for "accounting convenience" it was labeling all monies ordered as restitution. While it may be more convenient to label all Rehaume's legal financial obligations as restitution, there is no statutory authority for doing so.

Under the statutory scheme, the difference between costs and restitution is more than just a name. An order of costs is not the same as an order of restitution. See RCW 9.94A.760(1) (order of legal financial obligations must be segregated among separate assessments for restitution, costs, fines, and other assessments). Restitution is mandatory and is ordered without regard to the defendant's ability to pay, while costs can only be imposed if the court finds the defendant has the ability to pay them. State v. Lundy, 176 Wn. App. 96, 102, 308 P.3d 755 (2013); RCW 9.94A.753(4); RCW 10.01.160(3). Restitution has priority in repayment over court costs. RCW 9.94A.760(1). Unlike restitution, costs can be remitted under certain circumstances. Lundy, 176 Wn. App. at 103-04; RCW 9.94A.753(5); RCW 10.01.160(4).

Applying the statutory definitions, the subpoena service fees, witness costs, and investigator expenses are court costs. The court has no

authority to reclassify these expenses as restitution. The order awarding these costs as restitution must be vacated.

2. THE LOSS RESULTING FROM THE COUNTY'S FAILURE TO NEGOTIATE THE CASHIER'S CHECKS SHOULD NOT HAVE BEEN INCLUDED IN THE RESTITUTION ORDER.

As noted above, a trial court has authority to order restitution under RCW 9.94A.753(5), which provides as follows: "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." The trial court cannot impose restitution based on the defendant's general scheme or acts connected with the charged crime, however. There must be a causal connection between the crime and the injuries for which compensation is sought. Tobin, 161 Wn.2d at 524; State v. Kinneman, 155 Wn.2d 272, 286, 119 P.3d 350 (2005); Oakley, 158 Wn. App. at 552.

In Oakley, the defendant was convicted of second degree assault and attempted drive-by shooting, but he was ordered to pay restitution for damage done to a neighbor's garage door and vehicle after he fled the scene of the crime. Oakley, 158 Wn. App. at 548-49. This Court vacated the restitution order. Although the damage to the vehicle and garage door was connected with the defendant's charged crimes because he was trying to avoid apprehension when he caused the damage, he did not crash into

the garage door as a result of the assaults and attempted drive-by shooting. Thus, there was insufficient causal connection between the crimes and the damage, and the order of restitution was vacated. Oakley, 158 Wn. App. at 553; see also State v. Dauenhauer, 103 Wn. App. 373, 379-80, 12 P.3d 661 (2000) (court had no authority to order restitution for damages done in collision as defendant attempted to flee scene of charged burglary), review denied, 143 Wn.2d 1011 (2001).

Similarly, in this case there is insufficient causal connection between the outdated cashier's checks and the charged offenses to include that loss in the order of restitution. Rehaume was charged with misappropriation of accounts between January 1, 2010, and January 10, 2011. CP 21. On January 10, 2011, Rehaume delivered to the County Treasurer's office the Probation Department deposits in her possession, including \$15,111.55 in cashier's checks. The Cowlitz County Sheriff's Department immediately took custody of those deposits. While the checks were in the County's possession, they were allowed to expire, rather than being substituted with copies and negotiated. The checks did not expire as a result of Rehaume's crime. Thus, while the loss associated with the outdated checks was generally connected with the charged offense, there was insufficient causal connection to include the lost value in the

restitution order. That portion of the restitution order charging Rehaume with the value of the outdated cashier's checks must be vacated.

D. CONCLUSION

The court exceeded its authority in including prosecution costs in the order of restitution and in ordering restitution for a loss not caused by the charged offenses. Those portions of the restitution order must therefore be vacated.

DATED March 18, 2014.

Respectfully submitted,



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Today I mailed copies of the Brief of Appellant and Supplemental Designation of Clerk's Papers in *State v. Maryann Rehaume*, Cause No. 45375-4-II as follows:

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Belfair, WA 98528

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



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Catherine E. Glinski  
Done in Port Orchard, WA  
March 18, 2014

**GLINSKI LAW OFFICE**

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