

**NO. 47973-7-II**

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

STATE OF WASHINGTON, RESPONDENT

v.

E.A.S., APPELLANT

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Appeal from the Superior Court of Pierce County, Juvenile Division  
The Honorable G. Helen Whitner

No. 15-8-00042-7

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**BRIEF OF RESPONDENT**

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

1. Should respondent's challenge to the validity of the juvenile restitution order be rejected when the record shows respondent inflicted damages compensated and the order is authorized by statute?
2. Did the trial court act within its discretion when it held respondent jointly and severally liable for restitution damages associated with his adjudicated criminal conduct?

B. STATEMENT OF THE CASE.

1. Procedure

On January 13<sup>th</sup> 2015, Pierce County Prosecutor's Office filed an information, cause number 15-8-00042-7, charging E.A.S. ("respondent") with Assault in the Second Degree. CP 1, 9. The case proceeded to a bench trial before the Honorable G. Helen Whitner. 1RP 1, 4.<sup>1</sup> Judge Whitner determined respondent was guilty of the lesser offense of Assault in the Fourth Degree. 3RP 366; CP 13.

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<sup>1</sup> The Verbatim Report of Proceedings is contained in four volumes referred to herein as 1RP (Vol. I); 2RP (Vol. II); 3RP (Vol. III); 4RP (Vol. IV).

Respondent was sentenced to 6 months community supervision. 4RP 407-410; CP 14-19. A number of conditions were imposed to include joint and several restitution in the amount of \$4,183.93 for the victim's medical costs. 4RP 409-410, 424-427; CP 14-19, 22-42, 43-44. The court individually tailored a payment plan for respondent requiring him to pay only \$25 per month towards the total restitution amount. 4RP 428-9; CP 43-44. Respondent timely appealed the order of restitution. CP 61-63.

## 2. Facts

The evidence adduced at trial establishes that on January 12<sup>th</sup>, 2015, Q.R. challenged fellow Spanaway High School classmate T.O. to a fight in response to a disagreement involving a girlfriend. 2RP 116-120, 122-5; Ex. 12-18. Q.R. arrived at T.O.'s house to fight with respondent and a group of 6-10 other classmates. 2RP 125-8, 191-3, 195. The fight began when Q.R. started punching T.O. in the face and continued to hit him until he fell to the ground. 1RP 23-25; 2RP 129-131, 194-5.

As Q.R. began to walk away, respondent separated himself from the group, approached the victim, and continued to punch him. 2RP 133-4, 195-7; Ex. 19. Two new assailants from the crowd joined respondent and the three of them continued punching and kicking T.O. while he was on the ground. 2RP 135-6, 197-9. T.O. suffered several injuries as a result of the

attack including contusions, bruising, cuts to the face, and a severe cut through his lip that required oral surgery to repair. 1RP 52-55; CP 30; Ex. 1-11. The defense called two witnesses. 2RP 247-260; 3RP 301, 306-16. Respondent did not testify. 3RP 315.

C. ARGUMENT.

1. THE COURT ACTED WITHIN ITS STATUTORY AUTHORITY WHEN IT ORDERED RESTITUTION FOR INJURIES CAUSED BY RESPONDENT'S CRIMINAL CONDUCT.

The court's authority to impose restitution is statutorily derived. Courts are required to order juvenile offenders to make restitution for "any loss or damage as a result of the offense committed." RCW 13.40.190(1). *State v. Enstone*, 137 Wn.2d 675, 682, 974 P.2d 828 (1999). Restitution provisions of the Juvenile Justice Act are liberally construed in favor of imposing restitution. *State v. Barrett*, 54 Wn. App. 178, 179, 773 P.2d (1989); *State v. Vinyard*, 50 Wn. App. 888, 895, 751 P.2d 339 (1988). Juvenile restitution orders are reviewed for abuse of discretion. *State v. Morse*, 45 Wn. App. 197, 199, 723 P.2d (1986). A court abuses its discretion to order juvenile restitution if it exceeds the court's statutory authority. *State v. Horner*, 53 Wn. App. 806, 807, 770 P.2d 1056, 1057 (1989); *State v. J.P.*, 149 Wn.2d 444, 449, 69 P.3d 318 (2003).

A restitution order is proper if the victim's damages were a foreseeable consequence of the criminal conduct underlying respondent's

crime. *State v. Harrington*, 56 Wn. App. 176, 179, 782 P.2d 1101 (1989). The court considers a respondent's actual conduct when evaluating foreseeability, not simply the defined elements of the crime charged. *State v. Hiett*, 154 Wn.2d 560, 564, 115 P.3d 274 (2005); *State v. Landrum*, 66 Wn. App. 791, 799, 832 P.2d 1359, 1364 (1992). All participants in criminal conduct resulting in loss or damages are held jointly responsible for restitution, even if an individual participant did not directly cause a particular loss or damage. *Hiett*, 154 Wn.2d at 566.

Respondent was an active participant in the assault that caused the victim's injuries, therefore, he is liable for related restitution. Respondent accompanied Q.R. and a group of others to T.O.'s home with the explicit intention to fight T.O. 2RP 124-8, 191-3; Ex. 12-18. Q.R. initiated the assault of T.O. with several punches. 1RP 23-25; 2RP 129-131, 194-5. Respondent joined the assault, punching T.O. until he fell and then continued to deliver blows to the victim while he was on the ground. 2RP 133-4, 144-6, 196-8; Ex. 19. T.O.'s injuries were foreseeably caused by that conduct. The violent conduct underlying respondent's conviction and its relation to the victim's injuries is a sufficient basis to order restitution. *Hiett*, 154 Wn.2d at 564; *Landrum*, 66 Wn. App. at 799. The court is not required to connect a specific blow from the respondent to a specific injury to the victim for restitution purposes as respondent contends. *Hiett*, 154 Wn.2d at

566; Brief of Appellant at 10-11. It is immaterial for the purposes of restitution that respondent was convicted of a lesser degree of assault than initially charged.

2. THE COURT ACTED WITHIN ITS DISCRETION WHEN IT HELD RESPONDENT JOINTLY AND SEVERALLY LIABLE FOR RESTITUTION COSTS ASSOCIATED WITH HIS CRIME.

A trial court must order restitution for damages resulting from a juvenile crime. RCW 13.40.190(1). The court has the authority to assign joint and several restitution liability among all adjudicated respondents of a crime. RCW 13.40.185(1)(f). Restitution can only be awarded for damages resulting from a crime of adjudication. See *State v. Mead*, 67 Wn. App. 486, 490, 836 P.2d 257 (1992). The conditions of a restitution order are reviewed for abuse of discretion. *State v. Horner*, 53 Wn. App 806, 807, 770 P.2d 1056 (1989). An abuse of discretion occurs only when the decision or order of the court is “manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *State v. Cunningham*, 96 Wn.2d 31, 34, 633 P.2d 886 (1981).

The court acted within its discretion when it held respondent jointly and severally liable with any co-respondents for restitution associated with the victim’s injuries. The court must impose restitution liability and can only impose such liability on adjudicated respondents. Based on the

reviewable record, E.A.S. was the only individual adjudicated of the assault against T.O. and was correctly ordered to pay restitution.<sup>2</sup> 3RP 366-9; CP 14-21. The joint and several nature of the restitution order suggests that any future respondent found to be an accomplice to the offense will share liability. It is misguided to suggest the court could have or should have assigned liability to individuals who have not been adjudicated guilty for the underlying crime, as respondent argues. Brief of Appellant at 12-3. Respondent cannot escape restitution liability by virtue of being the only person adjudicated of the crime.

The court imposed a payment plan designed to accommodate respondent's particular means and circumstances to reduce financial hardship. Respondent's status as a high school student without a full time income and his father's assessment of his ability to contribute to the restitution amount were considered. 4RP 428-9. This was why respondent was only required to pay only \$25 per month towards the total restitution. 4RP 428-9; CP 43-44.

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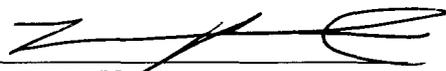
<sup>2</sup> The lone co-respondent in this case, E.L.G., was acquitted on assault charges related to the fight with T.O. There is no indication in the record that any person other than respondent was adjudicated for conduct related to the fight.

D. CONCLUSION.

The trial court acted within its statutory authority when it ordered respondent to pay restitution related to his criminal conduct, therefore the order should be affirmed.

DATED: March 8, 2016.

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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.

3-8-16 Theresa Ker  
Date Signature

**PIERCE COUNTY PROSECUTOR**

**March 08, 2016 - 4:10 PM**

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