

**FILED**

**MAY 20 2015**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 31583-5-III

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON

Chelan County Superior Court  
Cause No. 12-1-00320-4

STATE OF WASHINGTON,  
Plaintiff/Respondent,

v.

MICHAEL L. LONG, JR.,  
Defendant/Appellant.

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BRIEF OF RESPONDENT

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## I. ASSIGNMENTS OF ERROR

- A. THE TRIAL COURT DID NOT ERR WHEN IT ORDERED RESTITUTION FOR WHICH THERE WAS A CAUSAL CONNECTION BETWEEN MR. LONG'S POSSESSION OF THE STOLEN VEHICLE AND THE DAMAGES TO THE VEHICLE.
  
- B. THE TRIAL COURT DID ERR WHEN IT CONCLUDED THAT MR. LONG HAD THE ABILITY OR LIKELY FUTURE ABILITY TO PAY THE LEGAL FINANCIAL OBLIGATIONS IMPOSED IN THE JUDGMENT AND SENTENCE WITHOUT FIRST MAKING AN INDIVIDUALIZED INQUIRY INTO HIS CURRENT AND FUTURE ABILITY TO PAY.

## II. STATEMENT OF THE CASE

On October 8, 2012, pursuant to a plea agreement between the parties, the State prepared and filed an Amended Information charging the Defendant with Count I-Possession of a Stolen Vehicle occurring on or between July 6, 2012, and July 8, 2012,

Count II-Bail Jumping, and Count III-Possessing Stolen Property in the Second Degree. CP 7-9. On October 8, 2012, the Defendant pled guilty and was sentenced for those felony crimes. 10/8/12 RP 10.

On February 7, 2013, the State filed an Amended Restitution Report. CP 98-118.

On February 21, 2013, the Defendant filed Defendant's Brief in Response to State's Restitution Request. CP 119-124.

On March 28, 2013, the State filed State's Brief on Restitution. CP 125-154. Attached to the State's brief was a six page Wenatchee Police Department Incident Report prepared by Officer Brian Miller, a one page Facebook page belonging to Michael Long (a/k/a "Hotrod"), a six page Wenatchee Police Department Incident Report prepared by Detective Nathan Hahn, a two page Wenatchee Police Department Property Record, a three page Wenatchee Police Department Incident Report prepared by Officer Brian Miller, and a four page Wenatchee Police Department Incident Report prepared by Officer Jordan Orrell. CP 133-154.

On April 4, 2013, the matter came before the Honorable T.W. Small, Superior Court Judge, for a contested restitution hearing. CP 157.

The Amended Restitution Report requested restitution in the amount of \$1,500.00 to C&O Nursery, \$500 to Adrian Espinoza, and \$11,219.35 to Country Preferred Insurance Company, for a total request of \$13,219.35. CP 98, 158.

The Defendant stipulated to the restitution amount of \$1,500.00 as requested by C&O Nursery pursuant to his conviction on Count III-Possessing Stolen Property in the Second Degree. CP 158. The Defendant contested the restitution amounts of \$500.00 to Adrian Espinosa and \$11,219.35 to Country Preferred Insurance Company as they pertained to his conviction on Count I-Possession of a Stolen Vehicle. CP 158.

The Defendant offered no evidence of valuation for damages and loss to the vehicle. In fact, the only evidence of valuation for damages and loss to the vehicle was in the undisputed Amended Restitution Report. CP 98-118, 158, 159.

The court reviewed all of the Wenatchee Police Department reports and attached documents, the Amended Restitution Report, and found as fact and concluded as law that there was a factual basis to establish a causal connection between the Defendant's possession of the stolen vehicle and the damages to the vehicle so that the entry of an Order Setting Restitution in the total amount

requested by the State was appropriate. CP 1-4, 98-118, 158, 159, 155, 156.

On appeal herein, the Defendant once again claims that there isn't a causal connection between his sole possession of the vehicle and the damages done to the vehicle; and therefore, asserts that the trial court abused its discretion by imposing restitution for the damages done to Adrian Espinosa's vehicle.

### III. ARGUMENT

A. THE TRIAL COURT DID NOT ERR WHEN IT ORDERED RESTITUTION FOR WHICH THERE WAS A CAUSAL CONNECTION BETWEEN MR. LONG'S POSSESSION OF THE STOLEN VEHICLE AND THE DAMAGES TO THE VEHICLE.

A trial court has broad statutory authority to order restitution. RCW 9.94A.753; State v. Enstone, 137 Wn.2d 675, 679, 974 P.2d 828 (1999) (citing State v. Smith, 119 Wn.2d 385, 389, 831 P.2d 1082 (1992)). RCW 9.94A.753(1) directs that the court shall determine the amount of restitution due at a disposition hearing. The amount of loss need not be proved beyond a reasonable doubt

or by clear and convincing evidence, but rather restitution shall be based on easily ascertainable damages as required by RCW 9.94A.753(3). State v. Fambrough, 66 Wn. App. 223, 225, 831 P2d 789 (1992). And, the court has the statutory authority to double the amount of the offender's gain or the victim's loss due to the defendant's commission of the crime. RCW 9.94A.753(3).

On appeal, the review of a trial court's discretionary decision is for an abuse of discretion. State v. Erickson, 168 Wn.2d 41, 45, 225 P.3d 948 (2010). The trial court's factual findings are reviewed for substantial evidence. State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (Wash. 2008).

Unless a defendant enters into an express agreement to pay restitution for an uncharged crime, a trial court may order restitution only for losses that are causally connected to the crime. State v. Kinneman, 155 Wn.2d 272, 286, 119 P.3d 350 (2005). We determine whether restitution is causally connected to the crime by employing a "but for" inquiry. State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007). The legislature intended that restitution be "widely available to the victims of crimes, at least when their injuries were a foreseeable consequence" of the criminal conduct. State v. Hiett, 154 Wn.2d 560, 564, 115 P.3d 274 (2005). In order to

determine whether a causal connection exists, a court must look at the facts underlying the defendant's crime. State v. Griffith, 164 Wn.2d 960, 966, 195 P.3d 506 (2008).

The facts in this case came from all of the Wenatchee Police Incident Reports and attached documents and the Amended Restitution Report. CP 1-4, 133-154, 98-118.

Adrian Espinosa owned a white 2005 Dodge Neon, WA license AER5399. CP 1, 135. That vehicle had been parked at Town Dodge from early June, 2012, until it was reported stolen on or around July 6, 2012. CP 103. The car had been taken to the shop to diagnose and repair electrical problems. CP 103. The power control module (PCM) was found to be bad and it was removed from the vehicle rendering it inoperable. CP 103. Mr. Espinosa and a mechanic from Town Dodge removed the SKIM module from the vehicle. CP 103. An aftermarket PCM and the SKIM module were shipped to Seattle to be reprogrammed to each other and tied to the VIN on the Dodge Neon. CP 103. On July 6, 2012, Mr. Espinosa received the reprogrammed PCM and SKIM module and took them to Town Dodge for installation. CP 103. This is when Mr. Espinosa learned that the Dodge Neon had been stolen. CP 103. Both sets of keys for the vehicle were accounted

for and there was no apparent damage to the ignition lock cylinder.  
CP 103.

A forensic analysis was performed on the Dodge Neon to determine how the car could have been started, shifted, and steered. CP 103. According to the forensic locksmith the ignition lock was found intact. CP 103. It had not been defeated and was likely last rotated by using one of the existing keys with the correct mechanical cuts. CP 103. However, the report also notes that the ignition wiring had been altered and the car could have been started without turning the ignition lock. CP 103.

Witness Tyler McGrew saw the Defendant driving the white Dodge Neon on Friday, July 6, 2012, through the alley at 711 Orondo Street, which is behind his residence. CP 3, 141. The Defendant was alone in the vehicle. CP 3, 141. Witness Rodolfo Guizar saw the Defendant driving the vehicle on July 8, 2012, when it was parked in the 200 block of Spokane Street, where law enforcement subsequently found the vehicle and recovered it. CP 2, 135. Mr. Guizar indicated that the vehicle sounded like it was backfiring and having major engine problems. CP 2, 135. Witness Julie R. Bonifer indicated that the Defendant, Connie Contreras and another unidentified female had been in the vehicle

on July 8, 2012. CP 3, 137. Ms. Bonifer stated that either last night (July 7, 2012) or the night before (July 6, 2012) she drove the Defendant to a house up North to pick up the car. CP 3, 137. Ms. Bonifer pointed to the stolen car which was parked on Spokane Street. CP 3, 137. She stated that the Defendant drove it to its current location with Ms. Contreras and another unidentified female in the vehicle. CP 3, 137. Ms. Bonifer indicated that the Defendant left the scene prior to the arrival of law enforcement. CP 3, 137. And, she said that the Defendant had gone to get a new battery for the Dodge Neon. CP 3, 137.

The stolen Dodge Neon was recovered on July 8, 2012. When law enforcement found the vehicle, they observed stolen license plates on it. CP 1, 135. The stolen license plates came from a 1998 Plymouth Neon belonging to Chantelle Holbrook. CP 1, 135. Ms. Holbrook was interviewed by law enforcement and she indicated that she knows the Defendant and that he has a reputation for stealing cars. CP 144. The driver side handle was broken and/or possibly drilled out. CP 1, 135. The ignition area had parts removed. CP 1, 135. Where the VIN should have been located on the dash, there was a hand written paper stating, "FUCK DA POLICE." CP 1, 135. The Defendant had a Facebook page on

which there was a picture of him at the Wenatchee Police Department flipping off his middle finger at the sign that says, "POLICE," and a comment under the picture that reads, "F#ck da police." CP 139. Previously, the Dodge Neon did not have a battery and now a battery had been placed in the engine compartment. CP 1, 135. A part of the top of the hood had been removed and had been painted black. CP 2, 135. The hood had originally been entirely white. CP 1, 135. There was a Jeep brand key in the ignition. CP 2, 135. The stereo had been removed and it was on the front passenger floorboard. CP 135.

Inside of the vehicle, law enforcement located many items that did not belong to Mr. Espinosa. CP 135. There was a set of keys; a black welding helmet; a Dakine backpack containing various items including men's clothing, tools, and \$21.93 in U.S. currency; a black and silver electronic car part; a plastic mount with two car gauges; a plastic intake tube box; and, a Sylvania car headlight package. CP 135, 146, 147.

The trial court record contained sufficient evidence of a causal connection between the Defendant's possession of Adrian Espinosa's car and the damage to that vehicle to support the trial court's ordering of restitution in this case:

1) The Defendant pled guilty to the Amended Information that charged him with committing the crime on or between July 6, 2012, and July 8, 2012. The vehicle was discovered stolen from Town Dodge on July 6, 2012. Mr. McGrew saw the Defendant driving the vehicle on July 6, 2012. He was alone in the vehicle. On July 7, 2012, or July 6, 2012, Ms. Bonifer drove the Defendant to pick up the vehicle. On July 8, 2012, the Defendant was seen driving the vehicle and abandoning it because of car trouble in the 200 block of Spokane Street. Immediately after the vehicle was abandoned, law enforcement recovered the vehicle. Therefore, the Defendant had exclusive control over the vehicle during the short period of time that it was stolen. And, it is undisputed that the damage occurred during the Defendant's possession of the vehicle.

2) Indicia in the vehicle are solely attributable to the Defendant and no other person: the "tailored" VIN sign stating the Defendant's personalized expression of disdain for the police and his matching Facebook page, the men's clothing, tools to work on the vehicle, and the various vehicle parts. Mechanical changes and damages to the vehicle are consistent with the Defendant's ability and inclination to work on cars: a drilled out or damaged driver side handle to enter the vehicle, a partially painted hood,

altered ignition wiring, a Jeep brand key in the ignition to operate the vehicle, a removed stereo, and a battery placed into the vehicle to operate it. And, when the vehicle was abandoned due to car trouble, the Defendant left the scene to get another battery. The facts establish a link between the Defendant's conduct and the damage to the vehicle.

3) The Defendant admitted to law enforcement that he always works on cars. CP 153. He said that he helps people with their cars a lot. CP 154. When asked if he had worked on the Dodge Neon, the Defendant said, "I don't think so. I work on so many different cars though it's hard to keep track." CP 154. However, the Defendant did admit that his iPod might have been in the car. CP 153. It is reasonable to conclude the Defendant worked on the vehicle and caused the damage to it.

4) The stolen plates on the Dodge Neon came from a 1998 Plymouth Neon belonging to Chantelle Holbrook who is an acquaintance of the Defendant. CP 1, 135, 144. Ms. Holbrook admitted knowing the Defendant and said that he "had a reputation for stealing cars." CP 144. Stolen vehicle plates are put on stolen vehicles to intentionally conceal the identity of the vehicle from law enforcement.

Therefore, “but for” the Defendant’s sole possession of the stolen vehicle between July 6, 2012, and July 8, 2012, the damages to the vehicle and the losses suffered by the victim would not have occurred. The damages were a foreseeable result of the Defendant’s illegal possession of the vehicle.

The facts in this case are easily distinguishable from the facts in State v. Acevedo, 159 Wn. App 221, 248 P.3d 526 (2010). In Acevedo, the vehicle was stolen on December 5, 2008, and the defendant was found in possession of it 7 months later on June 11, 2009. Mr. Acevedo told the police he purchased the car in the condition they found it—completely stripped. There was no evidence that Mr. Acevedo stole the vehicle or stripped the vehicle when it was in his possession, which is distinguishable from the Defendant’s case.

The trial court did not abuse its discretion by finding, “5. The court reviewed and finds that the police reports, which are adopted herein, provide the factual basis to establish a causal connection between the Defendant’s possession of the stolen vehicle and the damages to the vehicle so that restitution is appropriate.” CP 158-159. And, therefore, the trial court imposed the restitution based upon the easily ascertainable amounts in the Amended Restitution

Report which were uncontested amounts. CP 159, 155-156. The damages were a direct and foreseeable consequence of the Defendant's conduct. "3. 'But for' the Defendant's possession of the stolen vehicle, the damages would not have occurred to the vehicle." CP 159.

Therefore, on appeal this court should affirm the trial court's Order Setting Restitution as a proper use of discretion when there was substantial evidence of a causal connection between the Defendant's brief and sole possession of the stolen vehicle and the damages that it sustained.

B. THE TRIAL COURT DID ERR WHEN IT CONCLUDED THAT MR. LONG HAD THE ABILITY OR LIKELY FUTURE ABILITY TO PAY THE LEGAL FINANCIAL OBLIGATIONS IMPOSED IN THE JUDGMENT AND SENTENCE WITHOUT FIRST MAKING AN INDIVIDUALIZED INQUIRY INTO HIS CURRENT AND FUTURE ABILITY TO PAY.

On March 12, 2015, The Supreme Court announced, "We hold that RCW 10.01.160(3) requires the record to reflect that the sentencing judge made an individualized inquiry into the

defendant's current and future ability to pay before the court imposes LFOs. This inquiry also requires the court to consider important factors, such as incarceration and a defendant's other debts, including restitution, when determining a defendant's ability to pay." State v. Blazina, 182 Wn.2d 827, 839, 344 P.3d 680 (Wash. 2015).

Because the records in this case do not show that the sentencing judge or the judge who presided over the restitution hearing made this inquiry into the defendant's ability to pay, the case should be remanded to the trial court for a new sentencing hearing.

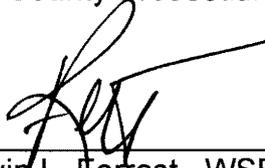
#### IV. CONCLUSION

Therefore, this court should affirm the trial court's restitution order as a proper exercise of discretion. The restitution ordered by the court was based upon a causal connection between the Defendant's possession of the stolen vehicle and the damages to it. And, this court should remand the matter for purposes of a new sentencing hearing regarding the imposition of legal financial obligations and the Defendant's ability to pay.

DATED this 18th day of May, 2015.

Respectfully submitted,

Douglas J. Shae  
Chelan County Prosecuting Attorney

A handwritten signature in black ink, appearing to read 'K. Forrest', is written over a horizontal line.

By: Kevin L. Forrest WSBA #22552  
Deputy Prosecuting Attorney

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

STATE OF WASHINGTON,	)	
	)	No. 31583-5-III
Plaintiff/Respondent,	)	Superior Court No. 12-1-00320-4
	)	
vs.	)	DECLARATION OF SERVICE
	)	
MICHAEL L. LONG, JR.,	)	
	)	
Defendant/Appellant.	)	

I, Cindy Dietz, under penalty of perjury under the laws of the State of Washington, declare that on the 18th day of May, 2015, I electronically transmitted to:

Renee S. Townsley  
Clerk/Administrator  
Court of Appeals, Div. III  
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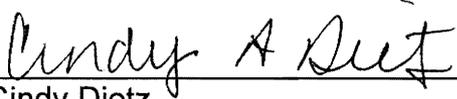
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1 said electronic transmission and envelopes containing true and correct copies of Brief of  
2 Respondent.

3 Signed at Wenatchee, Washington, this 18th day of May, 2015.

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5 \_\_\_\_\_  
6 Cindy Dietz  
7 Legal Administrative Supervisor  
8 Chelan County Prosecuting Attorney's Office

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