

79883-4

NO. 243893

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

THE STATE OF WASHINGTON,

Respondent,

v.

Joan Marie Griffith,

Appellant.

BRIEF OF APPELLANT

William Edelblute
Attorney for Appellant
WSBA 13808
200 N. Mullan Ste. 119
Spokane, WA 99206
(509) 928-3711

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A. ASSIGNMENT OF ERROR

Assignment of Error

The trial court erred in awarding Appellant to pay more restitution than was proven.

Issue Pertaining to Assignment of Error

Appellant was convicted of possession of stolen property. Did the trial court err in ordering restitution for property it was not shown that Appellant had stolen or possessed?

B. STATEMENT OF THE CASE

ELAINE LINSOTT testified that while she and her family were gone from December 29th, 2001 to January 2nd, 2002, their home in Spokane was burglarized. A large amount of items were taken, including:

...much jewelry, precious and semi-precious pearls, diamond jewelry and family antique early sterling silver and Grand Baroque and much silver from the robbery. As you can see from the police report it was over \$44,000.

RP 4, lines 7-21.

Ex. P1 was a list of all items taken, and their values.

Ms. Linscott recovered a strand of pearls, valued at five thousand dollars, which the Eastern Washington Coin Company, owned by the

Slaughters, had purchased from the Defendant. RP 6.

According to Ms. Linscott, the value of what Joan Griffith was “seen carrying”, was over \$11,000. RP 7, lines 1-6.

John Slaughter testified that he was in the business of buying and selling coins, scrap gold, sterling and similar items.

On about January 2nd, 2002, Joan Griffith came into his shop, and had a bag of items, some of which she sold to Slaughter. She sold \$97 worth of scrap but had other items she did not want to sell, including a string of pearls. RP 8-10. She had returned on January 4th. (Apparently this must have been when the string of pearls was sold.) RP 15.

Asked if he recalled seeing a “two and a half carat diamond ring”, he said he did recall seeing a ring with a large stone but he did not pay much attention to it to see if it was a real diamond. RP 10. He could not say it was the same ring described by Ms. Linscott. RP 14.

The rest of the items appeared to be a “mixture of stuff.” RP 10. It was a “big bag” of jewelry.” RP 15.

Mr. Slaughter was not able to pick out what he had seen from Ex. P1. RP 12.

The Defendant's attorney argued that every stolen item Ms. Griffith had been convicted of possessing had been recovered. RP 18.

The trial court judge ruled that it would consider the affidavit of fact filed in support of probable cause in making its decision. RP 19.

The State argued that the court should not limit itself to the crime to which the Defendant plead guilty, but that the court "had to look beyond that and take a look at the original charge in determining the restitution amount" RP 23.

The essence of the Superior Court judge's oral decision was as follows:

I am gleaning from the testimony from Ms. Linscott, although the five thousand dollar pearl necklace was lost but it was recovered, but there was a sum of \$11,000 worth of jewelry that was still identified, not necessarily documented in the total \$44,000 value, but that remains unrecovered. That is the amount that the Court would recognize as the loss in this case and those items and that all is established and related to the crime of possession of stolen property.

RP 24, lines 16-24.

The trial court judge also ruled there was sufficient nexus between Ms. Linscott's testimony about her stolen ring and "the ring described by the Slaughter statement", valued at \$480 to \$500, and ordered total restitution, based on the actual amount of loss, of \$11,500. RP 24,

line 24, to RP 25, line 17.

C. ARGUMENT

The authority to impose restitution is not an inherent power of the court but is derived from statute. *State v. Davison*, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991) (citing *State v. Eilts*, 94 Wn.2d 489, 495, 617 P.2d 993 (1980)). In the absence of the defendant's agreement, the court may not impose restitution beyond the scope of the crime charged. *State v. Woods*, 90 Wn.App. 904, 908, 953 P.2d 834 (1998). Thus, there must be a causal relationship between the crime charged and proven and the victim's damages. *Woods*, 90 Wn.App. at 907. A causal connection exists when, but for the offense the defendant is found to have committed, the victim's loss or damages would not have occurred. *State v. Hahn*, 100 Wn.App. 391, 399, 996 P.2d 1125 (2000) (quoting *State v. Enstone*, 89 Wn.App. 882, 886, 951 P.2d 309 (1998)).

Unless the defendant agrees, restitution may be ordered only for losses the victim incurred resulting from crimes charged and for which the defendant has been convicted. *State v. Eilts*, 94 Wn.2d 489, 493-94, 617 P.2d 993 (1980). An offender may be ordered to pay restitution for uncharged crimes only if the offender enters a guilty plea with an

express agreement to pay restitution for those crimes. *State v. Dauenhauer*, 103 Wn.App. 373, 378, 12 P.3d 661 (2000). In this case, there was no express agreement by Ms. Griffith to pay restitution for uncharged crimes.

A trial court may impose restitution if the damage or injury was a foreseeable consequence of the defendant's criminal acts. *State v. Landrum*, 66 Wn.App. 791, 799, 832 P.2d 1359 (1992). A causal connection must exist between the charged crime and the victim's damages. *Landrum*, 66 Wn.App. at 799. Here, there could not be a causal connection between the crime of possession of stolen property, and property that the Defendant was not shown to possess.

If, but for the criminal acts of the defendant, the victim would not have suffered the damages for which restitution is sought, a sufficient causal connection exists. *Landrum*, 66 Wn.App. at 799. For property never sufficiently identified as being in the possession of Ms. Griffith at some point, there cannot be a sufficient causal connection.

In determining whether a causal connection exists, the trial court must 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) (where defendant pleaded guilty to fourth degree assault, he could be assessed sexual assault counseling costs even though the charged crime was not sex-based because the underlying facts showed the assault was sexual in nature). Here, even looking at the underlying facts, there simply is not sufficient causal connection between Ms. Griffith holding a bag of unidentified jewelry, selling \$97 worth of identified jewelry, and having a ring that Mr. Slaughter could not say matched the one described by Ms. Linscott.

"Restitution cannot be imposed based on the defendant's 'general scheme' or acts 'connected with' the crime charged, when those acts are not part of the charge." *Woods*, 90 Wn.App. at 907-08 (quoting *State v. Miszak*, 69 Wn.App. 426, 428, 848 P.2d 1329 (1993)).

Because there is no specific link shown between whatever items Ms. Griffith had in the bag, or the ring, and those items described as missing by Ms. Linscott, then the trial court in reality was going on the fact that since Ms. Griffith was shown to have possessed some of Ms. Linscott's items, then she must have possessed all items in the

category that added up to \$11,500.

Miszak is instructive. There, the defendant pleaded guilty to attempted second degree theft and admitted taking one piece of jewelry. *Miszak*, 69 Wn.App. at 426-27. But he was ordered to pay restitution for 13 pieces of jewelry that the victim claimed were missing. *Miszak*, 69 Wn.App. at 427. Division One vacated the restitution order, concluding that it was 'manifestly erroneous' because 'in the absence of any additional evidence of what {the defendant} agreed to, the 'victim's loss' in this case is limited to the one item of jewelry that {he} actually admitted taking.' *Miszak*, 69 Wn.App. at 428, 430.

"Culpability for possession of stolen property does not necessarily include culpability for the stealing of the property. The actual thief is guilty of a different crime." *State v. Keigan C.*, 120 Wn.App. 604, 609, 86 P.3d 798 (2004).

From review of Ex. P1, it is difficult to ascertain what it is that Ms. Linscott described that added up to \$11,000, before adding in the two and a half carat ring. P. 2 of Ex. P1 lists "ivory items" totaling \$11,150. Neither Ms. Linscott's testimony, nor Mr. Slaughter's, about

a "big bag" of jewelry sufficient match to anything on Ex. P1
listed as \$11,000.

This Court should reverse the Superior Court's order of restitution,
and remand for entry of \$97 for the restitution in this case.

D. CONCLUSION

This Court should reverse the Superior Court's order of restitution,
and remand for entry of \$97 for the restitution in this case.

Respectfully submitted,

April 11th, 2006



William Edelblute
Attorney for Appellant
WSBA 13808

Certificate of Mailing

I hereby certify that on the 11th, day of
April, 2005, I mailed true and accurate copies
of the foregoing Brief of Appellant to, Kevin Korsmo,
Deputy Prosecuting Attorney, at 1100 W. Mallon Ave.
Spokane, WA 99260-2043 and to Joan Griffith,
Appellant, at 2823 E. 39th, St. Spokane, WA
99223, postage prepaid.



William Edelblute
Attorney for Appellant
WSBA 13808