

NO. 63659-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ROCHELLE TESORO,

Appellant.

FILED  
STATE OF WASHINGTON  
2009 DEC 15 PM 2:49  
DN

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY,  
JUVENILE DIVISION

THE HONORABLE RONALD KESSLER

**BRIEF OF RESPONDENT**

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

BRIDGETTE E. MARYMAN  
Deputy Prosecuting Attorney  
Attorneys for Respondent

King County Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, Washington 98104  
(206) 296-9000

TABLE OF CONTENTS

	Page
A. <u>ISSUE PRESENTED</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	1
1. PROCEDURAL FACTS .....	1
2. SUBSTANTIVE FACTS .....	2
C. <u>ARGUMENT</u> .....	2
1. THE TRIAL COURT PROPERLY ORDERED THE DEFENDANT TO PAY RESTITUTION FOR TOWING FEES .....	2
D. <u>CONCLUSION</u> .....	7

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Bennett, 63 Wn.App. 530,  
821 P.2d 499 (1991)..... 3

State v. Enstone, 137 Wn.2d 675,  
974 P.2d 828 (1999)..... 3

State v. Harrington, 56 Wn.App. 176,  
782 P.2d 1101 (1989)..... 3, 5

State v. Hiett, 154 Wn.2d 560,  
115 P.3d 274 (2005)..... 3, 6

State v. Landrum, 66 Wn.App. 791,  
832 P.2d 1359, (1992)..... 3

State v. Sanchez, 73 Wn.App. 486,  
869 P.2d 1133 (1994)..... 3

State v. Selland, 54 Wn.App. 122,  
772 P.2d 534 (1989)..... 3

State v. Teters, 81 Wn.App. 478  
914 P.2d 784 (1996)..... 4

State v. Woods, 90 Wn.App 904,  
953 P.2d 834 (1998)..... 4

Other Authorities

RCW 13.40.127..... 1, 2

RCW 13.40.190..... 2, 6, 7

**A. ISSUE PRESENTED**

Whether the trial court properly ordered the appellant to pay restitution after she was convicted of Possession of a Stolen Vehicle.

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

The state charged the appellant with one count of Possession of a Stolen Vehicle on February 19, 2009. CP 1. The appellant petitioned the court for a deferred disposition under RCW 13.40.127. CP 12-13. After reviewing the Certification for Determination of Probable Cause at the disposition hearing on April 17, 2009, the court found the appellant guilty of the original charge and deferred disposition for a period of 12 months. CP 17-19. At the restitution hearing on May 15, 2009, the state requested restitution for the cost of towing the vehicle after the respondent was arrested. The court ordered the appellant to pay restitution in the amount of \$164.88, joint and several with the co-defendant, Allen Bunma. CP 20-21.

**2. SUBSTANTIVE FACTS**

According to the Certification for Determination of Probable Cause, the victim's vehicle was stolen from outside his home in Renton on February 11, 2009. On February 15, 2009, Seattle Police Officer Whicker located the vehicle in the parking lot of Hamilton View Point, a Seattle park, after the park had closed. There were four people in the vehicle: the appellant was in the driver's seat and Bunma was in the front passenger seat. The steering column was torn apart, with wires hanging out. Bunma admitted to stealing the vehicle from the Liberty Ridge area. CP 2.

**C. ARGUMENT**

**1. THE TRIAL COURT PROPERLY ORDERED THE RESPONDENT TO PAY RESTITUTION FOR TOWING FEES.**

Payment of restitution under RCW 13.40.190 shall be a condition of community supervision when a court grants a respondent's motion for a deferred disposition. RCW 13.40.127(5). RCW 13.40.190(1) provides: "In its dispositional order, the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent." Juvenile restitution provisions are liberally construed to achieve their purpose, which is to compensate the

victims and hold the juvenile accountable. State v. Sanchez, 73 Wn.App. 486, 489, 869 P.2d 1133 (1994).

The decision to impose restitution and the amount thereof are within the trial court's discretion. State v. Bennett, 63 Wn.App. 530, 535, 821 P.2d 499 (1991). A restitution award will not be disturbed absent an abuse of discretion. State v. Enstone, 137 Wn.2d 675, 679, 974 P.2d 828 (1999). Courts find an abuse of discretion only when the action of the court is “manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” Id. at 679-80.

Under the restitution statute, a juvenile court's order is authorized if a causal connection exists between the crime as a whole and the property loss and damage. State v. Hiatt, 154 Wn.2d 560, 565, 115 P.3d 274, 277 (2005). A trial court may order restitution if the victim's damage was a foreseeable consequence of the defendant's criminal acts. State v. Harrington, 56 Wn.App. 176, 179, 782 P.2d 1101 (1989). In determining whether a causal connection exists, courts 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, 799-800, 832 P.2d 1359, 1364 (1992). A juvenile court is not limited by the definition of

the crime of which the defendant was convicted in ordering restitution. State v. Selland, 54 Wn.App. 122, 124, 772 P.2d 534, *review denied*, 113 Wn.2d 1011, 779 P.2d 729 (1989).

The appellant argues that there is no causal connection between her possession of the vehicle and the victim's towing expense. She relies heavily on the holdings in State v. Tettters, 81 Wn.App. 478, 914 P.2d 784 (1996), and State v. Woods, 90 Wn.App. 904, 953 P.2d 834 (1998), to support this argument. The only similarity, however, between those cases and the case at bar is the name of the underlying crime. Tettters and Woods cannot be interpreted to preclude restitution in all cases involving stolen property. In both of those cases, the court held that the defendants could not be held responsible for the loss of personal property inside the vehicle. Notably, in both cases, there was a gap in time between the theft of the vehicle and the arrest of the defendant. Given the timeline, and the fact that the defendants had not been convicted of stealing the vehicles, there was no way to determine by a preponderance of the evidence that the property went missing while the defendants possessed the vehicles.

In this case, there was certainly a causal connection between the crime and the damage suffered by the victim--the cost

of towing the vehicle away from the scene of the appellant's arrest. If the appellant had been in possession of the vehicle in front of the owner's residence, it would not have been necessary to tow it. Instead, the appellant was found in the driver's seat of the vehicle, in the parking lot of a Seattle city park after hours, miles away from the owner's residence in Renton. Clearly but for the appellant's illegal act, the victim's property would not have been in a position to require towing. see State v. Harrington, 56 Wn.App 176, 180, 782 P.2d 1101 (1989).

The appellant also incorrectly analyzes the role of the co-defendant, Allen Bunma, in assessing her own restitution responsibility. This analysis is based, in part, on facts that are not in the record. Without referencing any evidence, the appellant repeatedly asserts that the car had already been in the parking lot prior to her criminal activity. Appellant's Brief 3, 5, 7. The appellant likewise claims that she "temporarily changed seats with Bunma." App Brief 5. These assertions were not included in the evidence considered by the trial court, and require an improper inference with regard to the facts of the case on appeal.

More importantly, the appellant's attempt to assign all responsibility to Bunma ignores the legislature's intention that

juveniles be held jointly and severally liable for restitution. RCW 13.40.190(1) states "if the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution." The statutory provision for joint and several responsibility demonstrates the legislature's intent: an individual's actual conduct does not determine the extent of his responsibility for restitution; instead, all acts which form the crime are imputed, for restitution purposes, to any participant. State v. Hiett, 154 Wn.2d 560, 565, 115 P.3d 274 (2005).

When multiple juvenile defendants are involved in a crime, courts do not parse out the specific acts of each defendant to assign restitution responsibility. As long as the underlying offense was causally connected to the victim's damages, defendants are held jointly and severally liable. Hiett at 564 (holding that juvenile passengers of a stolen vehicle were jointly and severally responsible for restitution to victims, including damage to property occurring after they jumped from vehicle).

The appellant should not be relieved of responsibility for restitution merely because there was a causal connection between the co-defendant's crime and the damages. In such a situation,

RCW 13.40.190(1) clearly dictates that both must be held jointly and severally liable. In this case, the court properly ordered that the appellant's restitution responsibility is joint and several with Allen Bunma. CP 21. Because the appellant's possession of the stolen vehicle was causally connected to the towing fees incurred by the victim, restitution was properly ordered.

**D. CONCLUSION**

The appellant's offense is causally connected to the victim's loss. The trial court did not abuse its discretion when it ordered the appellant to pay restitution to the victim for the towing fees. This Court should affirm the restitution order.

DATED this 15 day of December, 2009.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
BRIDGETTE E. MARYMAN, WSBA #38720  
Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to David Koch, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. ROCHELLE TESORO, Cause No. 63659-6-I, in the Court of Appeals, Division I, for the State of Washington.

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

Betty A. Huddleston

Name

Done in Seattle, Washington

12/15/09

Date

FILED  
CLERK OF COURT  
STATE OF WASHINGTON  
2009 DEC 15 PM 2:49