

NO. 66305-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ELDEN GRAFTENREED,

Appellant.

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STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE ANDREA DARVAS

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

KRISTIN A. RELYEA
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 296-9650

TABLE OF CONTENTS

	Page
A. <u>ISSUES</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
1. PROCEDURAL FACTS	1
2. SUBSTANTIVE FACTS	2
C. ARGUMENT	4
1. THE TRIAL COURT PROPERLY FOUND A CAUSAL CONNECTION BETWEEN THE VICTIMS' LOSSES AND THE CHARGED OFFENSE.....	4
D. <u>CONCLUSION</u>	11

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

State v. Davis, 101 Wn.2d 654,
682 P.2d 883 (1984)..... 8

State v. Davison, 116 Wn.2d 917,
809 P.2d 1374 (1991)..... 6

State v. Dedonado, 99 Wn. App. 251,
991 P.2d 1216 (2000)..... 5, 6

State v. Enstone, 137 Wn.2d 675,
974 P.2d 828 (1999)..... 6

State v. Griffith, 164 Wn.2d 960,
195 P.3d 506 (2008)..... 5, 7

State v. Hiett, 154 Wn.2d 560,
115 P.3d 274 (2005)..... 9

State v. Israel, 113 Wn. App. 243,
54 P.3d 1218 (2002), review denied,
149 Wn.2d 1013 (2003)..... 9, 10

State v. Kinneman, 155 Wn.2d 272,
119 P.3d 350 (2005)..... 5, 9

State v. Lohr, 130 Wn. App. 904,
125 P.3d 977 (2005)..... 5, 9

State v. Tindal, 50 Wn. App. 401,
748 P.2d 695 (1988)..... 6

State v. Tobin, 161 Wn.2d 517,
166 P.3d 1167 (2007)..... 4

Statutes

Washington State:

RCW 9.94A.530 5

RCW 9.94A.753 4, 5

A. ISSUES

1. To order restitution, a court must find a causal connection between the victim's losses and the crime charged. Elden Graftenreed pled guilty as charged to residential burglary and theft of a firearm. He admitted to driving the codefendant to the victims' house believing that they would break into it and to personally burglarizing the victims' trailer. Has Graftenreed failed to show that the trial court abused its discretion by finding a causal connection between the victims' losses and the charged crime?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged Graftenreed and codefendant, Timothy Hemphill, with residential burglary and theft of a firearm. CP 1-7. Graftenreed pled guilty to both offenses. CP 8-30. The trial court imposed a residential-treatment-based special drug offender sentencing alternative (DOSA). CP 31-44; 1RP 11.¹

¹ The Verbatim Report of Proceedings consists of two volumes designated as follows: 1RP (April 23, 2010) and 2RP (October 13, 2010).

2. SUBSTANTIVE FACTS²

On February 2, 2010, Shannon Beck was working in her garage when she heard sounds coming from the back of her house.³ CP 4. Beck looked out the window and saw a man, later identified as Hemphill, break her bedroom glass door and walk inside. CP 4. Beck called 911 as she watched Hemphill walk around her house and lift up the mattress on her bed. CP 4.

Police arrived and found Graftenreed sitting in the driver's seat of a car parked outside Beck's home. CP 4-5. Both Graftenreed's car door and trunk were open. CP 5. Police later found items belonging to Beck and her family in Graftenreed's trunk. CP 6. Graftenreed told police that "Tim" was inside Beck's house, and that he gave "Tim" a ride there with the assumption that they would break into the house. CP 5-6. Graftenreed admitted to stealing items from Beck's camper trailer and stashing them in his trunk. CP 6. Police chased Hemphill out of the house and

² The facts are taken from the certification for determination of probable cause based on Graftenreed's stipulation to them as part of the felony plea agreement. CP 26.

³ Beck resides in the house with her husband and children. CP 4.

ultimately found him hiding in a nearby swamp with Beck's stolen property in his pockets. CP 5.

In his guilty plea, Graftenreed admitted to unlawfully entering Beck's "dwelling" and wrongfully taking a .22 caliber rifle belonging to Beck. CP 16. As part of the felony plea agreement, Graftenreed agreed to pay restitution and stipulated to the "real and material facts" contained in the certification for determination of probable cause. CP 26.

The State sought restitution for the Becks' losses in the amount of \$11,089.96.⁴ CP 45. Graftenreed disputed having to pay restitution, arguing that he "was responsible for the burglary, but not for the damage." 2RP 3. Although Graftenreed admitted to participating in "a joint enterprise," he contended that "Hemphill went beyond the scope of the crime" that he intended to commit. 2RP 3-4. In response, the State argued that Graftenreed was Hemphill's accomplice, and was therefore "in for a dime, in for a dollar." 2RP 4. The court agreed, finding Graftenreed "jointly and severally liable" for the full amount of restitution. 2RP 5; CP 45.

⁴ The documents supporting the State's restitution request are not in the record. Graftenreed does not dispute, and has never objected to, the amount of the Becks' losses. Nonetheless, the State will supplement the record with the supporting documentation at the Court's direction.

C. ARGUMENT

1. THE TRIAL COURT PROPERLY FOUND A CAUSAL CONNECTION BETWEEN THE VICTIMS' LOSSES AND THE CHARGED OFFENSE.

Graftenreed argues that the trial court erred by imposing restitution because a causal connection does not exist between the Becks' losses and the charged crime. For the first time on appeal, Graftenreed contends that he did not act as Hemphill's accomplice. Graftenreed's argument fails. Despite his claims to the contrary, Graftenreed served as Hemphill's accomplice by admittedly driving Hemphill to the Becks' house with the assumption that they would break into it, personally burglarizing the Becks' camper trailer and taking items inside, and remaining outside in his car with the trunk open while Hemphill rummaged through the house. Given this record, Graftenreed cannot show that the trial court abused its discretion by ordering restitution based on the causal connection between the crime charged and the Becks' losses.

The Legislature has granted trial courts broad power to order restitution. State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007); see also RCW 9.94A.753(3) (authorizing courts to award restitution up to double the offender's gain or the victim's loss). Whenever a defendant is convicted of a crime that results in

personal injury or property loss, the court must order restitution. RCW 9.94A.753(5). "There is no requirement that a victim's damages be foreseeable." State v. Kinneman, 155 Wn.2d 272, 285, 119 P.3d 350 (2005); see also State v. Lohr, 130 Wn. App. 904, 909-10, 125 P.3d 977 (2005) (trial court properly awarded restitution where the defendant recklessly left a candle burning in a hotel room and the resulting fire destroyed nearby cars and damaged another hotel).

To impose restitution, the court must find that there is a "causal connection" between the victim's losses and the crime charged. State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008). "Losses are causally connected if, but for the charged crime, the victim would not have incurred the loss." Id. at 966. When determining whether a causal connection exists, courts consider the underlying facts of the charged offense, rather than the name of the crime to which the defendant pled. Id. The court may rely on all the information that is admitted by the plea agreement, but no more. State v. Dedonado, 99 Wn. App. 251, 256, 991 P.2d 1216 (2000); see also RCW 9.94A.530(2) (codifying the "real facts" doctrine).

Courts will assume that facts contained in the probable cause certification are admitted for purposes of restitution when the defendant agrees that the facts are "real facts" for purposes of sentencing. See Dedonado, 99 Wn. App. at 253 (drawing the factual basis for the restitution order from the certification based on the defendant's plea agreement to "real facts"); State v. Tindal, 50 Wn. App. 401, 402-03, 748 P.2d 695 (1988) (concluding that the amount of credit card loss listed in the certification "becomes fact" for purposes of restitution when incorporated by reference in the defendant's plea agreement to "real facts").

A trial court's decision to award restitution will be upheld on appeal absent an abuse of discretion. State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). An abuse of discretion occurs when a court's decision is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." State v. Enstone, 137 Wn.2d 675, 679-80, 974 P.2d 828 (1999) (citations omitted).

Here, Graftenreed explicitly stipulated that the facts set forth in the probable cause certification were "real and material facts for purposes of sentencing." CP 26. According to the certification and his statement on plea of guilty, Graftenreed drove Hemphill to the Becks' house assuming that they would break into it, stole a rifle

from the Becks' camper trailer, and sat in his car with the trunk door open while Hemphill was inside the house. CP 5-6, 16. The Becks never would have incurred losses "but for" Graftenreed driving Hemphill to the Becks' house and the two of them committing residential burglary. The trial court properly found that a causal connection existed between the Becks' losses and the crime charged.

Graftenreed's attempts to argue for the first time on appeal that he was not Hemphill's accomplice should be rejected. The State jointly charged Graftenreed and Hemphill with Residential Burglary. CP 1-7. Graftenreed entered a guilty plea to the original Information. See CP 8-30 (Statement of Defendant on Plea of Guilty incorporating the original Information). At the restitution hearing, Graftenreed admitted that he "was responsible for the burglary" and participated in a "joint enterprise" with Hemphill. 2RP 3.

Although Graftenreed's factual plea statement does not reference Hemphill, the underlying facts of the charged offense, set forth in the probable cause certification and discussed above, confirm that Graftenreed served as Hemphill's accomplice. See Griffith, 164 Wn.2d at 966 (recognizing that courts determining

whether a causal connection exists consider the underlying facts of the charged offense, rather than the name of the crime to which the defendant pled).

Graftenreed mistakenly claims that "[n]othing in his guilty plea, or the incorporated documents, establishes his intent to enter the home was to cause damage or that he knew he was assisting his codefendant in doing so." Appellant's Br. at 1. Graftenreed admitted, however, that he assumed when they arrived at the Becks' house that they were going "*to break*" into it. CP 6 (emphasis added). Breaking into a home almost inevitably results in damage or loss.

Moreover, Graftenreed's argument disclaiming his role as an accomplice fails to acknowledge the "long recognized" legal principle that "an accomplice, having agreed to participate in the criminal act, runs the risk of having the primary actor exceed the scope of the preplanned illegality." State v. Davis, 101 Wn.2d 654, 658, 682 P.2d 883 (1984). Thus, even assuming what Graftenreed claims is true, that he did not agree to Hemphill damaging the house, Graftenreed was still liable as an accomplice because he agreed to and actively participated in the substantive crime.

Given Graftenreed's liability under the narrower accomplice statute, there can be no question of his liability under the broader restitution statute. The restitution statute "sweeps far more broadly than the accomplice liability statute, requiring neither knowledge nor foreseeability of the injury, but merely a causal relationship." State v. Israel, 113 Wn. App. 243, 300, 54 P.3d 1218 (2002), review denied, 149 Wn.2d 1013 (2003). A defendant need not foresee a victim's damages to be liable for restitution. Kinneman, 155 Wn.2d at 285; Lohr, 130 Wn. App. at 909-10. Graftenreed's claim to have not foreseen the damages that the Becks suffered is irrelevant.

The fact that Hemphill, rather than Graftenreed, caused the damage to the house is equally irrelevant. See State v. Hiatt, 154 Wn.2d 560, 564, 115 P.3d 274 (2005) (rejecting the theory that the law authorizes restitution only when the damage is causally connected to the defendant's individual conduct). "The relevant causal connection is between the damage and the committed offense . . . not between the damage and merely the [defendant's] individual offense." Id. (affirming restitution order holding defendants, convicted of taking a motor vehicle without permission, jointly and severally liable for damages that occurred before and

after they rode in the car). Graftenreed is liable for Hemphill's actions because together they committed an offense that directly resulted in losses to the Becks.

This Court should resist Graftenreed's urgings to reconsider its holding in State v. Israel that "one convicted of a conspiracy should be ordered to pay restitution for any injuries caused by the conspiracy, regardless of the defendant's knowledge or complicity in the particular injury." 113 Wn. App. at 300. Unlike the defendants in Israel, Graftenreed was not convicted of a conspiracy. Graftenreed fails to show that Israel was wrongly decided, and fails to explain how this case with inapposite facts presents the proper opportunity to reconsider it.⁵

The trial court properly found that a causal connection existed between the Becks' losses and the charged offense. The Becks never would have suffered any losses "but for" the residential burglary and Graftenreed's pivotal role in its commission. Graftenreed cannot show that the trial court abused its discretion by imposing restitution.

⁵ Israel is analogous only to the extent that it relies on the proposition that the restitution statute is broader than the accomplice liability statute because it requires neither knowledge nor foreseeability. 113 Wn. App. at 300.

D. CONCLUSION

For the foregoing reasons, the Court should affirm the trial court's restitution order.

DATED this 30th day of August, 2011.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
KRISTIN A. RELYEA, WSBA #34286
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 Gregory C. Link, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Respondent's Brief, in STATE V. ELDEN GRAFTENREED, Cause No. 66305-4-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.

U Brame
Name
Done in Seattle, Washington

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