

NO. 66317-8-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

RONALD R. ROMAN,

Appellant.

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STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE HELEN J. HALPERT

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. In a disposition order, a 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. In this case, the appellant is challenging restitution for a Samsung television that was damaged during the course of a residential burglary offense. Did the court have the discretion to order restitution for the television if it was causally linked to the offense that was charged?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged juvenile Ronald Roman with residential burglary. CP 1-2. On July 14th, 2010, Roman was given a deferred disposition with an order to pay restitution to the victim, Keith Hunter, and to the victim's insurance company pursuant to RCW 13.40.190(1) for a number of items that were taken or damaged during the offense. CP 6-7, 26. In response, Roman made a formal request to limit the restitution award based on an objection over one of the televisions and the broken window. CP 18, 22-23 (specifically, the Samsung television). The court subsequently

granted the State's restitution request in its entirety. CP 25-26; RP 21. Roman filed a timely appeal in response. CP 27. Roman currently contests only the amount based on the objection over the Samsung television. CP 23.

2. SUBSTANTIVE FACTS

On May 28th, 2010, Jeff Brown saw a flat screen television in his backyard next to the fence of his neighbor, Keith Hunter. Brown called Hunter to ask if the television belonged to him. Hunter was in the area at the time and was able to confirm that it was his television. Hunter then discovered a broken window to his home and determined that his house had been burglarized. CP 3.

While waiting for the police to respond, Hunter and another neighbor, Carlos Meza, noticed a suspicious car driving slowly by with its occupants looking around nervously. Shortly after, Hunter found the car parked and saw two black males standing between his and Brown's house. Meza ran around Hunter's house into the back yard to see an individual - later identified as Ronald Roman - jump over the fence with a flat screen television in his hand. Roman and the two other individuals fled in the suspicious car. Hunter was

able to obtain the license plate number while Meza got into his vehicle and attempted to follow the suspects. Id.

Richard Thompson, another neighbor of Hunter's, also saw the fleeing individuals and attempted to pursue them. Using the license plate number, police were able to track down the car and detain the suspects. With the help of Hunter and his neighbors, the suspects, including Ronald Roman, were able to be identified and were arrested. CP 3-4.

The victim filed a "Victim Loss Claim" form listing a handgun with unknown value, a 42" Toshiba LCD television valued at \$999.00, a Nikon camera valued at \$100.00, and gym bags, shoes, and luggage with unlisted values. Supp. CP ____ (Sub No. 58) (Order Attaching Additional Correspondence) at 1. In addition, the victim listed the back basement window broken during the burglary at \$241.00 and a 50" Samsung plasma television valued at \$1199.00 under the damaged property category. Id. The victim paid a \$250 deductible to Allstate, his insurance company. Id. Allstate gave an estimate for the items the victim claimed, valuing the Samsung television at \$635.23 after depreciation, the Toshiba television at \$795.29 after depreciation, and the glass damage at

\$241.47. Id. at 5. Adding in the \$250 for the deductible, the total damage to Keith Hunter and his insurance company was \$1672.99.

C. ARGUMENT

1. THE RESTITUTION AMOUNT GIVEN FOR THE DISPUTED TELEVISION WAS NOT AN ABUSE OF DISCRETION BY THE SENTENCING COURT

The authority to impose restitution in a juvenile case is purely statutory. State v. Hunotte, 69 Wn. App. 670, 674, 851 P.2d 694 (1993) (citing State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991)). When a juvenile respondent is granted a deferred disposition, "[p]ayment of restitution... shall be a condition of community supervision." RCW 13.40.127(5). In its dispositional order, a 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." RCW 13.40.190(1).

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). The Court of Appeals should reverse a restitution order only if it is manifestly unreasonable or the sentencing court exercised its discretion on untenable grounds or for untenable reasons. State v. Smith, 33 Wn. App. 791, 798-99,

658 P.2d 1250, review denied, 99 Wn.2d 1013 (1983) (citing State v. Cunningham, 96 Wn.2d 31, 34, 633 P.2d 886 (1981)). As a result, while "a restitution award must be based on a causal relationship between the offense charged proved and the victim's losses or damages," restitution is appropriate for any damage that was a foreseeable consequence of the respondent's criminal acts. State v. Keigan, 120 Wn. App. 604, 607, 86 P.3d 798 (2004); State v. Teters, 81 Wn. App. 478, 480, 914 P.2d 784 (1996).

The State is not required to prove a loss beyond a reasonable doubt or by clear and convincing evidence. Bennett, 63 Wn. App. at 535. Rather, the State need only prove the damages by a preponderance of the evidence. State v. Griffith, 164 Wn.2d 960, 965, 195 P.2d 506 (2008) (citing State v. Kinneman, 155 Wn.2d 272, 285, 119 P.3d 350 (2005)). Once the fact of damage is established, the precise amount need not be shown with mathematical certainty. Evidence of damage is sufficient if it affords a reasonable basis for estimating loss and does not subject the trier of fact to mere speculation or conjecture. State v. Bush, 34 Wn. App. 121, 124, 659 P.2d 1127, review denied; 99 Wn.2d 1017 (1983).

In this case, there is causal connection between the offense of residential burglary and Keith Hunter's (as well as Allstate's) damages. Roman did not contest his guilt and stipulated to the facts in the police reports and certificate for determination of probable cause that were used to find him guilty of residential burglary. CP 8-17. The State submitted the victim's loss claim form detailing the items involved in the offense and the amounts such items are worth. Supp. CP ____ (Sub No. 58)(Order Attaching Additional Correspondence) at 1; CP 31; RP 18-20. Allstate Insurance Company's claim summary report was also submitted. Supp. CP ____ (Sub No. 58)(Order Attaching Additional Correspondence) at 2-6. Based on the actions Roman admitted to and the items described as being involved with those actions, the sentencing court did not exercise its discretion for untenable reasons when it ordered restitution for the Samsung television.

The defense argues that the sentencing court's restitution order was manifestly unreasonable because the Samsung television was listed under "damaged property," despite the fact that far less than the \$1199 actually paid for the TV by the victim was awarded. In making an argument over the amount ordered, the defense relies on State v. Dedonado, 99 Wn. App. 251, 991 P.2d

1216 (2000). In Dedonado, the State failed to provide documentation showing that a replacement generator of a particular brand was a proper replacement for a generator of another brand. Id. at 257. In addition, the State in that case failed to show that all the repairs to a van were related to the damaged ignition switch caused by the actions of the offense. Id.

The case at bar is distinguishable from Dedonado. First, the replacement television asked for in this case is of the same brand and specifications as the one that was lost. Supp. CP ____ (Sub No. 58)(Order Attaching Additional Correspondence). Second, unlike the van in Dedonado, there is no question that any damage that resulted to the television was causally linked to the burglary by a preponderance of the evidence. CP 10-12.

The restitution amount ordered was based on documentation in the Loss Claim rather than mere speculation or conjecture. Supp. CP ____ (Sub No. 58)(Order Attaching Additional Correspondence).

The defense's characterization of the amount for the Samsung television as a "total loss" is a misnomer. A "total loss" requiring the purchase of an equivalent television would have cost the victim \$1199.00, the price the victim originally paid for the television. Supp. CP ____ (Sub No. 58)(Order Attaching Additional

Correspondence) at 1, 5. This value was not awarded. Roughly half of the total loss was actually awarded: \$635.23.

Allstate, as an insurance company, established the amount of the damaged property with substantial credible evidence by giving a professional estimate regarding the value of loss. Victim Loss at 5. A professional estimate is one of the three options on the "Victim Loss Claim" form the victim may use to support the value of damaged property. Supp. CP ____ (Sub No. 58)(Order Attaching Additional Correspondence). In Allstate's estimation, the victim should receive (and did) the unit cost of \$719.99 plus \$68.40 tax, subtracted by the "total depreciation" of \$152.16, totaling \$635.23. Id. at 2-6.

The defense's question as to whether repair would be cheaper is speculation that is not required by the trier of fact. As this court stated in Bennett, "We perceive no reason to question the reliability of the insurance company's accounting of Ms. Bennett's loss, given an insurer's strong financial interest in not overpaying claims." 63 Wn. App. at 536 n.4. The documentation submitted for restitution in this case establishes a reasonable basis for estimating the loss and gives sufficient evidence so that the trier of fact is not subjected to mere speculation or conjecture.

D. CONCLUSION

For the foregoing reasons, the State respectfully asks this court to affirm the restitution order for the amount previously specified.

DATED this 22nd day of July, 2011.

Respectfully submitted,

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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 B. 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. RONALD R. ROMAN, Cause No. 66317-8-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.



Name Teri Chase
Done in Seattle, Washington

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Date 7/22/11

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