

NO. 66559-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

NICHOLAS RAYMOND PROUT,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JAMES ROGERS

BRIEF OF RESPONDENT

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COURT OF APPEALS
DIVISION I
JAMES ROGERS

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A. ISSUES PRESENTED

Restitution is meant to compensate the victim for losses suffered as a result of a crime committed by the defendant. The trial court ordered restitution after reviewing police reports and signed declarations by five individual victims. Without detailed attachments to the declarations provided by the victims (receipts, invoices), could the trial court find that the evidence was substantially credible, casually connected and order restitution?

B. STATEMENT OF THE CASE

On January 19, 2010, Mr. Prout was contacted near the scene of a convenience store burglary. CP 43. After some questioning, Mr. Prout admitted to having committed two dozen commercial burglaries and proceeded to drive around with officers and point out the locations of his crimes. Id. Those burglaries included, but were not limited to the 99 Cents Plus located on Aurora Avenue, Gourmet Latte on Holman Road, Caffè Keffa on 15th Ave., Q Mart on 15th Ave., and Fortune Cafe on Aurora Ave; all located within the city of Seattle. CP 43-48. Mr. Prout also made very specific statements regarding his actions at each of these locations. CP 43. At 99 Cents Plus he stated that he broke the door and stole cigarettes. Id. Mr. Prout stated he broke the window at

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Gourmet Latte and broke the door at Q Mart, but can't remember what happened afterwards at either location. CP 44. Regarding Caffè Keffa, he told officers he broke a south side window with a rock, reached the counter inside, but ran away when the alarm went off. Id. Lastly, at Fortune Cafe, during an interview, Mr. Prout said he gained entry through a door with a rock and that the cash register was empty. CP 47-48.

1. PROCEDURAL HISTORY

In March of 2010, the appellant, Nicholas Raymond Prout, was charged by information in King County Superior Court with 15 counts of Burglary in the Second Degree. CP 1-7. Nicholas Raymond Prout pled guilty to four counts of Burglary in the Second Degree and one count of Malicious Mischief in the Second Degree on June 11, 2011, and was sentenced on July 2, 2011. CP 24-35, 55-63. The sentencing court ordered that restitution was to be determined at a future date. CP 57.

2. SUBSTANTIVE FACTS

The State scheduled a hearing on December 20, 2010 requesting \$37,440.16 in restitution for the fourteen victims before the Honorable Judge Jim Rogers. RP 1¹. Mr. Prout challenged

¹ RP refers to the report of proceedings of December 20, 2010.

specific items of the requested restitution amount, objecting to the lack of supporting documentation - specifically that there were no receipts for repairs, no invoices, and no proof of what was lost. RP 4-8.

The court pointed out that among the documents he had to consider were restitution sheets that listed the damages suffered by each individual victim, signed under penalty of perjury by that victim. RP 5. The court found these to be a declaration and sufficient evidence to proceed with the hearing. Id.

The State advised the court that there was a significant causal connection to the restitution as details were provided in the certification regarding each and every location, with Mr. Prout admitting to burglarizing the victims. RP 9.

The court stated, after listening to argument that "there are a number of property restitution estimates which are actually sworn affidavits or declarations by parties" but other such claims did not have documentation. RP 10-11. For specific locations, (99 Cents Plus, The Hideout, Gourmet Latte, Cafe Keffa, Q-Mart, Sunny Teriyaki, Highland Market, and Kidd Valley) the court concluded that "the declaration by itself is sufficient." RP 11. Detailing his reasoning, Judge Rogers stated:

Their claims are sufficient, they're easily ascertainable, they're certainly causally connected to Mr. Prout's actions insofar as the declarant states that these are a correct summary of losses incurred as the crime investigated, and a number of these losses also appear to be connected to the certification. RP 12.

Restitution was ordered in the amount of \$31,160.16. CP 69-71.

C. **ARGUMENT**

THE RESTITUTION ORDERED BY THE TRIAL COURT WAS CAUSALLY CONNECTED TO MR. PROUT'S CRIMES AND SUPPORTED BY SUBSTANTIAL EVIDENCE.

Mr. Prout argues that the trial court exceeded its statutory authority in setting an amount of restitution which was not supported by substantial evidence and was not causally connected to Mr. Prout's actions. However, the record shows that the trial court was within its statutory authority and did not abuse its discretion when it properly ordered restitution after considering documentation related to the loss suffered by the victims.

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). When the particular type of restitution in question is authorized by statute, imposition of restitution is generally within the discretion of the trial court. State v.

Morse, 45 Wash.App. 197, 199, 723 P.2d 1209 (1986). Imposition of restitution will not be disturbed on appeal absent an abuse of discretion. Davison, 116 Wn.2d at 919. An abuse of discretion occurs only when the decision or order of the court is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." State v. Enstone, 137 Wn.2d 675, 679, 974 P.2d 828 (1999).

Statutes authorizing restitution should not be given "an overly technical construction which would permit the defendant to escape from just punishment." Davison, 116 Wn.2d at 922. The statutory authority for granting restitution is RCW 9.94A.753. That statute provides in part:

Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property...unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances on the record.

The Legislature has expressed a strong desire that offenders must pay restitution to the victims of their crimes. State v. Johnson, 69 Wn. App. 189, 193, 847 P.2d 960 (1993). Restitution is not a substitute for a civil lawsuit. State v. Fleming, 75 Wn. App. 270, 275, 877 P.2d 243 (1994) overruled on other grounds by

Washington v. Recuenco, 548 U.S. 212, 126 S.Ct. 2546, 165 L.Ed.2d 466 (2006). It serves other purposes, one of which is to impose upon one who breaks the law a thorough understanding of the economic effects of a particular crime upon a victim. Id.

Restitution ordered by the court must be "based on easily ascertainable damages for injury to or loss of property." RCW 9.94A.753(3). While the claimed loss "need not be established with specific accuracy," it must be supported by "substantial credible evidence." State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008) quoting State v. Fleming, 75 Wn. App. 270, 274-75, 877 P.2d 243 (1994) overruled on other grounds by Washington v. Recuenco, 548 U.S. 212, 126 S.Ct. 2546, 165 L.Ed.2d 466 (2006); State v. Kinneman, 155 Wn.2d 272, 285, 119 P.3d 350 (2005). Evidence supporting restitution "is sufficient if it affords a reasonable basis for estimating loss and does not subject the trier of fact to mere speculation or conjecture." Id.

Costs that a victim incurs as the result of the defendant's crimes have been deemed a loss of property under the restitution statute, and the trial court enjoys broad discretion in determining the restitution amount. State v. Tobin, 161 Wn.2d 517, 526-27, 166 P.3d 1167 (2007). However, there must be a "causal connection"

between the damages claimed and the crime charged. Id. at 524-27; State v. Kinneman, 155 Wn.2d 272, 286-88, 119 P.2d 350 (2005). In evaluating this causal connection, courts have required only a determination that "but for" the defendant's crime, the damages would not have occurred. Id. Losses are causally connected if, but for the charged crime, the victim would not have incurred the loss. Tobin, 161 Wn.2d at 524.

Here, the trial court considered numerous documents that addressed the damage that Mr. Prout caused to the victim's of his many burglaries. These documents included certifications signed under penalty of perjury by law enforcement officers and the victim's of Mr. Prout's crimes. The trial court did not sign a blanket order, but went through the restitution request, singling out those items that he felt were appropriate based on supporting documentation. RP 10-11. The Super 99 Cents Plus, Gourmet Latte, Cafe Keffa, Q-Mart, and Fortune Cafe all returned itemized lists of the losses they had suffered and all forms were signed under the caption: "I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is a true and correct summary of the losses I incurred as a result of the crime investigated under the above cause number." RP 83-98.

The purpose of restitution is to make the victim whole.

There is no question of causal connection as in each and every one of these incidents Mr. Prout makes clear and unequivocal statements that link him to the damage that the victim's suffered. This clearly establishes that the restitution at issue is within the statutory authority of the trial court. Those statements by Mr. Prout, coupled with declarations that list the damages and subsequent monetary value, provided substantial evidence for the trial court to be able to reasonably determine the loss suffered. No evidence has been presented that establishes the trial court abused its discretion as the court was simply acting in accordance with the legislatures wishes, repairing windows that Mr. Prout had broken with rocks, doors that he had broken down, and the simple yet costless sense of security that he had stolen with his actions.

In his argument, Mr. Prout relies on State v. Kisor where the court was considering an affidavit for restitution which described the value of the loss as "checked on" or "customary". 68 Wn. App 610, 614, 844 P.2d 1038. This was found to be no more than a "rough estimate". Id. That is simply not the case here as the victims list specific losses they personally suffered with itemized dollar amounts and often times details about what the cost included (i.e.

installation, clean-up). Mr. Prout also references State v. Pollard, 66 Wn.App 779, 834 P.2d 51, review denied, 120 Wn.2d 1015 (1992). In that case, when the court references a desire for additional information, it is because they only had a police report. Id at 786. Information that appeared to have been relied upon at the original hearing, referenced as "support documentation" was not provided. Id. Also, their desire for "bank records" is not an indication of the detailed evidence required, but merely a suggestion of what would be helpful, given that the bank itself was the victim. Id. One could infer, that records from a bank would be similar to the evidence provided in this case, a declaration, signed under penalty of perjury, by the victim.

Here, there is ample evidence that the restitution was connected to the crimes of Mr. Prout and supported by documentation. The trial court did not abuse its discretion by ordering restitution be paid to Super 99 Cents Plus, Gourmet Latte, Cafe Keffa, Q-Mart, and Fortune Cafe.

For all the foregoing reasons, the restitution ordered by the trial court should be affirmed.

D. CONCLUSION

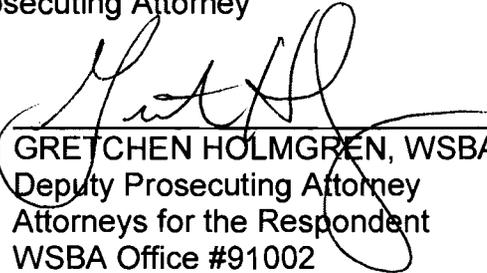
For the reasons set forth above, the State respectfully requests that the Court find that there was substantial evidence to support the order of restitution by the trial court.

DATED this 23rd day of September, 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 Thomas M. Kummerow, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. NICHOLAS RAYMOND PROUT, Cause No. 66559-6-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.

Janice J. Schwag
Name
Done in Kent, Washington

9/23/11
Date

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