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Court of Appeals  
Division I  
State of Washington

NO. 73623-0-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

J.P.  
(D.O.B. 9/30/99),

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

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APPELLANT'S OPENING BRIEF

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A. INTRODUCTION

J.P. contested the restitution the State sought as punishment for his adjudication of possession of a stolen car because the evidence showed that the car was damaged before he possessed it and he did not agree to pay restitution for uncharged crimes. This Court has held on several occasions that a conviction for possession of a stolen car does not authorize restitution for property damage that occurred earlier in time, such as when the car was stolen. The trial court exceeded its authority by ordering J.P. pay restitution for damage he did not cause.

B. ASSIGNMENT OF ERROR

The court improperly ordered J.P. pay restitution for loss that was not caused by the offense for which he was convicted.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

A trial court has authority to impose restitution only for damages caused by an offense charged and proven. This Court has repeatedly rejected restitution requests when a person is convicted of possession of stolen property and there is no evidence that the damage to the property occurred after the offender took possession. J.P. objected to paying for damage to a car that he did not cause and was not convicted of causing. Since the prosecution did not prove J.P.'s possession of the car caused

damage to the car, did the court lack authority to impose restitution for this damage?

D. STATEMENT OF THE CASE

On November 29, 2014, a patrol officer noticed two young men running in a Fred Meyer parking lot. CP 55. They got into a gold Porsche Cayenne, “very quickly” started it, and drove out of the lot. *Id.* The officer followed the Porsche in his unmarked police car. *Id.* The officer verified that the car had been reported stolen and activated his emergency lights. *Id.* J.P. was driving the car and he stopped when signaled. *Id.* The officer had followed the car only a few blocks as it made two turns. *Id.* When searching the rear passenger seat, where Abditifatah Mohamed had been sitting, the officer found three sets of car keys. CP 56. One key was for a Mercedes and had a tag attached as commonly found at car dealerships or rental car agencies.; the two other car keys near Mr. Mohamed were for an Audi and Mitsubishi. *Id.* The Porsche was being driven with its key. *Id.*

The Porsche had been stolen from a car dealership in Edmonds, which was about 25 miles away from the Fred Meyer lot if taking the most direct route. CP 57. The car was likely taken from the Car Masters lot sometime on November 28, 2014, and it was reported stolen to

police the next morning. CP 48. The officer saw the car in the parking lot at 10:26 p.m. on November 29, 2014, about 24 hours after it was stolen. CP 55.

J.P. originally entered drug court as part of a deferred disposition but later agreed to resolve the charge and an unrelated matter by guilty plea. Supp. CP \_\_, sub. no. 90; CP 42-46. He was adjudicated guilty of one count of possession of a stolen vehicle for driving the car on November 29, 2014. CP 4, 42. He objected to the court's restitution award for damages caused to the car's bumper and appealed that order. CP 47-54, 65. He did not contest his obligation to pay restitution for towing and storage fees. RP 27.

At the restitution hearing, the prosecution sought restitution for damages to the car's body. CP 11-38. It sought \$1367.64 for repairing damages to the car's headlights and front bumper, as well as towing and storage fees of \$713.30. CP 12-13. It did not offer witness testimony or allegations about the underlying incident. RP 25-26. J.P. argued that there was no evidence he stole or damaged the car, or that the damage occurred during the crime of conviction. RP 25-27. The court ruled that it could "attribute" the damages to the car to the person who was in it when stopped by police and there was "enough nexus" to the offense of

conviction to impose all restitution sought by the prosecution. RP 28;  
CP 63.

E. ARGUMENT.

**The court improperly ordered J.P. pay restitution for damages he did not cause.**

*1. Because restitution constitutes punishment for committing a criminal offense, it must be proven under criminal law standards.*

Restitution is a “strongly punitive” criminal sanction. *State v. Kinneman*, 155 Wn.2d 272, 280, 119 P.3d 350 (2005). It is part of the sentence that may not be imposed absent affording the accused the fundamental right to due process of law. *State v. Hotrum*, 120 Wn.App. 681, 683, 87 P.3d 766 (2004); *State v. Dedonado*, 99 Wn.App. 251, 254, 991 P.2d 1216 (2000). Determining the accurate sentence to impose, including restitution, may not be based on mere assertions or unproved allegations. *See State v. Hunley*, 175 Wn.2d 901, 910, 287 P.3d 584 (2012).

“The authority to impose restitution is not an inherent power of the court, but is derived from statutes.” *State v. Davison*, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). A restitution order is void when the trial court deviates from the parameters of the restitution statute. *State*

*v. Dauenhauer*, 103 Wn.App. 373, 378, 12 P.3d 661 (2000); *State v. Hefa*, 73 Wn. App. 865, 866-67, 871 P.2d 1093 (1994).

The juvenile restitution statute provides, in pertinent part, “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.*” (Emphasis added.) RCW 13.40.190(1)(a).<sup>1</sup> The causal requirement of the juvenile restitution statute is set forth in clear and unambiguous language. By speaking of “the offense committed” and “the offense charged,” the Legislature intended that the person convicted be ordered to pay restitution only for damages that occur due to the precise offense for which the person has been charged and convicted. *Id.*; *see, e.g., State v. Roberts*, 142 Wn.2d 471, 509-13, 14 P.3d 713 (2000) (by defining accomplice liability as knowingly aiding in “the crime,” Legislature imposed requirement that accomplice knowingly aid in the charged crime and not in a related or uncharged offense).

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<sup>1</sup> The restitution statute in adult criminal case similarly requires that the loss or damages must be the result of the offense of conviction. RCW 9.94A.753(5); *see e.g., State v. Johnson*, 69 Wn.App. 189, 191, 847 P.2d 960 (1990) (setting forth similar causation standard in adult restitution case as applies in juvenile restitution case).

Only when a person expressly agrees, as part of a plea bargain, may the court order restitution for offenses beyond those underlying the crime of conviction. RCW 13.40.190(1); *see Dauenhauer*, 103 Wn.App.at 379 (rejecting defense concession to pay restitution at sentencing since not part of plea bargain and not based on damages from offense of conviction). J.P. did not agree to pay restitution for offenses beyond the crime of conviction.

2. *The court misapplied the law requiring a causal connection for restitution ordered as part of a sentence for a criminal offense.*

The court's authority to order restitution is limited to losses that are causally connected to the crime of conviction. *State v. Acevedo*, 159 Wn.App. 221, 229-30, 248 P.3d 526 (2010). Whether the loss is causally connected to the crime of conviction is a question of law reviewed de novo on appeal. *Id.*, citing *State v. Johnson*, 96 Wn.App. 813, 816, 981 P.2d 25 (1999) (proper application of a statute is a question of law).

In *Acevedo*, the defendant was convicted of possession of a stolen car. He claimed that the car was already damaged when he obtained it. *Id.* at 230. The prosecution had no evidence Mr. Acevedo stole the car or possessed it when it was damaged. *Id.* at 231. To

determine whether the damage was causally connected to the crime for which Mr. Acevedo was convicted, the court explained, “[t]here is no causal connection if the loss or damage occurred *before* the act constituting the crime” and reversed the restitution order. *Id.* at 230 (emphasis added).

Similarly, in *State v. Woods*, 90 Wn.App. 904, 905, 953 P.2d 834 (1998), the defendant pled guilty to possession of a stolen motor vehicle and evidence showed she had stolen the truck several weeks earlier. The car’s owner also lost personal property that had been inside the truck when it was stolen and the trial court ordered the defendant to pay restitution for these items missing. *Id.* But this Court reversed the restitution order because there was not a sufficient causal connection between the crime of conviction and the missing items.

The *Woods* Court explained that authority to order restitution is constrained by the crime of conviction. *Id.* at 908. Restitution is not authorized “for loss beyond the scope of the crime charged” unless the defendant expressly agrees to pay this additional amount. *Id.* Even though the prosecution had evidence connecting the defendant to the actual theft, she was not convicted of stealing the car. *Id.* “The State essentially asked the trial court to impose restitution based on Woods’

‘general scheme,’ or based on acts ‘connected with’ the crime charged that were not part of the crime charged.” *Id.* This award was improper because “[t]he trial court cannot base restitution on such losses, which go beyond the crime charged.” *Id.*

“Even assuming Woods did steal the vehicle,” and she had admitted that she did, her conviction for possession of a stolen vehicle did not authorize the court to order restitution for damages that occurred when the car was stolen. *Id.* at 908-09. The theft of items from the car might be appropriate restitution if convicted of theft or taking a motor vehicle without permission, but not for the crime of possession of stolen property which rests on the defendant’s control of the stolen property at a point in time separate from the actual taking. *Id.*

The same analysis controlled in *State v. Tetters*, 81 Wn.App. 478, 479-80, 914 P.2d 784 (1996), where the defendant was convicted of possession of stolen property for driving a stolen car. The trial court ordered the defendant pay restitution for personal property taken from the car, but this Court reversed. The lost personal property was not causally related to the crime of conviction, which rested on possessing the car at a later point in time. *Id.*

The *Tetters* Court explained, “[n]o evidence has been presented to suggest that Tetters was in possession of the vehicle either from the time it was taken, or when the items were taken from the vehicle.” *Id.* at 481. Instead, “the loss undeniably occurred before the criminal act for which the defendant was convicted.” *Id.* He cannot be required to pay restitution for property damaged or lost before he was proven to have possessed the car. *Id.*

Like *Acevedo*, *Woods*, and *Tetters*, J.P. was convicted of possession of a stolen car, not theft of a motor vehicle or taking a motor vehicle. As the *Woods* Court explained, “it is clear that if the loss or damage occurs before the act constituting the crime, there is no causal connection between the two.” *Id.* at 909 (quoting *State v. Hunotte*, 69 Wn.App. 670, 675, 851 P.2d 694 (1993)). Lost property or damages that occurred before and not during or as a direct result of the crime of conviction may not be the basis of a restitution order.

J.P.’s conviction for unlawful possession of the stolen vehicle rested on allegations that a police officer watched him drive the car out of a Fred Meyer parking lot and down the street for several blocks, where he stopped when the pursuing police officer signaled him to pull over. CP 55. There was no proof he caused damage to the car and there

was no evidence that he had been driving the car before the officer followed him. He was not seen parking the car in the Fred Meyer lot or getting out of the car earlier in the day.

As J.P. argued to the trial court, his culpability for the offense of conviction cannot be extended based on broad notions of liability that might apply in civil law. CP 49-51; *State v. Bauer*, 180 Wn.2d 929, 942, 329 P.3d 67 (2014) (“legal causation in civil cases is broader and more flexible than it is in criminal cases”). To attach criminal liability, the defendant must be the actual cause and the proximate cause of the result. *Id.* at 935. In criminal law, it is not enough to show the defendant “occasioned the harm; he must have ‘caused’ it in the strict sense.” *Id.* at 937, quoting H.L.A. Hart & Tony Honore, *Causation in the Law* 350-51 (2d ed. 1985).

There was no evidence J.P. caused the damage to the car or that it occurred as a result of his possession of the car. The only time J.P. was seen with the car was after the damage had occurred. The court lacked authority to impose restitution for the damage to the car that was not caused by the crime of which he was convicted.

3. *The restitution ordered for damage not caused by J.P. should be stricken.*

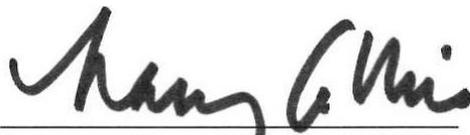
J.P. was not charged with or convicted of stealing the car or creating a situation in which the car would likely be damaged by others. He cannot be held liable for the acts of others who damaged the car at an earlier point in time. As in *Acevedo*, *Woods*, and *Tetters*, the trial court erred by ordering restitution for injuries not caused by the crime of conviction. The portion of the restitution order pertaining to the car's damage must be stricken. As J.P. conceded in the trial court, the towing and storage fees are reasonably foreseeable results of possessing a stolen vehicle and he may be ordered to pay those fees.

F. CONCLUSION.

The improperly ordered restitution should be stricken from the disposition order entered.

DATED this 1<sup>st</sup> day of December 2015.

Respectfully submitted,



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Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
v.	)	NO. 73623-0-I
	)	
J.P.,	)	
	)	
Juvenile Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 1<sup>ST</sup> DAY OF DECEMBER, 2015, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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**SIGNED** IN SEATTLE, WASHINGTON THIS 1<sup>ST</sup> DAY OF DECEMBER, 2015.

X \_\_\_\_\_ 

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