

FILED
Sep 06, 2016
Court of Appeals
Division I
State of Washington

NO. 74414-3-I

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

STATE OF WASHINGTON,

Respondent,

v.

JAMES BEA,

Appellant.

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

The Honorable Monica Benton, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

BEA'S PLEA AGREEMENT EXPRESSLY LIMITED RESTITUTION TO JACK HENRY AND ASSOCIATES' CREDIT CUSTOMERS FOR CHARGED CONDUCT AND NO CHARGED CONDUCT COVERS REIMBURSEMENT FOR JACK HENRY'S CREDIT CUSTOMERS' FRAUD LOSSES

The State correctly concedes this matter should be remanded "to have another restitution hearing to determine the proper amount of restitution consistent with the plea agreement." Br. of Resp't at 9. The State also correctly states Bea "agreed to pay restitution to [Jack Henry and Associates] for all costs related to charged conduct including security measures and reimbursement for fraud losses to credit customers." Br. of Resp't at 9 (emphasis omitted) (citing CP 61). But the State incorrectly asserts, "An important part of the agreement was to pay restitution for fraud losses to credit customers." Br. of Resp't at 9. The State's view that this was an important part of the plea agreement is contradicted by the language of the plea agreement. The plea agreement did not make Bea responsible to pay Jack Henry and Associates for fraud losses to credit customers beyond charged conduct, and the only charged conduct relating to Jack Henry was threats to bomb or injure property.

As discussed in the opening brief, a defendant is not required to pay restitution for uncharged conduct unless the plea agreement contains an express agreement authorizing such restitution. Br. of Appellant at 5-6

(discussing State v. Osborne, 140 Wn. App. 38, 163 P.3d 799 (2007), and State v. Dauenhauer, 103 Wn. App. 373, 12 P.3d 661 (2000)). The only restitution for uncharged conduct authorized in the plea agreement related to losses sustained to “Main[e] State Credit Union credit card customers Lynn Hancock and Robert Schena” CP 61 (emphasis omitted). Every other restitution item agreed to in the plea agreement duplicates and is therefore limited to the charged conduct. Br. of Appellant at 7-8.

This is true of Bea’s agreement to pay for Jack Henry and Associates’ losses: Bea “agree[d] to pay restitution to Jack Henry and Associates for all costs related to charged conduct including security measures and reimbursement for fraud losses to credit customers” CP 61 (emphasis added and omitted). Though Bea might have agreed to pay restitution for security measures and reimbursement for fraud losses to credit customers, he only agreed to pay this restitution insofar as it “related to charged conduct.” Because the only charged conduct pertaining to Jack Henry and Associates consisted of threats to bomb or injure property—not theft, fraud, identity theft, or the like—the State cannot show this conduct includes security measures and reimbursement for fraud losses to credit customers.

The State posits that the “trial court, without explanation, limited the restitution to only two of the thirteen institutions that [Jack Henry and

Associates] had to reimburse for fraud losses.” Br. of Resp’t at 9. But the trial court read the plea agreement, which does not name any non-Jack Henry institution other than Maine State Credit Union, and then concluded the plea agreement was limited to Maine State Credit Union. See 3RP 5 (“I have limited -- of financial institution I have limited to the one that your client agreed to pay.”).¹ The trial court’s reason for limiting restitution was not unexplained; it was based on the plea agreement’s language, which did not list any financial institution other than Jack Henry and Associates and Maine Street Credit Union.

Had the State wished to seek restitution for all Jack Henry and Associates’ losses vis-à-vis the financial institutions, it should have ensured language to that effect was in the plea agreement. It could easily have negotiated for an agreement “to pay restitution to Jack Henry and Associates for all costs related to security measures and reimbursement for fraud losses to credit customers.” Instead, the agreement the State negotiated requires that Bea pay Jack Henry and Associates for all costs *related to charged conduct, including* such security measures and reimbursement for fraud

¹ The trial court certainly erred, but for different reasons than the State claims. It was error to impose restitution for losses to Mainstreet Community Bank because this institution was not listed in the charging document or the plea agreement. See Br. of Appellant at 8-9. The trial court also erred in requiring Bea to pay for any of Maine State Credit Union’s losses because Bea only agreed to pay for the losses of four specific Maine State Credit Union credit card customers, not the losses of Maine State Credit Union itself. See Br. of Appellant at 9-10. The State does not respond to these arguments, indicating it has no response.

losses to credit customers. CP 61. The problem with the State's position is that the security measures and credit customers' fraud losses plainly fall outside the charged conduct. On remand, the State must be held to the language it agreed to.

Finally, for the sake of clarity, Bea wishes to correct aspects of the opening brief. Bea summarized the authorized restitution "based on the conduct Bea was convicted of and Bea's express agreement." Br. of Appellant at 8. Bea indicated restitution was authorized for "(2) Jack Henry and Associates' losses related to security measures and reimbursement for fraud losses to credit customers" Br. of Appellant at 8. After reviewing the State's brief, Bea acknowledges this statement is not as precise as it should have been. Bea now clarifies his position that restitution is authorized for Jack Henry and Associates' losses, if any, related to security measures and reimbursement for fraud losses to credit customers as long as those losses arose from the charged bomb threat conduct. Because it is difficult to conceive that the charged conduct of bombing or injuring property resulted in fraud losses to Jack Henry and Associates' credit customers, however, Bea contends the plea agreement precludes the State from seeking any restitution for losses sustained by any of Jack Henry and Associates' credit customers.

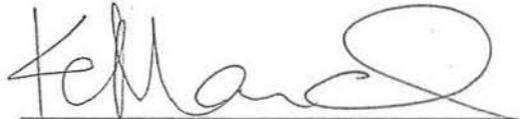
B. CONCLUSION

The restitution order should be vacated. Consistent with the State's concession, this court should remand for an evidentiary hearing on the facts Bea placed in dispute.

DATED this 6th day of September, 2016.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "Kevin A. March", written over a horizontal line.

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