IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. RONALD EDWARD STEEN, Appellant.	No. 39114-7-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — The Pierce County Superior Court accepted Ronald Steen's knowing and voluntary *Alford*[1] plea to an original information charging him with one count of unlawful possession of a stolen vehicle in violation of RCW 9A.56.068 and .140. The trial court imposed a 43-month standard range sentence, standard costs and fines, and restitution by later order of the trial court. The trial court subsequently set restitution "in the sum of $537.49 ($190.75 for car detailing and enzyme treatment; $227.39 for impound costs; and $119.35 for ignition repair)" to be paid to the vehicle's rightful owner, William Lee Bergstrom. Clerk's Papers (CP) at 38.

On appeal, Steen challenges only portions of the trial court's restitution order requiring

[1] *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). *State v. Newton*, 87 Wn.2d 363, 552 P.2d 682 (1976), adopted *Alford*.

that he reimburse Bergstrom $227.39 for vehicle impound fees and $119.35 for repairs to the car's ignition. He argues that there is no causal link between his unlawful possession of Bergstrom's car and these losses and that the court cannot order that he pay restitution for this damage.[2] Because Bergstrom's damages were a foreseeable consequence of Steen's knowing possession of Bergstrom's stolen vehicle, we affirm.

Discussion

A trial court has broad statutory authority to order restitution. RCW 9.94A.753; *State v. Enstone*, 137 Wn.2d 675, 679, 974 P.2d 828 (1999) (citing *State v. Smith*, 119 Wn.2d 385, 389, 831 P.2d 1082 (1992)). We will not disturb a trial court's order of restitution absent an abuse of discretion. *State v. Tobin*, 161 Wn.2d 517, 523, 166 P.3d 1167 (2007). A trial court abuses its discretion when its decision or order is "'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Enstone*, 137 Wn.2d at 679-80 (quoting *State v. Cunningham*, 96 Wn.2d 31, 34, 633 P.2d 886 (1981)). A trial court may also abuse its discretion by applying an incorrect legal analysis or other error of law. *Tobin*, 161 Wn.2d at 523.

Unless a defendant enters into an express agreement to pay restitution for an uncharged crime, a trial court may order restitution only for losses that are causally connected to the crime. *State v. Kinneman*, 155 Wn.2d 272, 286, 119 P.3d 350 (2005). We determine whether restitution is causally connected to the crime by employing a "but for" inquiry. *Tobin*, 161 Wn.2d at 524. If the defendant disputes facts relevant to determining restitution, the State must prove the damages at an evidentiary hearing by a preponderance of the evidence. *Kinneman*, 155 Wn.2d at 285.

[2] Steen does not appeal the remaining $190.75 for detailing and enzyme treatment of Bergstrom's car to repair unspecified damages caused by Steen's dog.

Steen does not dispute the reasonableness of the individual restitution amounts or the facts relevant to determining restitution. Instead, he contends that the facts do not support a finding that his crime is sufficiently causally connected to the trial court's restitution order requiring that he reimburse Bergstrom for towing and impound fees and ignition repairs. We disagree.

Ignition Repair

The record on appeal contains sufficient evidence of a causal connection between Steen's possession of Bergstrom's car and ignition damage to support the trial court's order requiring Steen to pay $119.35 for the ignition repair.

The Seattle Police Department received a report from Bergstrom that his 1992 dark blue Honda Accord had been stolen. On September 16, 2008, Pierce County Deputy Matthew Smith ran the plate on the 1992 dark blue Honda Accord that Steen was driving and learned that it was Bergstrom's stolen car. Smith detained Steen and, after advising him of his *Miranda*[3] rights, asked about the car. Steen claimed that he was borrowing it. The car's ignition was damaged; a house key had been used to start the vehicle but the engine would continue running with the key out of the ignition. Smith found a set of shaved keys commonly used by car thieves to defeat vehicle ignition systems in the car.

The trial court found that Steen drove the vehicle with a house key in the ignition warranting restitution to the victim to repair the ignition. Steen argues that although he stipulated to the declaration for determination of probable cause to establish a factual basis for his plea, he did not agree to allow the trial court to review the document for purposes of sentencing. But the trial court advised Steen that, even though he was making an *Alford* plea, he was acknowledging

[3] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

the facts in the declaration of probable cause and that it would support his plea and sentencing.

> THE COURT: Would you agree, sir, that I can look at the Declaration of Probable Cause in order to find the facts I need to support your plea?
> [STEEN]: Yes, I do.
> . . . .
> THE COURT: And you understand that even though you maintain your innocence, by pleading guilty today, it will be as if you admitted all the facts that were charged against you?
> [STEEN]: Yes, ma'am.
> THE COURT: So you'll have the same sentence as if you admitted the facts?
> [STEEN]: Yes, ma'am.

Report of Proceedings (RP) (Jan. 15, 2009) at 8.

Moreover, Steen did not object to the trial court's review of the declaration at the restitution hearing. Thus, Steen has not preserved an objection to the trial court's consideration of the probable cause declaration at his restitution hearing and he may not object to it for the first time on appeal. ER 103. The information in the probable cause declaration that Steen used a house key to operate Bergstrom's car and that he had a ring of shaved keys in the car at the time of his arrest, is evidence sufficient to create a reasonable inference that Steen damaged Bergstrom's ignition by using a house key to start the car. A causal connection exists between Steen's criminal conduct and the damage to Bergstrom's ignition. Accordingly, the trial court did not abuse its discretion when it ordered Steen to pay Bergstrom $119.35 in restitution to reimburse him for ignition repairs.

Impound Fees

The record before this court references, but does not contain, Bergstrom's initial statement of damages in the amount of $3,064.64. However, it does contain Steen's pro se letter to the court disputing the $227.39 impound cost, which states, "I was accosted on private

property therefore impound was not mandatory. Owner was not notified of recovery until after impound not giving owner a choice to pick-up from private property or impound at owners [sic] expense." CP at 46. The State argues that an impound fee is directly related to Steen's crime of possessing the stolen car and that, but for Steen's unlawful possession, the car would not have been towed.

At Steen's restitution hearing, the deputy prosecutor stated,

> Mr. Steen was pulled over in a stolen vehicle. When he was pulled over, he pulled into a private driveway. . . . [A]ccording to the officer, he contacted the victim of the stolen vehicle. At the time of the stop, the victim lived in Seattle, indicated he could be down in a reasonable amount of time. Couldn't come down through traffic and get there in time. Thus, the officer needed to impound the vehicle. Otherwise he would have had to stay there. So given the fact that Mr. Steen was driving around in a stolen vehicle, a reasonable expectation is that if you know it's stolen and you know you get caught and you know you're arrested, that that car is going to have to be impounded. The officers don't, as a matter of administrative policy, leave stolen vehicles, leave vehicles that are involved in crimes out in the general public. They have to be impounded where the victim can get ahold of them in a timely and efficient manner.
>
> So I think that's reasonably related to Mr. Steen's decision to drive a stolen vehicle.

RP (March 31, 2009) at 3-4.

Essentially Steen's argument at the restitution hearing and on appeal is that he should not be required to pay restitution for monetary losses that Bergstrom incurred as a result of the arresting officer's "unnecessary" decision to impound the car. Steen's argument suggests that the arresting officer's decision to impound the vehicle is a supervening intervening cause, which cuts off Steen's liability. This argument completely ignores the fact that, assuming, as we must, Steen did not steal Bergstrom's car; when Steen came into possession of a car he knew was stolen, he could have contacted police and had the car returned to Bergstom without incurring any liability.

But he did not contact the police and was convicted of possessing stolen property. Accordingly, he is required to pay restitution for the damages resulting from having committed that crime.

The legislature intended that restitution be "widely available to the victims of crimes, at least when their injuries were a foreseeable consequence" of the criminal conduct. *State v. Hiett*, 154 Wn.2d 560, 564, 115 P.3d 274 (2005). From his knowing, unlawful, and unauthorized possession of someone else's car, Steen could reasonably foresee that the car would be taken into police custody until it could be returned to the rightful owner. In essence, Steen argues that the officer had a duty to reduce his restitution obligation by minimizing costs to the victim for the return of his property. Steen suggests that the officer had a duty to minimize costs and should have left the car parked in the driveway and called Bergstrom so that he could come get his car. The difficult logistics required for one person to travel to another city to recover a stolen vehicle aside, standard evidence preservation procedures are not consistent with Steen's suggestion. Because the ignition was damaged, the car could be started with any key and Deputy Smith could not delegate to the driveway owner the responsibility of ensuring the vehicle was delivered to its rightful owner. Impounding the vehicle until the rightful owner was notified and had an opportunity to prove he was entitled to possession of the car and retrieve it from police custody (via impound) was reasonable and foreseeable. The trial court did not abuse its discretion by requiring Steen to pay $227.39 to reimburse Bergstrom for the impound fees.

Steen argues that *State v. Tetters*, 81 Wn. App. 478, 914 P.2d 784 (1996), and *State v. Woods*, 90 Wn. App. 904, 953 P.2d 834, *review denied*, 136 Wn.2d 1021 (1998), stand for the proposition that there is no causal connection between the order of restitution's towing and impound fee and his unlawful possession of a stolen vehicle. But *Tetters* and *Woods* are

distinguishable. Those cases involved the disappearance of property allegedly in the vehicles at the time they were stolen but not recovered when the defendants were arrested for possessing the stolen vehicles. As *Tetters* noted, a defendant's mere possession of the stolen vehicle is neither "sufficiently, nor necessarily, related to the lost personal property. He can not [sic] be obligated to pay restitution for those items" because "the loss undeniably occurred before the criminal act for which the defendant was convicted." *Tetters*, 81 Wn. App. at 481. Steen's unlawful possession of Bergstrom's car is causally related to costs Bergstom incurred to retrieve the vehicle. Accordingly, the trial court did not abuse its discretion when it required Steen to pay $227.39 to reimburse Bergstom for this cost.

We review a trial court's restitution order for an abuse of discretion. We are aware that Steen was ordered to pay the cost of towing and one day's impound fee. We are not asked to decide whether a trial court could require a defendant to pay inordinately high impound fees in cases when the rightful owner of the car lacked sufficient available funds (or interest) to retrieve the car from impound. We are also aware that some courts have ordered defendants to pay restitution to the towing/impound company for lost impound fees when the lawful owner could not or would not pay. In at least one case, the towing company had stored the stolen vehicle for 92 days. *People v. Clay*, 74 P.3d 473 (Colo. Ct. App.) (although the vehicle owner's failure to timely retrieve the vehicle contributed to the towing company's lost revenue, the loss would not have occurred but for defendant's acts), *cert. denied*, 2003 WL 21958347 (Colo. 2003). Thus, we hold only that the trial court did not abuse its discretion when it ordered Steen to pay Bergstom $227.39 in restitution for the towing and impound fees he incurred in recovering his stolen vehicle, which Steen knowingly possessed.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

ARMSTRONG, P.J.

HUNT, J.