

IN THE UTAH COURT OF APPEALS

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Salt Lake City,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20060951-CA
v.)	
)	F I L E D
Lee Gordon Howell,)	(May 3, 2007)
)	
Defendant and Appellant.)	2007 UT App 148

Third District, Salt Lake Department, 061902008
The Honorable Stephen L. Henriod

Attorneys: Marlene M. Mohn, Salt Lake City, for Appellant
Simarjit S. Gill and Scott A. Fisher, Salt Lake City,
for Appellee

Before Judges Greenwood, Billings, and Orme.

PER CURIAM:

Following a guilty plea to attempted theft by receiving stolen property, Appellant Lee Gordon Howell appeals the restitution order. Appellee Salt Lake City agrees and moved this court to summarily reverse the restitution order and remand to the district court for revision of the order.

Pursuant to a plea agreement, Howell pleaded guilty to attempted theft by receiving stolen property. He admitted that he recovered a piece of metal from a field, which he later sold for \$442. The piece of metal was a part of a metal loading ramp that was stolen from a business. An employee of the business testified at the restitution hearing that the theft of the entire ramp cost the business \$10,000 to \$11,000. Howell denied any knowledge about the theft or the whereabouts of the remaining portion of the ramp. The district court ordered Howell to pay restitution in the amount of \$10,000, representing the entire value of the stolen ramp.

In State v. Mast, 2001 UT App 402, 40 P.3d 1143, we applied Utah Code section 76-3-201 to similar facts. Mast pleaded guilty to receiving stolen property and admitted receipt of jewelry and checks belonging to a victim whose home was burglarized. Mast

was not convicted of the burglary and did not admit possession of any other stolen items. Nevertheless, the district court ordered restitution in an amount based upon the value of the other property taken in the burglary, the cost of check replacement, and the victim's lost work time. Concluding that the order was contrary to the plain language of section 76-3-201, we vacated the restitution order and remanded the matter "for a hearing to determine what pecuniary damages resulted from defendant's admitted conduct, specifically receiving the stolen property enumerated in her plea." Mast, 2001 UT App 402 at ¶19. In support of the holding, we stated that "[g]iven that defendant entered a guilty plea only to the receiving stolen property charges, she cannot be held to answer for all damages resulting from the burglary." Id. at ¶18.

Similarly, Howell was convicted only of attempted theft by receiving stolen property. He admitted only that he recovered scrap metal belonging to the victim, which he sold for \$442. The district court could not require restitution for pecuniary damages measured by the entire value of the stolen ramp where there was neither a conviction nor an admission to support the award.

We grant the City's motion to summarily reverse the restitution award and remand for a restitution hearing consistent with section 76-3-201 "to determine what pecuniary damages resulted from the admitted conduct, specifically receiving the stolen property enumerated in [Howell's] plea." Id. at ¶19.

Pamela T. Greenwood,
Associate Presiding Judge

Judith M. Billings, Judge

Gregory K. Orme, Judge