

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

STATE OF WASHINGTON,	)	No. 63353-8-I
	)	
Respondent,	)	
	)	
v.	)	
	)	
VAN TINH TRAN,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: July 26, 2010
	)	

Ellington, J. — Sentencing courts have the statutory authority to continue a restitution hearing beyond the 180 day limit for good cause. Here, Van Tinh Tran’s restitution hearing was initiated prior to the relevant deadline and continued for good cause. And there was substantial credible evidence supporting the amount of the restitution award. We affirm.

BACKGROUND

On December 15, 2007 Mark and Annie Bews, along with their young child, went to look at a house on South Ferdinand Street in Seattle. Bews parked his car in the driveway of the house. Van Tinh Tran and his son John Nguyen came out of the house and told Bews to move his car. Bews started to get back into his car, but Tran and Nguyen began striking Bews with their hands and feet. While holding her son, Annie Bews attempted to stop the fight but Tran kicked her in the back and chest. Tran then

obtained a sledgehammer from his truck and used it to strike Mark Bews in the head and chest. Bews tried to flee, but Tran and Nguyen followed him and continued the assault. When police officers arrived, Tran claimed that he had used the sledgehammer in self-defense.

Tran entered an Alford<sup>1</sup> plea to one count of assault in the fourth degree.<sup>2</sup> On September 12, 2008, the sentencing court imposed a deferred sentence of 12 months. The conditions of sentencing included the payment of any restitution arising from the assault, to be determined at a hearing. The hearing was originally scheduled for February 26, 2009, but was continued to March 5, 2009 because the court was closed due to inclement weather. On March 5, 2009, the State moved for a brief continuance so Mark Bews could be present for the hearing. The court granted the request and continued the hearing to March 10, 2009.

At the March 10 hearing, the State argued that Tran should pay \$1,940.40 to the Crime Victims Compensation program for medical bills and \$28,000 in lost earnings for Mark Bews. Counsel for Tran argued against both awards. Tran wanted to address the court directly, but was unable to do so without an interpreter. Because an interpreter had not yet been ordered, the court found good cause to continue the hearing on the last day of speedy restitution. Tran did not object.

The court scheduled the next restitution hearing for March 17, 2009. Although the hearing reconvened on that day, Tran was still unable to address the court because an interpreter was not present. The court again found good cause to continue to

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<sup>1</sup> North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

<sup>2</sup> Both Mark and Annie Bews were named as victims in the same count.

hearing for the purpose of allowing Tran to address the court. Tran did not object. The hearing was continued to March 31, 2009.

On March 31, 2009, the State again put forth its request for restitution but without offering any additional evidence. Tran's attorney made additional arguments against restitution that he had not made at the March 10 hearing. Tran was then given an opportunity to address the court through a court-certified interpreter. Tran stated that he had acted in self-defense, that he had difficulty explaining the facts to law enforcement, and that Nguyen had been seriously injured during the incident.

The court ordered restitution in the amount of \$29,940.40 which included \$28,000 in lost earnings to Mark Bews and \$1,940.40 to the Crime Victims Compensation program for medical bills. Tran appealed.

### ANALYSIS

Tran first argues that the trial court erred in ordering restitution because it exceeded its statutory authority to grant a continuance of the restitution hearing beyond the 180-day statutory time limit.

A trial court's restitution order is reviewed for abuse of discretion.<sup>3</sup> The court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds or reasons.<sup>4</sup> "Generally, the choice, interpretation, and application of a statute are matters of law reviewed de novo."<sup>5</sup>

A trial court's authority to impose restitution is purely statutory.<sup>6</sup> "The legislature

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<sup>3</sup> State v. Hunotte, 69 Wn. App. 670, 674, 851 P.2d 694 (1993).

<sup>4</sup> State v. Enstone, 137 Wn.2d 675, 679-80, 974 P.2d 828 (1999).

<sup>5</sup> State v. Johnson, 96 Wn. App. 813, 816, 981 P.2d 25 (1999).

has expressed ‘a strong desire that offenders must pay restitution to the victims of their crimes.’”<sup>7</sup> “[T]he restitution statute is to be interpreted broadly.”<sup>8</sup> “Statutes authorizing restitution should not be given ‘an overly technical construction which would permit the defendant to escape from just punishment.’”<sup>9</sup> However, the court may not exceed the authority granted under the controlling statute.<sup>10</sup> A restitution order is void if statutory provisions are not followed.<sup>11</sup>

RCW 9.94A.753(5) provides that a sentencing court shall order restitution “whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property.” RCW 9.94A.753(1) specifies that

[w]hen restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within one hundred eighty days except as provided in subsection (7) of this section. The court may continue the hearing beyond the one hundred eighty days for good cause.

“[T]he time limit for setting restitution is mandatory.”<sup>12</sup>

We conclude that the trial court did not exceed its statutory authority under the facts of this case. The 180-day period operates like an ordinary statute of limitations, rather than a jurisdiction limit, and it is subject to the doctrine of equitable tolling.<sup>13</sup> A

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<sup>6</sup> State v. Smith, 119 Wn.2d 385, 389, 831 P.2d 1082 (1992).

<sup>7</sup> State v. Tobin, 132 Wn. App. 161, 175, 130 P.3d 426 (2006) (quoting State v. Johnson, 69 Wn. App. 189, 193, 847 P.2d 960 (1993)), affirmed, 161 Wn.2d 517 (2007).

<sup>8</sup> State v. Israel, 113 Wn. App. 243, 299, 54 P.3d 1218 (2002).

<sup>9</sup> Johnson, 69 Wn. App. at 193 (quoting State v. Davison, 116 Wn.2d 917, 922, 809 P.2d 1374 (1991)).

<sup>10</sup> State v. Martin, 137 Wn.2d 149, 155, 969 P.2d 450 (1999).

<sup>11</sup> State v. Duback, 77 Wn. App. 330, 332, 891 P.2d 40 (1995).

<sup>12</sup> Johnson, 96 Wn. App. at 816.

<sup>13</sup> State v. Duvall, 86 Wn. App. 871, 874, 940 P.2d 671 (1997).

motion to continue the hearing for good cause must be made before the 180-day period has elapsed.<sup>14</sup> “Good cause” to grant a continuance “requires a showing of some external impediment that did not result from a self-created hardship that would prevent a party from complying with statutory requirements.”<sup>15</sup>

Here, the speedy restitution period expired on March 10, 2009. The restitution hearing was originally scheduled for February 26, 2009 and, after two continuances, was held on March 10, 2009. At that hearing, the State presented all evidentiary documents and made all arguments in support of restitution and counsel for Tran argued against restitution. The court’s sole reason for granting continuances on March 10 and March 17 was to obtain an interpreter at Tran’s request so he could address the court directly. In granting those continuances, the court specifically noted that argument had already been heard from both parties on March 10. At the final hearing on March 31, Tran addressed the court directly through an interpreter. The court also allowed counsel for Tran to present additional arguments against restitution. Therefore, Tran suffered no prejudice.

Tran’s reliance on State v. Johnson<sup>16</sup> is misplaced. There, the first scheduled restitution hearing was held 235 days after sentencing. The trial court concluded that good cause existed for the delay because it was beyond the prosecutor’s control to obtain the defendant at an earlier date.<sup>17</sup> The appellate court reversed, holding that the

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<sup>14</sup> Johnson, 96 Wn. App. at 816.

<sup>15</sup> State v. Reed, 103 Wn. App. 261, 265 n.4, 12 P.3d 151 (2000).

<sup>16</sup> 96 Wn. App. 813, 981 P.2d 25 (1999).

<sup>17</sup> Johnson, 96 Wn. App. at 815–16.

court lacked statutory authority under the “good cause” provision to order a restitution hearing beyond the 180-day limit.<sup>18</sup> But here, the sentencing court granted two continuances prior to the expiration of the time limit, conducted a hearing on the last day of speedy restitution, and then granted two further continuances for the sole purpose of obtaining an interpreter so that Tran could address the court.

Tran also argues that the trial court erred in ordering \$28,000 in restitution awarded to Mark Bews for lost earnings because the amount was based on speculation and conjecture.

“The trial court need only find that a victim’s injuries were causally connected to a defendant’s crime before ordering a defendant to pay restitution for the expenses which resulted.”<sup>19</sup> “The trial court has discretion to determine the amount of restitution.”<sup>20</sup> The amount of the loss “shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury.”<sup>21</sup> “‘Easily ascertainable’ damages are those tangible damages which are proved by sufficient evidence to exist. Precise determination is not required.”<sup>22</sup> “Evidence of damage is sufficient if it affords a reasonable basis for estimating the loss and does not subject the trier of fact to mere speculation or conjecture.”<sup>23</sup>

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<sup>18</sup> Id.

<sup>19</sup> Enstone, 137 Wn.2d at 682.

<sup>20</sup> State v. Kisor, 68 Wn. App. 610, 619, 844 P.2d 1038 (1993).

<sup>21</sup> RCW 9.94A.753(3).

<sup>22</sup> State v. Bush, 34 Wn. App. 121, 123, 659 P.2d 1127 (1983).

<sup>23</sup> Id. at 124 (quoting Haner v. Quincy Farm Chemicals, Inc., 29 Wn. App. 93, 97–98, 627 P.2d 571 (1981)).

We disagree with Tran. First, there was a clear causal connection between the crime and the losses. The record shows that Tran struck Mark Bews in the head with a sledgehammer. The State submitted a signed handwritten letter on Valley Medical Center stationary from Bews' doctor acknowledging the assault and noting that Bews was unable to work from December 15, 2007 through February 2008 due to headaches.

Second, the amount of the loss was easily ascertainable. Bews is a house framer in the construction industry. Prior to the assault, Bews had done house framing for Brian Johnson of GoGo Designs. Johnson calculated that Bews had earned \$70 per hour. Soon after the assault, Johnson contacted Bews and asked him to work on a framing job that was projected to take 8 to 10 weeks to complete. Bews was forced to decline due to his head injuries. In requesting a total of \$28,000 in lost wages, the State began with Bews' wage of \$70 per hour and multiplied it by 10 40-hour weeks. The State supported these calculations with a letter from Johnson, Bews' W-2 statement, and a written affidavit from Bews signed under penalty of perjury in which he calculated \$28,000 in lost earnings. Although it is not possible to determine the actual amount of Bews' lost earnings with mathematical certainty, the calculations are logically sound and not based on mere speculation or conjecture.

Tran further argues that the evidence in support of restitution was insufficiently reliable because the letter from Johnson was not signed and dated and because the

