

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 66959-1-I
)	
Respondent,)	DIVISION ONE
)	
v.)	
)	
RONNIE EARL SEYMOUR, JR.,)	UNPUBLISHED
)	
Appellant.)	FILED: <u>July 23, 2012</u>
)	
)	

Cox, J. — If, as part of a plea agreement, a defendant expressly agrees to pay restitution for crimes he was not charged with or convicted of, the trial court does not abuse its discretion in ordering restitution to the victims of those crimes.¹ In his plea agreement with the State, Ronnie Seymour agreed to pay restitution for “all” conduct alleged in the Certification for Determination of Probable Cause, including several uncharged burglaries. Accordingly, we affirm the trial court’s order of restitution to the burglary victims identified in the certification.

Police arrested Seymour at the scene of a burglary. The circumstances of the crime were very similar to other unsolved burglaries in the same

¹ State v. Griffith, 164 Wn.2d 960, 966, 195 P.3d 506 (2008) (quoting State v. Woods, 90 Wn. App. 904, 908, 953 P.2d 834 (1998) (quoting State v. Johnson, 69 Wn. App. 189, 191, 847 P.2d 960 (1993))); State v. Hunsicker, 129 Wn.2d 554, 559, 919 P.2d 79 (1996).

neighborhood. After further investigation, the police determined that Seymour pawned or possessed stolen property from many of the other burglaries. The State did not charge Seymour for any of the earlier burglaries, but it did charge him with eight counts of first degree trafficking in stolen property and one count of third degree possessing stolen property. The certification described both the property possessed or pawned by Seymour and the circumstances of the uncharged burglaries.

Seymour entered into a plea agreement with the State in which he agreed to plead guilty to four of the charged counts and pay restitution for “all” of the conduct described in the certification. In exchange, the State dismissed two counts of first degree trafficking in stolen property and agreed not to file additional charges. The trial court sentenced Seymour in accordance with this agreement.

Before the restitution hearing, Seymour objected to the State’s claims for restitution, in part, because he claimed that some of the losses from the burglaries lacked a nexus with the possession and trafficking crimes charged. The trial court held that restitution was proper because Seymour agreed to it as a term of his plea agreement. It then entered an order of restitution.

Seymour appeals this order.

RESTITUTION

Seymour argues that the trial court’s order of restitution must be vacated because the losses compensated are not causally connected to his charged

offenses. We disagree.

The trial court must order restitution when a defendant is convicted of an offense that results in damage to, or loss of, property.² Generally, restitution is permitted only for losses that are causally connected to the charged crimes.³ But, if the defendant expressly agrees to pay restitution for crimes for which he was not convicted, an order of restitution is also proper.⁴ The State bears the burden of establishing restitution by a preponderance of the evidence.⁵

We review the trial court's restitution order for an abuse of discretion.⁶ The court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons.⁷

Here, the State charged Seymour with eight counts of first degree trafficking in stolen property and one count of third degree possessing stolen property. Seymour entered into a felony plea agreement in which he agreed to plead guilty to three counts of the first degree trafficking in stolen property

² RCW 9.94A.753(5); Griffith, 164 Wn.2d at 965.

³ Griffith, 164 Wn.2d at 965-66 (quoting State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007) (quoting State v. Kinneman, 155 Wn.2d 272, 286, 119 P.3d 350 (2005))).

⁴ Id. (quoting Woods, 90 Wn. App. at 908 (quoting Johnson, 69 Wn. App. at 191)).

⁵ State v. Dennis, 101 Wn. App. 223, 226-27, 6 P.3d 1173 (2000).

⁶ Griffith, 164 Wn.2d at 965.

⁷ State v. Enstone, 137 Wn.2d 675, 679-80, 974 P.2d 828 (1999).

charges and one count of third degree possessing stolen property. The State agreed to dismiss two of the remaining first degree trafficking in stolen property charges and not to file any additional charges. As part of this plea agreement, Seymour agreed to pay restitution for “all losses for all charged cts, inc. VII & IX, & ***all conduct in cert.***”⁸

The trial court determined that, based on the plea agreement, Seymour agreed to pay for the losses from all of the burglaries outlined in the certification.

The court explained that:

In exchange for the dismissal of Counts VII and IX the defendant lowered his offender score, which lowered his sentence, and in that negotiation he also contractually agreed to pay restitution for all losses for all charged counts, including Counts VII and IX, and all conduct in cert, end quote. He has agreed to pay restitution for all conduct in cert. I don’t think “all”—what does “all” leave out? It leaves out nothing.

That includes a number of burglaries and it includes a number of the conduct [sic] that was attributed to [another individual].⁹

This was a correct interpretation of the plea agreement. Seymour agreed to pay restitution for “all” conduct described in the certification. Given that plain language, the trial court did not abuse its discretion in ordering Seymour to pay restitution for the uncharged burglaries identified in the certification.

Seymour argues that the trial court abused its discretion because restitution is only allowed for losses that are causally connected to charged

⁸ Clerk’s Papers at 40 (emphasis added).

⁹ Report of Proceedings (March 22, 2011) at 17-18.

crimes and there was insufficient evidence to causally link him to the uncharged burglaries. Without any citation to authority, Seymour claims that the plea agreement did not “empower the court to disregard the statutory requirement that there be an evidentiary nexus between Seymour’s acts and the loss incurred.”¹⁰ But an evidentiary nexus is not necessary if the defendant agrees, as part of a plea agreement, to pay restitution for crimes that the State did not charge.¹¹ Because Seymour agreed to pay restitution for “all” conduct described in the certification, the State did not need to show an evidentiary nexus between Seymour’s possession and trafficking of stolen property charges and the burglaries.

We affirm the order of restitution.

Cox, J.

WE CONCUR:

Schieweller, J.

Becker, J.

¹⁰ Opening Brief of Appellant at 5.

¹¹ See Griffith, 164 Wn.2d at 965-66 (quoting Woods, 90 Wn. App. at 908 (quoting Johnson, 69 Wn. App. at 191)); Hunsicker, 129 Wn.2d at 559 (holding that promise to pay restitution for uncharged counts was binding).

No. 66959-1-1/6