IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27995-2-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
JOAN MARIE GRIFFITH,	)	**UNPUBLISHED OPINION**
	)	
Appellant.	)	
	)	

Kulik, C.J. — Joan Griffith pleaded guilty to possession of stolen property in the second degree. The trial court ordered Ms. Griffith to pay $11,500 in restitution to the owners of the property. On appeal, this court affirmed the order. On review, the Supreme Court vacated and remanded for a new restitution hearing, stating there was insufficient evidence to support the restitution amount. After a second restitution hearing, the trial court entered a new order for $4,596. Ms. Griffith appeals, asserting there was insufficient evidence to support the $4,596 figure. The trial court had a reasonable basis, supported by substantial evidence, to enter the restitution order for $4,596. Accordingly, we affirm the order of restitution.

FACTS

Sometime between Christmas 2001 and New Year's Day 2002, burglars broke into Robert and Elaine Linscott's home taking jewelry, sterling silverware, firearms, and other items. On January 1, 2002, the Linscotts reported the burglary and provided the police with a detailed list of the stolen items and their estimated values, totaling around $44,000. One of the missing items was a 2.5 carat diamond ring, which Ms. Linscott valued at $4,500.

John and Russ Slaughter are co-owners of the Eastern Washington Coin Company (Coin Company) in Spokane. On January 2, Joan Griffith took plastic bags of "stuff" into the Coin Company containing jewelry, pearls, and a ring which appeared to contain a large diamond. Report of Proceedings (June 30, 2005) (RP) at 9. The Slaughters bought several pieces of "scrap" jewelry from Ms. Griffith for $96. RP at 10. Ms. Griffith showed Russ Slaughter what appeared to be a large diamond ring, for which he offered her between $480 and $500. Ms. Griffith declined the offer.

On her own initiative, Ms. Linscott searched local pawnshops for her stolen belongings. Ms. Linscott found several of her belongings, including a pearl necklace, at the Coin Company. Russ Slaughter identified Ms. Griffith as the person who had sold

Ms. Linscott's items to the Coin Company.

When the police contacted Ms. Griffith, she told them that two men in a parking lot sold her the jewelry that she later sold to the Coin Company.

The State charged Ms. Griffith with second degree trafficking in stolen property. Ms. Griffith pleaded guilty to possession of stolen property in the second degree.

The court held a restitution hearing in June 2005. Ms. Linscott testified that $11,000 worth of her jewelry was still missing, including a 2.5 carat diamond ring. Ms. Linscott testified that it was her understanding that Ms. Griffith was seen "carrying" the diamond ring as well as some of Ms. Linscott's gems. RP at 5-7.

John Slaughter testified that Ms. Griffith brought a bag of "stuff" into the Coin Company. He bought $96 worth of scrap gold. John Slaughter stated that he saw a ring that looked like Ms. Linscott's 2.5 carat diamond ring, but he "didn't pay too much attention to it to see if it was a real diamond or anything." RP at 10. Russ Slaughter did not testify at the restitution hearing, but the affidavit of facts stated that he could testify that he offered between $480 to $500 for a ring with a large diamond.

The trial court found that "$11,500 . . . of Elaine Linscott's property was identified by John Slaughter as having been in defendant's possession after the crime" and ordered Ms. Griffith to pay $11,500 in restitution to the Linscotts. Clerk's Papers at 20.

Ms. Griffith appealed, arguing insufficient evidence, and this court affirmed the trial court with Judge John Schultheis dissenting. *State v. Griffith*, 136 Wn. App. 885, 151 P.3d 230 (2007), *rev'd*, 164 Wn.2d 960, 195 P.3d 506 (2008).

On review, the Supreme Court stated that the "evidence is not only 'skimpy'—it is legally insufficient" to support the restitution order. *Griffith*, 164 Wn.2d at 967. The Supreme Court remanded for a new restitution hearing, but stated that no new evidence could be admitted. *Id.* at 968.

The trial court held a second restitution hearing on March 12, 2009. The trial court entered an order of restitution for $4,596, including $4,500 for the 2.5 carat diamond ring and $96 for the scrap jewelry.

Ms. Griffith appeals, asserting substantial evidence does not support the restitution order regarding either the $96 for the scrap jewelry or the $4,500 for the diamond ring.

ANALYSIS

The size of a restitution award is reviewed for an abuse of discretion. *State v. Mead*, 67 Wn. App. 486, 490, 836 P.2d 257 (1992). We review a trial court's factual findings supporting the restitution order for substantial evidence. *Ingram v. Dep't of Licensing*, 162 Wn.2d 514, 522, 173 P.3d 259 (2007).

A court must order restitution when an offender is convicted of an offense that

caused a loss of property. The amount of restitution must be based on "easily ascertainable damages." RCW 9.94A.753(3). A court can award restitution up to double the amount of a victim's loss. RCW 9.94A.753(3).

The State must prove the amount of restitution by a preponderance of the evidence. *State v. Kinneman*, 155 Wn.2d 272, 285, 119 P.3d 350 (2005). Supporting evidence is sufficient if it provides a reasonable basis for estimating loss and it does not subject the trier of fact to mere speculation or conjecture. *Griffith*, 164 Wn.2d at 965 (quoting *State v. Hughes*, 154 Wn.2d 118, 154, 110 P.3d 192 (2005), *abrogated by Washington v. Recuenco*, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006)).

There is no right to a jury determination of facts supporting restitution, but restitution awards must be only for losses that are causally connected to the charged crimes. *Griffith*, 164 Wn.2d at 965 (quoting *State v. Tobin*, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007)). "Losses are causally connected if, but for the charged crime, the victim would not have incurred the loss." *Id.* at 966. In determining whether a causal connection exists, the court should look to the underlying facts of the charged offense, and not merely the name of the crime. *State v. Landrum*, 66 Wn. App. 791, 799, 832 P.2d 1359 (1992).

Here, Ms. Griffith asserts there was insufficient evidence to support the trial

court's order of restitution in regard to both the $96 purchase of scrap jewelry and the $4,500 for the 2.5 carat diamond ring. Ms. Linscott recovered some of her jewelry at the Coin Company. Ms. Griffith asserts that the State failed to show that none of the recovered jewelry came from the $96 of scrap. Ms. Griffith asserts that because it is unclear which jewelry was part of the $96 purchase, and which jewelry was not, the amount of restitution set by the trial court was speculative and not supported by a preponderance of the evidence.

It is not disputed that Ms. Griffith sold $96 worth of Ms. Linscott's jewelry to the Slaughters. Ms. Linscott testified that she believed Ms. Griffith had over $11,000 worth of the Linscotts' property with her when she went to the Coin Company, which Ms. Linscott never recovered. The Supreme Court said that the $11,500 figure was not supported by substantial evidence. However, the $96 figure has strong support. Loss does not need to be established with specific accuracy, it just needs to be supported by substantial evidence. *Griffith*, 164 Wn.2d at 965 (quoting *State v. Fleming*, 75 Wn. App. 270, 274-75, 877 P.2d 243 (1994)). Here, there is no question that Ms. Griffith sold $96 worth of Ms. Linscott's property.

Ms. Griffith also contends that there was insufficient evidence to support the $4,500 figure for the diamond ring. Ms. Griffith asserts that the State failed to prove that

she was in possession of Ms. Linscott's ring and, therefore, the $4,500 figure was impermissibly based on mere speculation and conjecture.

John Slaughter testified that he saw a ring that "looked like" the 2.5 carat diamond ring Ms. Linscott described she was missing. RP at 10. When asked if he had seen Ms. Linscott's ring, John Slaughter replied that he was not sure, but he saw one that was similar. In the affidavit of facts, Russ Slaughter stated that he offered Ms. Griffith $480 to $500 for a ring with a large diamond.

The Supreme Court stated that "[c]ounsel for the defendant conceded at oral argument that John's testimony was sufficient to establish the ring he saw was Mrs. Linscott's two and one-half carat diamond ring." *Griffith*, 164 Wn.2d at 967 n.4. Ms. Griffith asserts in her brief that defense counsel's statement was not a concession, but merely an observation that the evidence might survive a preponderance of the evidence test.

Based on the State's evidence, there is a reasonable basis to conclude that Ms. Griffith possessed Ms. Linscott's 2.5 carat diamond ring. The trial court adopted Ms. Linscott's valuation of the ring at $4,500.

The trial court had a reasonable basis, supported by substantial evidence, to enter the restitution order for $4,596. There was no abuse of discretion.

We affirm.

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

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Kulik, C.J.

WE CONCUR:

_____ _____
Sweeney, J. Brown, J.