

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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|--------------------------------|---|-------------------------|
| STATE OF WASHINGTON, |) | |
| |) | |
| Respondent, |) | |
| |) | No. 62156-4-I |
| v. |) | (consolidated with |
| |) | No. 62959-0-I) |
| JAMES IRVIN-PARRIS WOODS, JR., |) | |
| |) | DIVISION ONE |
| Appellant. |) | |
| _____ |) | |
| STATE OF WASHINGTON, |) | UNPUBLISHED OPINION |
| |) | |
| Respondent, |) | |
| |) | |
| v. |) | |
| |) | |
| JAMES IRVIN-PARRIS WOODS, JR., |) | |
| |) | |
| Appellant. |) | |
| _____ |) | FILED: November 9, 2009 |

Leach, J. — In this consolidated appeal, James Woods challenges his conviction for second degree possession of stolen property and the resulting order of restitution. We reject his contention that the trial court violated his right to a fair and impartial jury by deviating from the statutory jury selection process. But we agree that the State failed to establish a causal connection between Woods’s possession of a stolen car and the stereo missing from the car at the

time of Woods's arrest. We therefore affirm Woods's conviction and reverse the order of restitution.

FACTS

On the morning of September 10, 2006, Erin Kane noticed that her 1993 Honda Accord was missing. Kane, who had seen the car in her driveway the previous evening, reported the theft to the police. At about 1:00 p.m. on September 11, 2006, Seattle Police Officer Tim Barnes saw the Accord traveling on Lake City Way. Barnes confirmed the theft report and then stopped the car and arrested the driver, James Woods.

After being advised of his Miranda¹ rights, Woods told Barnes that he had bought the car for \$500 the previous day. Woods claimed that there was a handwritten bill of sale in the glove box, but the only papers in the glove box documented Kane's purchase of the car in May 2006.

At trial, Woods testified that he bought the car from an acquaintance named James Haynes, whose street name was Dicky Barnes. Woods paid Haynes \$150 and agreed to pay \$350 later. Both Haynes and the woman who was with Haynes assured him that the car and title were "straight." According to Woods, Haynes wrote out a bill of sale and said the title was in the glove box. Woods then put the bill of sale in the glove box without looking at it. Woods denied taking the car or knowing that it was stolen.

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Kane testified that when the police returned her car, she noticed that the stereo had been removed and the rear seatbelt cut off.

The State charged Woods with first degree possession of stolen property. The court dismissed the charge at the conclusion of the State's case because of insufficient evidence of value, and the jury found Woods guilty of second degree possession of stolen property. The trial court imposed restitution of \$323.76 for the car's stereo.

DECISION

Woods contends that the trial court failed to follow proper procedures when it excused a potential juror before voir dire without a sufficient showing of cause and without permitting the defense an opportunity to object or inquire further. He argues that the court's actions impermissibly tainted the jury selection process, violating both his right to an impartial and representative jury and his right to a public trial. But the trial court substantially complied with the statutory jury selection process, and Woods has failed to demonstrate any resulting prejudice.

Immediately following the CrR 3.5 hearing, before any potential jurors entered the courtroom, Judge Spector informed counsel that there was "a new batch of jurors that have come in" and that the panel would be ready in 10 or 15 minutes. After reviewing the planned questionnaire, the court took a brief

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recess.

Upon return, the court stated,

Just so you know, juror 5 was excused by the Court. So we only have 34 jurors as opposed to 35. There is a personal connection there, and I think it would be inappropriate for him as an attorney to be on this case. I just want to give you an explanation why I excused him.

Neither party objected or attempted to inquire about the court's announcement.

The parties then proceeded to jury selection.

Eight days after the conclusion of the trial, attorney Michael Kahrs contacted defense counsel to ask why jury room staff had excused him from the jury pool for Judge Spector's courtroom. In an affidavit, Kahrs stated,

I do not know Judge Spect[o]r personally. I appeared before her six years ago in a case but I was not the attorney of record. I do presently represent professionally the individual who was convicted in her court room those six years ago.

Woods moved for a new trial, arguing that the trial court violated his constitutional right to a fair trial when it excused the potential juror without adequate justification. The trial court denied the motion, concluding that Woods had waived any challenge to the dismissal of the potential juror by failing to object and that Woods had failed to demonstrate any denial of his right to a representative jury.

RCW 2.36.100 provides that the trial court may excuse jurors "upon a showing of undue hardship, extreme inconvenience, public necessity, or any

reason deemed sufficient by the court for a period of time the court deems necessary.” (Emphasis added.) In applying this provision to the venire selection process, our Supreme Court has noted that it grants the trial court “broad discretion in excusing jurors.”² An appellate court reviews the decision excusing jury venire members for an abuse of discretion.³ If the selection process “is in substantial compliance with the statutes, the defendant must show prejudice. If there has been a material departure from the statutes, prejudice will be presumed.”⁴

In State v. Tingdale,⁵ over a defense objection, the trial judge authorized the court clerk to excuse three people from the panel based on the clerk’s subjective knowledge that they were acquainted with the defendant. Our Supreme Court concluded that the trial court’s ruling was not in substantial compliance with chapter 2.36 RCW because the practice permitted the trial court or the clerk “to assemble a jury panel of their own choosing,” violating the statutorily required element of chance and calling into doubt the impartiality of the jury.⁶ The court also noted that there was no factual basis to dismiss two of the three potential jurors for cause.⁷

² State v. Rice, 120 Wn.2d 549, 562, 844 P.2d 416 (1993).

³ State v. Tingdale, 117 Wn.2d 595, 600, 817 P.2d 850 (1991).

⁴ Tingdale, 117 Wn.2d at 600.

⁵ 117 Wn.2d 595, 817 P.2d 850 (1991).

⁶ Tingdale, 117 Wn.2d at 601.

⁷ Tingdale, 117 Wn.2d at 601-02; see also RCW 4.44.170.

Here, unlike Tingdale, there are no circumstances suggesting that the trial court's ruling might have systematically excluded specific individuals who were favorable to the defendant.⁸ Moreover, contrary to Woods's assertions, nothing in the record supports an inference that the trial court excluded juror 5 for cause or precluded the defense from objecting to the decision. The trial judge informed the parties that there was "a personal connection" and that "it would be inappropriate for him as an attorney to be on this case." Although the judge did not provide a detailed explanation, she clearly identified the general factual basis for her decision. The ruling was therefore sufficient to alert both sides to potential concerns. The court did not prevent either side from objecting, inquiring further, or seeking an alternative remedy.⁹

The purpose of the jury selection statutes is to "provide a fair and impartial jury, and if that end has been attained and the litigant has had the benefit of such a jury, it ought not to be held that the whole proceeding must be annulled because of some slight irregularity."¹⁰ An isolated irregularity does not constitute a material departure from the statutory jury selection process.¹¹ Under the circumstances, Woods has not shown a material departure from the jury

⁸ See Rice, 120 Wn.2d at 561-62 (distinguishing Tingdale).

⁹ See Tingdale, 117 Wn.2d at 597 (after excluding three potential jurors, trial court denied defense counsel's request to recall the jurors, allow the defense additional peremptory challenges, or reduce the State's peremptory challenges).

¹⁰ Rice, 120 Wn.2d at 562 (quoting State v. Finlayson, 69 Wn.2d 155, 157, 417 P.2d 624 (1966)).

¹¹ See Rice, 120 Wn.2d at 562.

selection statute or resulting prejudice. The trial court therefore did not abuse its discretion in excusing juror 5 or denying Woods's motion for a new trial.

Citing Batson v. Kentucky,¹² Woods next contends that the trial court violated his right to an impartial jury. He also maintains that the trial court violated his right to a public trial. But Woods, who did not raise a Batson challenge below, has not identified any circumstances that would support an inference of discriminatory purpose.¹³ Nor does the record support Woods's conclusory allegation that the trial court conducted a private "colloquy" or "voir dire proceeding" with juror 5 or undertook any actions that could reasonably be characterized as a closure of the courtroom or that implicated the requirements of State v. Bone-Club.¹⁴ Woods fails to support either claim with citation to relevant authority.

Woods next contends that the trial court erred in imposing restitution because the State failed to establish a causal connection between second degree possession of stolen property and the stereo that was missing from the Accord at the time of his arrest. We agree.

The trial court's authority to impose restitution is entirely statutory, and RCW 9.94A.142 confers broad power on the trial court to order restitution.¹⁵

¹² 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986).

¹³ See Batson, 476 U.S. at 94; see generally State v. Hicks, 163 Wn.2d 477, 181 P.3d 831 (2008).

¹⁴ 128 Wn.2d 254, 906 P.2d 325 (1995).

¹⁵ See State v. Enstone, 137 Wn.2d 675, 679, 974 P.2d 828 (1999); RCW

RCW 9.94A.753 directs the court to order restitution “whenever the offender is convicted of an offense which results in injury to any person.” Generally, in order to impose restitution, the trial court need only find a causal connection between the defendant’s crime and the victim’s injury.¹⁶ A causal connection exists when “‘but for’ the offense committed, the loss or damages would not have occurred.”¹⁷ But unless the defendant agrees, the court cannot impose restitution “based on a defendant’s ‘general scheme’ or acts ‘connected with’ the crime charged, when those acts are not part of the charge.”¹⁸ An appellate court generally reviews the trial court’s restitution order for an abuse of discretion.¹⁹

Woods was convicted of possession of stolen property. The evidence at trial established only that police stopped and arrested Woods in the stolen car a day or two after it was stolen. Woods testified that the stereo was not in the car when he purchased it, and the State has not identified any evidence supporting an inference that he was in possession of the car from the time it was stolen or at the time that the damage occurred.²⁰ Consequently, to determine that the

9.94A.142.

¹⁶ Enstone, 137 Wn.2d at 679.

¹⁷ State v. Enstone, 89 Wn. App. 882, 886, 951 P.2d 309 (1998), aff’d, 137 Wn.2d 675, 974 P.2d 828 (1999).

¹⁸ State v. Dauenhauer, 103 Wn. App. 373, 378, 12 P.3d 661 (2000) (citing State v. Woods, 90 Wn. App. 904, 907-08, 953 P.2d 834 (1998)).

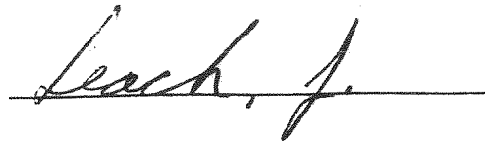
¹⁹ State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991).

²⁰ Cf. State v. Harrington, 56 Wn. App. 176, 782 P.2d 1101 (1989) (affirming restitution award for damage to vehicle where defendant admitted illegal possession of the vehicle for the entire time victim was out of possession).

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stereo would not be missing “but for” Woods’s possession of the stolen car, the trier of fact would necessarily have to speculate about actions that were not part of the charged offense or supported by any evidence. Because the State failed to prove a causal connection by a preponderance of the evidence, the trial court abused its discretion in ordering restitution.²¹

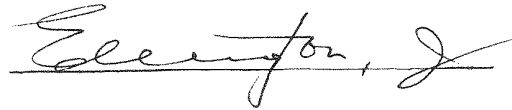
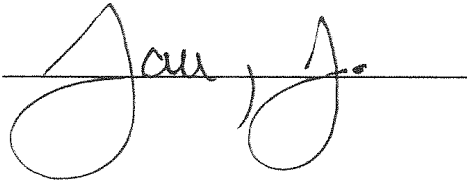
We affirm Woods’s conviction and reverse the order of restitution.



WE

CO

NCUR:



²¹ See State v. Tetter, 81 Wn. App. 478, 914 P.2d 784 (1996) (evidence failed to establish causal connection between defendant’s possession of stolen vehicle and personal property taken from the car sometime after it was stolen).