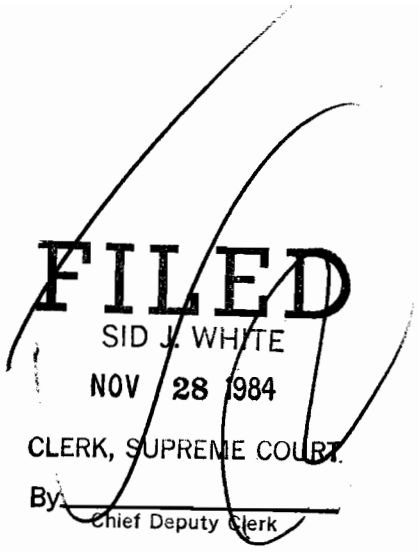
IN THE SUPREME COURT OF FLORIDA



J. S. H., a child,

Petitioner,

vs. Case No. 66,~~010~~ 029

STATE OF FLORIDA,

Respondent.

BRIEF OF RESPONDENT ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

Appellee accepts appellant's statement of the case and facts.

ARGUMENT

THE TRIAL COURT DID NOT ERR IN ORDERING RESTITUTION FOR DAMAGE WHICH WAS CAUSED BY THE OFFENSE TO WHICH PETITIONER PLED GUILTY.

Petitioner was charged with being a delinquent by having committed the offense of Grand Theft, Second Degree. He pled guilty to this offense. A person is guilty if he knowingly obtains or uses, or endeavors to obtain or to use the property of another with intent to, either temporarily or permanently, deprive the other person of a right to the property or a benefit therefrom. Fla. Stat. 812.014 (1983).

In this case the property stolen was, among other things, a boat. The boat was not taken from its location, but there was a grand theft of the boat because (1) it had been damaged by breaking a hole in the fiberglass bottom and (2) by cutting or loosening the electrical wires to the motor. These acts constitute a theft of the boat because, however, temporarily, they deprived the owner of a benefit from the property. In

order to obtain his property back, in a condition whereby he could again use it as intended, the owner had to expend some $1,500.00 in repairs.

Fla. Stat. 39.11(1)(g)(1983) provides that as part of a community control program the court may order a child or parent

> " . . . to make restitution for damage or loss caused by his offense in a reasonable amount or manner to be determined by the court."
>
> (emphasis supplied)

In the instant case there was a grand theft of the boat to the extent of $1,500.00. This damage or loss was caused by petitioner's offense. Consequently, the lower courts correctly held that the restitution could be ordered.

Petitioner argues here, as he did below that " . . . the statutory language 'caused by his offense' must be construed to include only damages directly flowing from the criminal conduct." (appellant's brief p. 4) The lower court disagreed, saying that the words "caused by his offense" does not mean that the offense charged must bear "a direct relationship" to the offense charged.

In the first place even if the statute is construed as appellant argues, he looses. The damages to the boat directly flowed from petitioner's grand theft conduct. The damage to the boat is what constituted grand theft. Consequently, the

damage flowed directly from petitioner's conduct in committing the grand theft.

What petitioner is really saying is that the phrase "caused by his offense" should be construed to mean that restitution may only be ordered where the offense charged is the type of offense that would always cause the type of damage or loss that occurred in the case.

He basis this interpretation on, we submit, a mistaken understanding of Fresneda v. State, 347 So. 2d 1021 (Fla. 1977), W.N. v. State, 426 So. 2d 1206 (Fla. 4 DCA 1983), and G. H. v. State, 414 So. 2d 1135 (Fla. 1 DCA 1982).

In Fresneda the defendant was charged with leaving the scene of the accident. He was never charged, or at least from what can be gleaned from the opinion, never adjudicated of having committed an offense which caused the accident and its resulting damage. The damage or loss was not caused by the offense of leaving the scene. If, in Fresnada, the defendant had been charged and adjudicated guilty of committing an offense, such as following too close to another vehicle, which offense contributed to the accident and caused the damage, we have little doubt that this court would have held that the damage was caused by the offense.

Similarly in G.H. v. State, the juvenile was only adjudicated guilty of leaving the scene of an accident. A person may leave the scene of an accident for reasons other than having caused the accident. He might not have caused the accident yet flee because he is a wanted felon. The damages resulting from the accident cannot be deemed to have been caused by the offense of which he was adjudicated. It is true that in G.H. v. State, the juvenile had also been charged with criminal mischief. One can assume that the criminal mischief caused the damages, but when the state dropped the charge there was never a judicial determination that such an offense had been committed.

In W.N. v. State, the juveniles " . . . were charged in the juvenile division with criminal mischief for having broken windows belonging to the Lucie County School Board and trespassing onto Lincoln Park School property . . ." Id 2106-1207. Apparently, the only damage caused was the broken windows. Since the allegations of delinquency alleged that the damage was caused by the criminal mischief and not by the trespass, when the state nolle prossed the criminal mischief charge it, in effect, said the juveniles committed no damage. That is the reason the court said that the offense for which the juvenile pled bore no direct relationship to the damage.

With deference we disagree with the lower court's reasoning that W.N. v. State, and the instant case conflict. In W.N. the trespass did not bear a direct relationship to the damage because the damage was not caused by the trespass. In the instant case the grand theft did bear a direct relationship to the damage because the damage itself is what constituted the theft.

Consequently, we submit, whether one accepts petitioner's stated interpretation of the statute or that of W.N. the trial court properly ordered restitution.

Nevertheless, as we stated above, we believe that what petitioner really means is that restitution may only be ordered where the offense charged is the type of offense that would always cause the type of damage or loss that occurred. If this is what petitioner is saying we think he is seriously misinterpreting the statute. Not all trespassses cause damage to property, but if in committing a trespass a door or a window is broken to gain entry then it cannot seriously be disputed but that the damage to the door or window was caused by the trespass. Blowing up an automobile may constitute a violation of several crimes. One of those is theft of the automobile. It is theft because the owner is being deprived of its use.

The statute requires restitution for damage or loss caused by "his" offense. The above cited cases stand for the proposition that the damages must be caused by the offense for which the accused stands adjudicated of having committed. That is all that State v. Bausch, 83 N.J. 425, 416 A 2d 833 (1980), cited by appellant in his brief, stands for,, that is, that restitution can only be ordered for crimes of which the defendant stands convicted. The same holds true with respect to Hamm v. State, 403 So. 2d 1155 (Fla. 1 DCA 1981) cited by appellant. The only thing Hamm was adjudicated of was stealing the shot gun — not firing it into a structure nor stealing the jewelry. In the instant case petitioner was adjudicated of the offense which caused the damage. Consequently, the lower court's decision does not conflict with any of the above cited cases.

Petitioner argues that he was never adjudicated of stealing the boat. We disagree. The petition alleged that he committed grand theft, the property of Arturo Alquizar. (R-2) This included the boat. (R-18)

CONCLUSION

Based on the above and foregoing reasons, arguments and authorities the decision of the lower court should be affirmed.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: Mr. Douglas S. Connor, Assistant Public Defender, Courthouse Annex, Tampa, Florida 33602 on this 26th day of November, 1984.

OF COUNSEL FOR RESPONDENT