

2007

State of Utah v. Leah Mae Hall, Edward Pulido Jr. : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

v.

LEAH MAE HALL,

Defendant/Appellant.

Case No. 20070235-CA

STATE OF UTAH,

Plaintiff/Appellee,

v.

EDWARD PULIDO JR.,

Defendant/Appellant.

BRIEF OF APPELLANT

Appeal from the Orders of Restitution entered on or about April 4, 2007, made in both above captioned cases, Hon. G. Michael Westfall, District Court Case No.'s 061500170 and 061500169, in the Fifth District Court in and for Beaver County.

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The Defendant/Appellant is not incarcerated.

FILED
UTAH APPELLATE COURTS
NOV 29 2007

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

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v.

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STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction pursuant to Utah Code Annotated § 78-2a-3.

STATEMENT OF ISSUES

Whether the District Court erred in determining the amount of restitution owed by the defendants in these companion cases would included auto-repair costs acknowledged by the crime victim not to have arisen out of, or caused by, the crime which the defendants committed (Unauthorized Control of a Vehicle for an Extended Time).

STANDARD OF REVIEW

This Court "will not disturb a trial court's order of restitution unless the 'trial court exceeds the authority prescribed by law or abuses its discretion.'" *State v. Robinson*, 860 P.2d 979, 980-81 (Utah Ct. App. 1993) (quoting *State v. Twitchell*, 832 P.2d 866, 868 (Utah Ct. App. 1992)).

PRESERVATION OF THE ISSUE

The issue was preserved in the restitution hearing in which defense counsel argued against and objected to the inclusion of the acknowledged unrelated auto-repair costs in the restitution award. *See* R. at 63 (Transcript of Restitution Hearing) at pp. 25-27.

STATEMENT OF THE CASE

The co-defendants in these companion cases, Leah Mae Hall and Edward Pulido, Jr., pleaded guilty to, and were convicted of, Unauthorized Control of a Vehicle for an Extended Time (joyriding), a Third Degree Felony, R. 34-37, and at a joint restitution hearing, the state produced a letter from AAA Insurance which included an itemization of the restitution claim amounts, which included, inter alia, the vehicle repair costs in the amount of \$5,912, along with the auto repair

report/invoice from Ken Garff Body Shop which explained the repairs done to the automobile after it was recovered, and subsequent to which it was returned to the victim. *See Exhibit Folder in Record, State's Exhibits 2 and 3.* The victim acknowledged at the joint restitution hearing, however, that the repairs done at Ken Garff included items for which the victim was entitled to have AAA insurance pay for, due to his comprehensive coverage, but which likely did not arise from the crime. R. 63, pp. 12-23, particularly 22-23.

Specifically, the victim forthrightly testified as follows: "Say there would have been any damage from like a door ding or something from a parking lot, when a car is in the shop you're paying the deductible, they would also repair that damage. So there may be some of this damage on this that is not from them stealing the car." Defense counsel then questioned further: "Okay. So then what you're asserting is that there are some things on here that may have been – that were just covered under your broad insurance policy, not specific to this incident?" to which the victim responded "There probably is, yes." R. 63, p. 22.

The State did not respond with further clarification or proof as to the questioned inclusion of unrelated items in the overall repair bill, or testimony as to which repairs were or were not related to the car theft. R. 63, pp. 25-27; instead it merely argued that the amount sought was the amount requested by the insurance company (the insurance company's letter requests \$5,912 for auto repairs, which is slightly less than the total repair bill of \$6,162). No explanation or itemization of those repairs which were or were not related to the theft was presented by anyone from the insurance company or the repair company, and Defense counsel did object to their documents coming in without live testimony to clarify such issues. *See, e.g., R. 63 at 11-12.* Despite the acknowledgment

of the victim that the bill included unrelated items, and the lack of clarification or proof as to specific line items on the repair bill, and over the objection of defense counsel – arguing that the victim himself had acknowledged the repair bill probably included unrelated items – the Court ordered the full amount requested by the insurance company to be included in its restitution order. R. 63, 26-28.

ARGUMENTS

Utah Code section 76-3-201(4)(a) provides:

When a person is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to the victims

Utah Code Ann. §§ 76-3-201 (Supp. 2007).

This Court has clarified:

A defendant cannot be ordered to pay restitution for criminal activities for which the defendant did not admit responsibility, was not convicted, or did not agree to pay restitution. See Utah Code Ann. §§ 76-3-201.

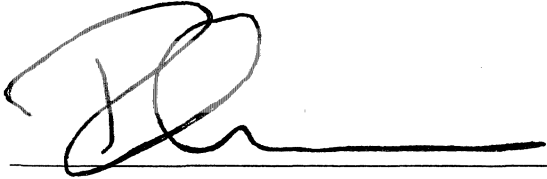
State v. Brickley, 2002 UT App 342, ¶¶9, 60 P.3d 582.

The district court abused its discretion by ordering the full amount requested by the insurance company be included in the restitution amount, without clarification or proof as to which items were and were not related to or caused by the crime, given the fact the only witness put on by the State, the victim, forthrightly acknowledged that unrelated items were likely included.

CONCLUSION

The Court should reverse and remand this back to the district court to conduct a new restitution hearing

Dated this 27 day of Nov., 2007,

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a long horizontal line.

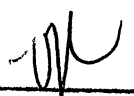
Randall Allen, attorney for Appellants

ADDENDUM

Orders of Restitution

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FIFTH DISTRICT COURT
07 FEB 21 PM 4:57

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BEAVER COUNTY
BY 

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF BEAVER, STATE OF UTAH

STATE OF UTAH, : **ORDER OF**
 : **RESTITUTION**
 Plaintiff, :
 vs. :
 LEA MAE HALL, : Criminal No. 0615000170
 Defendant. :

Based upon the Stipulated Motion by the parties in this matter, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant, LEA MAE HALL, pay restitution jointly and severally with her co-defendant in the amount of \$6,711.10, payable to, AAA Insurance Company, claim #196446, P.O. Box 5824, Irvine, California 92616-5824.

DATED this 21st day of February, 2007

BY THE COURT,


G. MICHAEL WESTFALL
District Court Judge

FILED
FIFTH DISTRICT COURT
07 FEB 21 PM 4:57
BEAVER COUNTY

VON J. CHRISTIANSEN
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Telephone: (435) 438-6441

BY _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF BEAVER, STATE OF UTAH

STATE OF UTAH, : **ORDER OF**

Plaintiff, : **RESTITUTION**

vs. :

EDWARD PULIDO JR., : **Criminal No. 061500169**

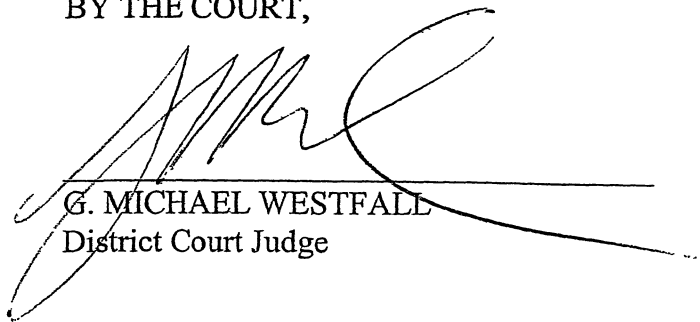
Defendant. :

Based upon the Stipulated Motion by the parties in this matter, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant, EDWARD PULIDO JR., pay restitution jointly and severally with his co-defendant in the amount of \$6,711.10, payable to, AAA Insurance Company, claim #196446, P.O. Box 5824, Irvine, California 92616-5824.

DATED this 21st day of February, 2007

BY THE COURT,


G. MICHAEL WESTFALL
District Court Judge

CERTIFICATE OF SERVICE

I certified that on the 20th day of November, 2007 I caused a true and correct copy of the foregoing to be served via mailing by US Mail first class postage prepaid to:

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Wade Franse