

**IN THE
MISSOURI SUPREME COURT**

| | | |
|----------------------------|---|-------------------------------------|
| STATE OF MISSOURI |) | |
| |) | |
| ex rel. |) | |
| |) | |
| ANTHONY W. BOWMAN |) | |
| |) | |
| Relator, |) | |
| |) | |
| vs. |) | No. SC95783 |
| |) | |
| THE HONORABLE |) | |
| TIMOTHY W. INMAN, |) | St. Francois County Case No. |
| JUDGE, DIVISION 9 |) | 14SF-CR01416 |
| ST. FRANCOIS COUNTY |) | |
| |) | |
| Respondent. |) | |

**PETITION FOR WRIT OF PROHIBITION TO THE
MISSOURI SUPREME COURT
FROM THE CIRCUIT COURT OF ST. FRANCOIS COUNTY, MISSOURI
TWENTY FOURTH JUDICIAL CIRCUIT,
THE HONORABLE TIMOTHY W. INMAN, JUDGE**

RELATOR'S BRIEF

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JURISDICTIONAL STATEMENT

Relator filed a writ with the Court of Appeals Eastern District cause number ED104371. The Eastern District issued a preliminary writ on May 23, 2016; however, later denied permanent writ without opinion on June 3, 2016. Although procedure generally mandates initially filing in the circuit court, doing so in this cause would have been futile because Respondent had already made his ruling with regards to merits of this writ at the restitution hearing, and he filed a return to this writ denying that he abused his discretion. As such, this cause falls into one of the well-recognized exceptions for cases in which an initial filing in the circuit court would be futile. *See State ex rel Henderson v. Cook*, 182 S.W.2d 292, 293 (Mo. banc 1944). Relator then filed a writ with this Court on June 28, 2016. Jurisdiction lies in the Supreme Court of Missouri Mo. Const., Art. V, §§ 4, 5, Rule 97.01.

STATEMENT OF FACTS

On October 23, 2014, Anthony Bowman was charged with one count of the Class C Felony of receiving stolen property. [*Exhibit 1*, Complaint]. Mr. Bowman was alleged to have received stolen property that was stolen by another individual who burglarized Christina Moore's home. [*Exhibit 2*, Probable Cause Statement]. On July 30, 2015, the State filed an Amended Information amending the charge to one count of the Class A Misdemeanor of Receiving Stolen Property [*Exhibit 3*, Amended Information]. On July 31, 2015, Mr. Bowman pled guilty to one count of the Class A Misdemeanor of Receiving Stolen Property, was given a suspended imposition of sentence, placed on two years bench probation with a payment plan for court costs and fines. [*Exhibit 4*, Plea of Guilty/Waiver of Counsel and Rights/Formal Sentence and Judgment; *Exhibit 5*, Certified Copy of the St. Francois County Circuit Court Docket Sheet].

On November 30, 2015, the State of Missouri filed a Motion to Revoke Mr. Bowman's Probation for failure to pay restitution. [*Exhibit 6*, State's Motion to Revoke Relator's Probation]. On January 29, 2016, the State of Missouri filed a Motion to Amend Mr. Bowman's Probation by adding the conditions as follows: pay restitution of \$4,064 to Christina Moore and \$75 to St. Francois County for the Prosecutor fee on restitution. [*Exhibit 7*, State's Motion to Amend Conditions of Relator's Probation]. On January 29, 2016, the State also filed a Notice calling for

a hearing on the State's Motion to Amend Probation. [*Exhibit 8*, State's Notice of Hearing to Amend Conditions of Relator's Probation].

On February 22, 2016, Respondent granted the State's Motion to Amend Mr. Bowman's Probation by adding restitution as a condition of his probation. Mr. Bowman was not present at this hearing. A hearing was scheduled for March 17, 2016 for the State's Motion to Revoke Probation. [*Exhibit 5*, Certified Copy of the St. Francois County Circuit Court Docket Sheet].

On March 17, 2016, Mr. Bowman appeared in person and applied for the public defender services. Public Defender entered into case on this date and a restitution hearing was scheduled for April 22, 2016. [*Exhibit 5*, Certified Copy of the St. Francois County Circuit Court Docket Sheet].

On April 22, 2016, a restitution hearing was held. After hearing evidence on the matter, Respondent granted the State's Motion to Add Restitution as a condition of Mr. Bowman's probation and ordered him to pay restitution in the amount of \$4,064 to Christina Moore and \$75 to the St. Francois County Prosecutor's Office for a prosecutor's fee. Respondent further ordered that Mr. Bowman was to pay \$240 per month towards the total restitution amount, beginning on May 15, 2016. [*Exhibit 5*, Certified Copy of the St. Francois County Circuit Court Docket Sheet; *Exhibit 9*, Transcript of Proceedings of April 22, 2016, Pp. 12-13].

At the restitution hearing, Christina Moore testified that she prepared a list of all of the items she could remember that were taken from her home when it was burglarized. [*Exhibit 9*, Transcript of Proceedings of April 22, 2016, P. 2, Ln. 32-38; *Exhibit 10*, List Written by Christina Moore Regarding Items Taken During Burglary]. Ms. Moore also testified that she recovered some items, but not all of them. [*Exhibit 9*, Transcript of Proceedings of April 22, 2016, P. 2, Ln. 42]. She testified that the items that were recovered were recovered from Mr. Bowman. [*Exhibit 9*, Transcript of Proceedings of April 22, 2016, P. 2, Ln. 39-42]. Ms. Moore could not say who burglarized her home and she does not know who has the items that were never recovered. [*Exhibit 9*, Transcript of Proceedings of April 22, 2016, P. 3, Ln. 92-97].

Ms. Moore testified that she made a list of the items that were taken from her home during the burglary and that she listed the price that she paid for each item when she first purchased the items. [*Exhibit 9*, Transcript of Proceedings of April 22, 2016, P. 2, Ln. 32-38; P. 4, Ln. 102-104]. After listing the amount paid for each item that was stolen during the burglary, Ms. Moore then deducted the amount that she paid for each item that was returned to her by Mr. Bowman. [*Exhibit 9*, Transcript of Proceedings of April 22, 2016, P. 2, Ln. 37-48]. Ms. Moore testified that the total amount that she paid for the items that were still missing was \$4,064. [*Exhibit 9*, Transcript of Proceedings of April 22, 2016, P. 2,

Ln. 49-52]. Ms. Moore testified that the amounts she used were not the value of the items at the time they were stolen. [*Exhibit 9*, Transcript of Proceedings of April 22, 2016, P. 5, Ln. 135-138]. Ms. Moore testified that the value of the property at the time it was stolen would be the replacement cost of the property. [*Exhibit 9*, Transcript of Proceedings of April 22, 2016, Pp. 5-6, Ln. 139-141].

At the time Mr. Bowman entered his plea of guilty, restitution was not part of his plea agreement because the items he was alleged to have received stolen were recovered by Christina Moore. [*Exhibit 9*, Transcript of Proceedings of April 22, 2016, P. 7, Ln. 168-178]. Restitution was not listed as part of the plea agreement signed by Mr. Bowman. [*Exhibit 4*, Plea of Guilty/Waiver of counsel and Rights/Formal Sentence and Judgment].

Mr. Bowman was never charged with burglarizing Christina Moore's home. [*Exhibit 1*, Complaint; *Exhibit 2*, Probable Cause Statement; *Exhibit 3*, Amended Information]. Mr. Bowman was never alleged to have, nor convicted of receiving the stolen items that Christina Moore is still missing [*Exhibit 1*, Complaint; *Exhibit 2*, Probable Cause Statement; *Exhibit 3*, Amended Information; *Exhibit 4*, Plea of Guilty/Waiver of counsel and Rights/Formal Sentence and Judgment].

On May 16, 2016, Mr. Bowman filed his Petition for Writ of Prohibition in the Missouri Court of Appeals, Eastern District. [*Exhibit 11*, Realtor's Petition for Writ of Prohibition Filed with the Missouri Court of Appeals Eastern District]. On

May 23, 2016, the Missouri Court of Appeals, Eastern District, issued a preliminary order directing Respondent to file his answer and suggestions in opposition to the petition for prohibition on or before May 26, 2016, indicating that if he failed to do so, judgment by default would be taken against him for the relief demanded in the petition. It was further ordered for Respondent to refrain from all action in the premises until further notice. [*Exhibit 12*, Missouri Court of Appeals Eastern District Preliminary Order in Prohibition].

On May 27, 2016, Respondent through his counsel, filed his answer and suggestions in opposition to Mr. Bowman's Petition for Writ of Prohibition. At that time, no Motion for Leave to File Response Out of Time was filed. [*Exhibit 13*, Respondent's Answer and Reply to Relator's Petition for Writ of Prohibition Filed with the Missouri Court of Appeals Eastern District]. On this same day, Mr. Bowman filed his Motion in Opposition to Respondent's Answer and Suggestions in Opposition as Filed Out of Time. [*Exhibit 13*, Relator's Motion in Opposition to Respondent's Answer and Suggestions in Opposition as Filed Out of Time Filed with the Missouri Court of Appeals Eastern District]. Thereafter, Respondent filed his own Motion for Leave to File Response Out of Time. [*Exhibit 15*, Respondent's Motion for Leave to File Response Out of Time (prepared by Respondent)].

On May 29, 2016, Mr. Bowman filed his Reply to Respondent's Suggestions in Opposition to Relator's Petition for Writ of Prohibition. [*Exhibit 16*, Relator's Reply to Respondent's Suggestions in Opposition to Relator's Petition for Writ of Prohibition Filed with the Missouri Court of Appeals Eastern District]. On May 31, 2016, Respondent through his counsel, filed a Motion for Leave to File Response Out of Time. [*Exhibit 17*, Respondent's Motion for Leave to File Response Out of Time (prepared by Prosecuting Attorney on behalf of Respondent)]. On June 3, 2016, the Court of Appeals, Eastern District quashed its preliminary order issued on May 23, 2016 and denied Mr. Bowman's Petition for Writ of Prohibition without issuing an opinion. [*Exhibit 18*, Missouri Court of Appeals Eastern District Order in Case No. ED104371].

Mr. Bowman has not sought relief in any higher court. He has not sought relief in the circuit court. However, Respondent has already made a ruling regarding this issue at the restitution hearing, as well as denied an abuse of discretion in his return, and thus any such writ filed at the circuit level would be futile. As such this cause falls into the exception for generally filing an extraordinary writ first in the lower court. *See State ex rel Henderson v. Cook*, 182 S.W.2d 292, 293 (Mo. banc 1944).

To avoid needless repetition, additional facts may be set out in the argument section of this brief.

POINT RELIED ON

Relator is entitled to an order prohibiting Respondent from adding the condition to Relator's probation that he pay restitution to Christina Moore in the amount of \$4,064 and to St. Francois County Prosecuting Attorney's Office in the amount of \$75, because Respondent clearly abused his discretion under RSMO 559.105.1, in that Respondent ordered Relator to pay restitution for a victim's losses due to an offense to which Relator did not plead, nor was he convicted of such offense. The court's error was a clear excess of the court's authority under RSMO 559.105.1 and will deprive Relator of his right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, Section 10 of the Missouri Constitution if Respondent is allowed to conduct a probation revocation proceeding for Relator failing to pay the ordered restitution. This error was a clear abuse of discretion such that the lower court lacked the power to act as it did, and thus requires the issuance of an extraordinary writ.

State ex rel Mo. Pub. Def. Commn. v. Pratte, 298 S.W.3d 870 (Mo. 2009)

RSMO § 559.105.1

US Const. V, XIV; Mo Const., Article I, Section 18

ARGUMENT FOR POINT RELIED ON

Relator is entitled to an order prohibiting Respondent from adding the condition to Relator's probation that he pay restitution to Christina Moore in the amount of \$4,064 and to St. Francois County Prosecuting Attorney's Office in the amount of \$75, because Respondent clearly abused his discretion under RSMO 559.105.1, in that Respondent ordered Relator to pay restitution for a victim's losses due to an offense to which Relator did not plead, nor was he convicted of such offense. The court's error was a clear excess of the court's authority under RSMO 559.105.1 and will deprive Relator of his right to due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, Section 10 of the Missouri Constitution if Respondent is allowed to conduct a probation revocation proceeding for Relator failing to pay the ordered restitution. This error was a clear abuse of discretion such that the lower court lacked the power to act as it did, and thus requires the issuance of an extraordinary writ.

Standard of Review

A Writ of Prohibition is appropriate (1) to prevent the usurpation of judicial power when a lower court lacks authority or jurisdiction; (2) to remedy an excess of authority, jurisdiction or abuse of discretion where the lower court lacks the power to act as intended or (3) where a party may suffer irreparable harm if relief

is not granted. *State ex rel Mo. Pub. Def. Commn. v. Pratte*, 298 S.W.3d 870, 880 (Mo. 2009).

Argument

Any person who has been found guilty of or has pled guilty to an offense may be ordered by the court to make restitution to the victim for the victim's losses due to such offense.

--RSMO § 559.105.1

RSMO § 559.105.1 makes it clear that a person who has pled guilty to an offense may be ordered by the court to make restitution to the victim. However, the power to order restitution to a victim is clearly limited to the victim's losses due to the offense to which a person pleads guilty. Therefore, a person who pleads guilty to an offense can only be ordered to pay restitution to a victim for the victim's losses due to that offense to which the person pled guilty. In other words, a court cannot order a defendant to pay restitution to a victim for the victim's losses due to another crime to which the defendant has not pled nor been convicted.

Mr. Bowman pled guilty to receiving stolen property. As such, Respondent can only order restitution to Christina Moore for her losses due to the offense of receiving stolen property, not her losses due to the offense of burglary. This is because receiving stolen property and burglary are two separate offenses. A

person who has pled guilty to receiving stolen property does not also necessarily plead guilty to burglary. The Blockburger Test can be used to demonstrate that receiving stolen property and burglary are two separate offenses:

The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.

Blockburger v. U.S., 284 U.S. 299, 304 (1932). Here, burglary and receiving stolen property are crimes referenced in two separate statutes. *See* RSMO §§ 569.160, 569.170, and 570.080. In addition, each requires proof of a fact which the other does not.

For example, both burglary in the first degree and second degree require a person to knowingly enter or unlawfully remain in a building or inhabitable structure, whereas receiving stolen property does not require proof of such a fact. *See* RSMO §§ 569.160, 569.170, and 570.080. Receiving stolen property requires a person to have received, retained or disposed of property of another knowing or believing that it has been stolen, whereas the burglary offenses do not require proof of such a fact. *See* RSMO §§ 569.160, 569.170, and 570.080. Therefore, burglary and receiving stolen property are two separate offenses and Mr. Bowman cannot be

held liable for restitution as a result of the burglary, when the crime he was charged with, pled to, and was convicted of was not burglary, but rather receiving stolen property.

Here, Respondent clearly abused his discretion by adding restitution as a condition of Mr. Bowman's probation because the restitution he ordered was the restitution amount relating to a burglary that occurred. Mr. Bowman was never charged with burglary. He never pleaded guilty to burglary. He was never convicted of burglary. Therefore, he cannot be ordered to pay restitution for Ms. Moore's losses as a result of the burglary, a crime in which he did not commit. The only restitution that he can be ordered to pay is that amount for Ms. Moore's losses as a result of him receiving stolen property. Thus, the question becomes was the amount of restitution ordered by Respondent that amount for Ms. Moore's losses as a result of Mr. Bowman receiving stolen property. Based on all of the evidence produced at the restitution hearing, no reasonable person could find that the unrecovered items from the burglary were a part of Ms. Moore's losses as a result of Mr. Bowman receiving stolen property of hers.

As set forth in *Exhibit 3*, Mr. Bowman pled guilty to receiving stolen property in that on or about September 17, 2014, he with the purpose to deprive the owner of a JVC DVD VCR combination player, received such property, knowing or believing that it had been stolen. Thus, based on this amended information, a

reasonable person could only find that Mr. Bowman was responsible for paying Christina Moore for any restitution associated with the JVC DVD VCR player. However, the probable cause statement in *Exhibit 2* clearly states that the JVC DVD VCR player was recovered. No evidence was introduced that suggested this item was damaged in any way, and thus no restitution would be owed for this item. Based on the amended information, which is the information to which Mr. Bowman pled guilty, there was no restitution owed by Mr. Bowman. Christina Moore was already made whole for the offense to which he pled guilty.

Furthermore, the restitution amount would be next to zilch even if we use the original complaint that was filed against Mr. Bowman. In the original complaint, Mr. Bowman was charged with receiving stolen property in that on or about September 17, 2014, he with the purpose to deprive the owner of several miscellaneous items including a JVC DVD VCR combination player, received such property knowing or believing that it had been stolen. “Several miscellaneous items” in and of itself is extremely vague; however, when read in conjunction with the accompanying probable cause statement, it is clear that the original complaint covered only stolen property that was recovered by Christina Moore. For instance, the probable cause statement states as follows: “During the search of Bowman’s residence, it was discovered that in the corner of the master bedroom under a blanket were several miscellaneous items that matched the description of items that

were stolen from Moore. Also in the bedroom located under the left side of the bed was a chocolate covered leather binder containing approximately 206 DVD's and CD's which was consistent with the binder reported stolen. The items discovered were seized and will be placed into evidence." Therefore, it is clear that when Mr. Bowman was originally charged with receiving stolen property including several miscellaneous items, such language was referencing the same several miscellaneous items mentioned in the probable cause statement that were recovered by Ms. Moore. Because all of the items received by Mr. Bowman were returned to Ms. Moore, the only potential restitution for the offense to which Mr. Bowman pled would be that amount resulting from any damage caused to the items recovered from him. Ms. Moore answered this very question herself at the restitution hearing. She was asked about whether the items she recovered were damaged to which she replied , "There were a couple of things damaged" and that "It was small minor stuff, it was a backpack you know that I didn't pay that much for, some shea butter that was actually given to me by someone so it wasn't anything worth putting on the list." By her own words, none of this was worth putting on the list used to calculate her restitution amount. Therefore, there was no restitution as a result of Mr. Bowman receiving stolen property because all of the items he received as stolen were recovered by Ms. Moore in the same or substantially same condition. As such, no reasonable person could find that

Relator owed restitution to Christina Moore for receiving stolen property of hers because she was already made whole when she received the items back from him.

Essentially what Respondent did was used the restitution hearing to determine Mr. Bowman's guilt with regards to the burglary of Christina Moore's home. The purpose of a restitution hearing is not to determine a person's guilt/innocence relating to a particular crime, but rather to determine the total amount of restitution owed to a victim for the crime to which a defendant already pled guilty. By ordering Relator to pay restitution in the full amount for Christina Moore's losses as a result of the burglary, Respondent essentially found Relator guilty of the burglary. Such a ruling by Respondent was a clear abuse of discretion.

Furthermore, by Respondent's own words at the restitution hearing, he concedes that he abused his discretion in ordering restitution in the full amount for Ms. Moore's losses as a result of the burglary. At the restitution hearing, Respondent stated, "that there was probably some property that was not recovered that was given to other people."

First off, there was no evidence that was introduced indicating that Relator gave other, unrecovered property away to an unknown person. There was no evidence whatsoever that Respondent had any stolen items in his control, other than those items that were recovered. Respondent's ruling of "probably" was mere

speculation and was not based on the evidence that was presented at the restitution hearing. As such, his ruling was a clear abuse of discretion because no reasonable person could have found that “there was probably some property that was not recovered that was given to other people” when there was no evidence to support such a finding.

Second off, Respondent ruled that Mr. Bowman was responsible for the full restitution amount for Ms. Moore’s losses as a result of the burglary. However, holding that Mr. Bowman is responsible for the full amount of restitution from the burglary is holding that Mr. Bowman had received all of the items stolen during the burglary. Again, there was no evidence of this presented at the restitution hearing. In fact, this is even inconsistent with Respondent’s ruling at the restitution hearing that “there was probably some property that was not recovered that was given to other people.” “Probably some property” is certainly not “all property.” Thus, Respondent never ruled that all of the unrecovered items on Christina Moore’s list were received by Relator as stolen property. So how can he now tell this Honorable Court that he did not abuse his discretion when ordering restitution in the full amount for all of the items that were never recovered from the burglary?

By awarding that full amount, Respondent is in other words holding Mr. Bowman liable for the burglary as if he was the one who committed such offense.

If Respondent is not prohibited from doing such, then we will be sending a message to judges, prosecutors and law enforcement officials in Missouri telling them that it is okay if we don't find the actual perpetrator of crimes because victims can just be made whole again from other individuals who were not responsible for that crime. We would also be sending them a message telling them that it is okay to hold people liable for crimes that they did not commit.

As we see in this case, this amount of unfettered discretion will only permit judges to do as they please, rather than adhere to the limitations placed on their discretion. Respondent clearly abused his discretion because based on all of the evidence produced at the hearing, no reasonable person could find that the unrecovered items from the burglary were a part of Christina Moore's losses due to Mr. Bowman receiving stolen property. As such, this Court should issue a permanent writ prohibiting Respondent from adding the condition of Mr. Bowman's probation that he pay restitution to Christina Moore in the amount of \$4,064 and to the St. Francois County Prosecutor's Office in the amount of \$75.

CONCLUSION

WHEREFORE, based on the argument as set forth in this brief, Relator Anthony Bowman respectfully requests that this Honorable Court make its preliminary writ permanent and prohibit Respondent from taking any action on this case with regards to Relator failing to pay restitution, and mandate that Respondent remove the condition to pay restitution in the amount of \$4,074 to Christina Moore and \$75 to the St. Francois County Prosecutor's Office from Relator's probation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Relator's Brief was served by e-mail on this 25th day of October, 2016, to:

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/s/ Sarah Jackson
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CERTIFICATE OF SERVICE

Pursuant to Missouri Supreme Court Rule 84.06(c), I hereby certify that this brief includes the information required by Rule 55.03 and that it complies with the page limitations of Special Rule 360. This brief was prepared with Microsoft Word for Windows, uses Times New Roman 14 point font, and does not exceed the word limits for a reply brief in this court. The word-processing software identified that this brief contains 4,533 words, and 22 pages including the cover page, signature block, and certificates of service and of compliance. In addition, I hereby certify that this document has been scanned for viruses with Symantec Endpoint Protection Anti-Virus software and found virus free. It is in searchable PDF form.

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