

Passenger Restitution

Is a passenger in a stolen vehicle liable for economic damage?

By Suzanne Sanchez, Defender Attorney, and Christina Phillis, Group Supervisor

A person who does not steal or drive a vehicle, but who accepts a ride in the vehicle and knows, or has reason to know, that the vehicle was stolen, commits unlawful use of a means of transportation. A.R.S. § 13-1803(A)(2). However, is this passenger liable for restitution? The answer varies, and depends upon considerations set forth below.

First, beware of any plea agreement provision that the client will pay restitution for all economic loss arising out of a specified law-enforcement report. Appellate courts generally construe such an agreement as a waiver of any argument that the client should not have to pay because he or she did not cause the damage. *See, e.g., Maricopa County Juv. Action No. JV-128676*, 177 Ariz. 352, 355, 868 P.2d 365, 368 (App. 1994).

Restitution is not limited to the adjudicated offense. *In re Stephanie B.*, 204 Ariz. 466, 469-70 ¶¶ 14-17, 65 P.3d 114, 118-19 (App. 2003). Thus, restitution properly can extend to offenses for which the client prevails at trial. *Id.* Restitution also properly can extend to uncharged offenses. *See Maricopa County Juv. Action No. JV-128676*, 177 Ariz. at 354, 868 P.2d at 368. Furthermore, restitution can extend to unlawful conduct that is not an element of the adjudicated offense. *In re Andrew A.*, 203 Ariz. 585, 586 ¶ 7, 58 P.3d 527, 528 (App. 2002).

However, the State must prove by a preponderance of the evidence that the economic loss would not have occurred but for the client's unlawful conduct. *Stephanie B.*, 204 Ariz. at 466, 467 ¶ 1, 469 ¶ 10, 65 P.3d at 115, 117; *see also State v. Wilkinson*, 202 Ariz. 27, 39 P.3d 1131, 1133 (2002). Such evidence may be entirely circumstantial. *Andrew A.*,

203 Ariz. at 587 §§ 8, 10, 58 P.3d at 529. However, such evidence must “reasonably lead to the inference” that the client's conduct caused the loss. *Id.* at 586 ¶ 7, 58 P.3d at 528 (citing *Maricopa County Juv. Action No. JV-132905*, 186 Ariz. 607, 609, 925 P.2d 748, 750 (App. 1996); *State v. Lindsley*, 191 Ariz. 195, 198, 953 P.3d 1248, 1251 (App. 1997)).

Evidence likely will not establish a reasonable inference that the client damaged a vehicle that he did not drive. *See, e.g., Maricopa County Juv. Action No. JV-132905*, 186 Ariz. at 609, 925 P.2d at 750 (citing *Maricopa County Juv. Action No. JV-128676*, 177 Ariz. at 352, 868 P.2d at 365). For example, in *Maricopa County Juv. Action No. JV-128676*, a youth accepted a ride in a car that he knew had been stolen by another youth. 177 Ariz. at 352, 355, 868 P.2d at 365, 368. There was no evidence that such passenger participated in the original taking of the vehicle or drove the vehicle at any time. *Id.* Hence, the passenger was not liable for restitution. *Id.* at 369, 868 P.2d at 356. Courts should not order restitution based upon conspiracy or accomplice-liability theories, absent an adjudication based upon one of these theories. *Id.* at 356, 868 P.2d at 369.

However, if the court concludes, based upon evidence reasonably leading to such an inference, that the client either participated in the unlawful taking of the vehicle or drove the vehicle at some time prior to the arrest, and that such conduct caused damage, then the court may order restitution. *Andrew A.*, 203 Ariz. at 587 ¶ 10, 58 P.3d at 529; *Maricopa County Juv. Action No. JV-132905*, 186 Ariz. at 609, 925 P.2d at 750. A passenger may also cause economic loss to the owner of a stolen vehicle if such passenger takes or damages personal property that the owner left in the

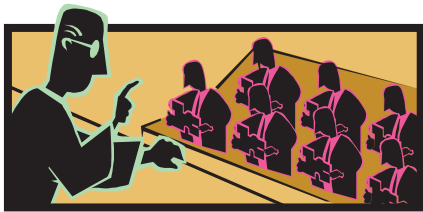
vehicle, or if such passenger inscribes graffiti in or otherwise damages the vehicle. Furthermore, courts can properly order restitution against a person who abandons a stolen vehicle, thereby allowing others to come upon and damage the vehicle. *Id.* at 355, 868 P.2d at 368.

If your client is prosecuted in juvenile court and must pay restitution, the court, pursuant to A.R.S. § 8-344(A), may order that the client pay partial restitution. The statute indicates that in exercising its discretion, the court must consider, *inter alia*, “the nature of the

offense[.]” A.R.S. § 8-344(A). The nature of the offense may be that your client, as a passenger, did not cause most of the damage.

In sum, restitution is a significant part of our clients’ sentences – the ability to pay it in full can oftentimes make the difference in our clients being able to successfully complete probation and move forward with productive lives. Use these standards to limit the amount they are ordered to pay to the economic losses caused by their actions.

Capital Jury Selection Seminar



Friday, April 23, 2004

ASU Downtown Center
502 E. Monroe Street, “A” Building
Phoenix, AZ

Registration: 8:30 a.m. - 9 a.m.

Sessions: 9 a.m. to 5 p.m. (with a lunch break, on your own)

Please join the Arizona Capital Representation Project, the Maricopa County Legal Defender’s Office, the Maricopa County Public Defender’s Office and the Maricopa County Office of Legal Advocate for this full-day capital jury selection seminar, featuring nationally known expert counsel Skip Gant, Sean O’Brien and Chris Adams.

This seminar will provide capital defense team members with hands-on training in the selection of a capital sentencing jury. The format will consist of both lectures and role-playing sessions, in which some participants will have an opportunity to receive personal feedback from qualified trainers.

Participation is limited exclusively to individuals who currently represent or who intend to represent a defendant in a capital case. The seminar is not open to those who are engaged in the prosecution or adjudication of criminal offenses. The seminar is free of charge to attorneys who are appointed by courts to represent indigent criminal defendants in Arizona. Participants will obtain approximately 6 hours of training in capital defense.

Space is limited. To register for this event, please RSVP by FRIDAY, APRIL 16, at azcaprep@hotmail.com. You also may RSVP by phone at (520) 229-8550 or fax at (520) 229-6150.