

NO. 45646-0-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

JOANNA KRYSTIN SPEAKS, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.12-1-02163-5

BRIEF OF RESPONDENT

Attorneys for Respondent:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

ANNE M. CRUSER, WSBA #27944
Deputy Prosecuting Attorney

Clark County Prosecuting Attorney
1013 Franklin Street
PO Box 5000
Vancouver WA 98666-5000
Telephone (360) 397-2261

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A. **RESPONSE TO ASSIGNMENTS OF ERROR**

- I. **THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ORDERING SPEAKS TO PAY \$2,044.99 IN RESTITUTION FOR THE DAMAGE TO, AND LOSS OF, MR. LANDSTROM'S PERSONAL PROPERTY.**
- II. **SPEAKS WAS NOT DENIED EFFECTIVE ASSISTANCE OF COUNSEL.**

B. **STATEMENT OF THE CASE**

Joanna Speaks was charged, as an accomplice, with robbery in the first degree, attempted murder in the first degree, and kidnapping in the first degree. CP 9. She pled guilty to an amended information charging only robbery in the first degree and tampering with a witness. CP 1-2. She entered this plea in exchange for dismissal of the charges of attempted murder in the first degree and kidnapping in the first degree. CP 3-11. Speaks agreed to pay restitution to the victim for losses attributable to the dismissed counts. CP 10, RP 13 (“I’ll keep this short, it’s a stipulated agreement, Your Honor...”). At the restitution hearing, the trial court admitted exhibit 1, which represented the victim’s recitation of his property losses relating to the robbery and attempted murder. At the hearing, Mr. Landstrom (the victim) testified that the itemization of losses on Exhibit 1 reflect the exact amounts he paid for the items. RP 34. During

the robbery, his wallet, containing \$650, his credit cards and his phone were stolen from him. RP 28, Exhibit 1. As to the remaining losses, Mr. Landstrom testified those items (listed on Exhibit 1) were damaged or lost during the robbery and subsequent attempted murder. RP 32-34. The damage to his shirt, jacket, pants, shoes, and socks occurred during, and as a result of, the bullet holes he incurred from the shooting. RP 34. The headrest in his car was lost to him when it was collected as evidence because it had his blood on it. RP 35.

The trial court entered a restitution order for \$18,418.33. CP 35-36. Speaks only challenges the \$2,044.99 that pertains to property damage and loss, and does not challenge the \$16,373.34 that pertains to the medical expenses that resulted from these crimes. See Brief of Appellant at 5. This timely appeal of the restitution order followed.

C. **ARGUMENT**

SUMMARY OF ARGUMENT

Speaks agreed to pay restitution for losses caused both by the robbery she was convicted of and the attempted murder which was dismissed pursuant to her plea bargain. Exhibit 2, RP 13. In this appeal, Speaks does not challenge the imposition of restitution for

Mr. Landstrom's medical expenses, which represents \$16,373.34 of the restitution order. Exhibit 1, Brief of Appellant at 5. Rather, Speaks challenges the imposition of restitution for the property that was lost or damaged during the two crimes, which represents the remaining \$2,044.99 of the restitution award. Exhibit 1, Brief of Appellant at 5.

Speaks' argument in this appeal is that the trial court abused its discretion in setting the restitution amount because the restitution for the property damage and loss in the amount of \$2,044.99 was not easily ascertainable. Speaks' argument is meritless.

I. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ORDERING SPEAKS TO PAY \$2,044.99 IN RESTITUTION FOR THE DAMAGE TO, AND LOSS OF, MR. LANDSTROM'S PERSONAL PROPERTY.

As noted above, Speaks does not challenge the imposition of \$16,373.34 in restitution for Mr. Landstrom's medical bills. She effectively concedes that she did agree to pay restitution for both the robbery and the attempted murder, and she effectively concedes that the injuries which gave rise to the medical bills were incurred not only as part of the attempted murder which was dismissed pursuant to her plea bargain, but as part of the robbery in the first degree to which she pled guilty. Her claim in this appeal is that the victim's oral testimony of his property loss,

combined with his written memorialization of the loss found in Exhibit 1, was insufficient to prove his loss.

As an initial matter, Speaks fails to state the standard of review. “The trial court has great power and discretion in issuing restitution.” *State v. Hughes*, 154 Wn.2d 118, 153-54, 110 P.3d 192 (2005), *abrogated on other grounds, Washington v. Recuenco*, 548 U.S. 212, 126 S.Ct. 2546 (2006), citing *State v. Enstone*, 137 Wn.2d 675, 679, 974 P.2d 828 (1999); *State v. Fleming*, 75 Wn.App. 270, 274, 877 P.2d 243 (1994). “A restitution order will only be reversed if Hughes shows an abuse of discretion by the trial court, which exists when the trial court's determination is manifestly unreasonable or based on untenable grounds.” *Hughes* at 154.

The amount of restitution should be based on “easily ascertainable damages.” RCW 9.94A.753(3). However, the amount of harm or loss “need not be established with specific accuracy.” *State v. Fleming*, 75 Wash.App. 270, 274, 877 P.2d 243 (1994). Evidence supporting restitution “is sufficient if it affords a reasonable basis for estimating loss and does not subject the trier of fact to mere speculation or conjecture.” *Id.* at 274–75, 877 P.2d 243 (quoting *State v. Pollard*, 66 Wn.App. 779, 785, 834 P.2d 51 (1992) (quoting *State v. Mark*, 36 Wn.App. 428, 434, 675 P.2d 1250 (1984))).

Hughes at 154.

Relying principally on *State v. Dedonado*, 99 Wn.App. 251, 991 P.2d 1216 (2000), Speaks argues that the victim’s estimate of loss cannot

form the basis of a restitution order because a causal connection between the crime and the loss cannot be based solely on evidence of the victim's expenditures or receipts. Stated another way, Speaks argues that a victim's estimate of loss is inherently speculative and unreliable. But Speaks misreads *Dedonado*. The issue in *Dedonado* was whether the State had established a *causal connection* between the criminal act and the losses that were claimed for purposes of restitution, not whether a victim can provide a reasonable estimate of his loss. *Dedonado* at 257. In *Dedonado*, the trial court ordered restitution for the purchase of a generator and for car maintenance items that were not shown to have been necessitated by the criminal acts in question. *Id.* The *Dedonado* Court did not hold that where the State establishes causation, the trial court is nevertheless precluded from calculating the amount of restitution utilizing the victim's reasonable estimate of the loss.

Here, the victim testified that the amounts given for the items he lost during the robbery represented the amounts he paid for those items. RP 34. One of the items he lost was the \$650 in cash of which he was robbed. See Exhibit 1. Speaks does not explain how any further explanation could possibly be needed or given to establish the amount of this loss. As for the remainder of the items (for which, again, Speaks does not argue a lack of causation), the trial court did not abuse its discretion

when it found that the exact amounts Mr. Landstrom paid for his damaged or lost items provided an easily ascertainable estimate of his losses.

Speaks cites no authority for her apparent claim that receipts for the original purchase of the items are required, or that there must be testimony about wear and tear or market value. In *State v. Fleming*, 75 Wn.App. 270, 877 P.2d 243 (1994), the Court of Appeals upheld a restitution award that was based on the value of the item (a gold necklace) at the time of the restitution hearing, rather than at the time it was stolen three years earlier.

Fleming at 275. The Court said:

Interpreting the restitution statute broadly to effect the Legislature's intent, we hold that it is within the sound discretion of the trial court to take fluctuations in market value into consideration for purposes of setting restitution. Restitution is not a substitute for a civil lawsuit. It serves other purposes, one of which is to impose upon one who breaks the law a thorough understanding of the economic effects of a particular crime upon the victim. Here, Barbara Johnson Grove lost not only a valuable piece of jewelry, but also the opportunity to take advantage of the increase in the market value of the precious metal of which the necklace was made. If Fleming had not taken the necklace Grove would have had the option to secure a windfall by selling the necklace when the value of gold increased. Thus, the appreciated value of the necklace was substantial credible evidence of the amount of Ms. Grove's loss. Absent clear abuse, which we do not find here, we defer to the trial court's discretion.

Fleming at 275.

Fleming has not demonstrated abuse of the trial court's considerable discretion in setting restitution. The restitution order should be affirmed in its entirety.

II. SPEAKS WAS NOT DENIED EFFECTIVE ASSISTANCE OF COUNSEL.

Speaks was not denied effective assistance of counsel based on her attorney's allegedly anemic objection to the calculation of the victim's property loss. That is, Speaks cannot demonstrate prejudice where the trial court did not abuse its discretion in setting restitution and the restitution award was proper. Where a defendant cannot demonstrate prejudice, relief on a claim of ineffective assistance of counsel is barred. See *Strickland v. Washington*, 466 U.S. 668, 691, 104 S.Ct. 2052 (1984).

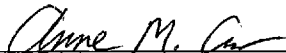
D. CONCLUSION

The restitution order should be affirmed in its entirety.

DATED this 19th day of September, 2014.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By: 
ANNE M. CRUSER, WSBA #27944
Deputy Prosecuting Attorney

CLARK COUNTY PROSECUTOR

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