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NO. 65156-1-I

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

STATE OF WASHINGTON,

Respondent,

v.

RYAN DANFORD,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

REPLY BRIEF OF APPELLANT

Elaine L. Winters
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

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A. ARGUMENT IN REPLY

1. THE RESTITUTION ORDER MUST BE VACATED
BECAUSE IT WAS ENTERED BEYOND THE
STATUTORY TIME PERIOD

The Sentencing Reform Act (SRA) authorizes a sentencing court to order restitution within 180 days of the sentencing hearing. RCW 9.94A.753(1). Ryan Danford argues the trial court erred by continuing his restitution hearing beyond the 180-day deadline because the State was not prepared to establish the requested restitution. The State did not establish good cause for the continuance, and this Court should reject the prosecutor's attempt to blame Mr. Danford for the continuance.

At the restitution hearing on March 15, the State presented the court with a list of Brandon Black's medical bills and insurance claim summaries that showed Mr. Black or his insurance carrier had paid portions of the bills. CP 70-117. The court, however, stated that the prosecutor needed to call a witness to establish a nexus between the crime and the medical bills. RP 13-14 ("I really need to have someone who can tell me what this means in order for me to conclude there is a nexus [inaudible]. I need someone to testify."). The court therefore continued the hearing to March 19,

beyond the 180-day time limit, over Mr. Danford's objection. RP 14-17.

The State now lays blame for the continuance at Mr. Danford's feet, claiming the continuance was necessary "to address Danford's concerns about the medical documentation." Brief of Respondent at 8, 11-12. It is, however, the State's burden to prove the amount of restitution and the causal connection to the defendant's crime by a preponderance of the evidence. State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008); State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007). It is not the defendant's burden to provide the State with notice of his objections.

The State's argument is reminiscent of one rejected by this Court over ten years ago in State v. Dedonado, 99 Wn.App. 251, 991 P.2d 1216 (2000). In Dedonado the trial court refused to consider the defendant's challenge to a portion of the requested restitution because the defendant had not notified the prosecutor's office in advance of his objection. Dedonado, 99 Wn.App. at 254-55. The trial court reasoned that the defendant had the State's restitution documentation prior to the hearing, and it was therefore the defendant's burden to inform the prosecutor of any objections.

Id. This Court, however, explained that the defendant was not required to notify the prosecutor of any objections to the restitution claim in order to have an evidentiary hearing; rather, an evidentiary hearing was required to determine if there was the necessary causal connection between the damage and the defendant's actions. Id. at 256. "RCW 9.94A.142¹ does not require that a defendant notify the State that he or she is challenging written documentation so that the State can have the opportunity to summon a witness or to get additional documentation to address his or her concerns." Id. at 257.

Moreover, as the State concedes, it had notice prior to the March 15 hearing that Mr. Danford was challenging the restitution claim. Response Brief at 11 (citing CP 45-46). Mr. Danford filed memorandum on March 4 arguing that the medical bills presented by the prosecutor were not sufficient to establish a causal connection to Mr. Danford's offense and attaching two relevant cases. CP 45- 62. In fact, the State even acknowledges that an earlier continuance had been granted to permit the prosecutor's office to address the points defense counsel raised. Brief of Respondent at 11-12; CP 68.

¹ RCW 9.94A.142 has since been recodified as RCW 9.94A.753.

Thus, the State had no excuse for not providing sufficient evidence to the court to support its restitution request prior to the expiration of the statutory 180-day deadline. The State's attempt to blame Mr. Danford for the continuance must be rejected.

The State also argues that the SRA's restitution statute affords crime victims the same if not more protections than those provided to defendants. Brief of Respondent at 9 (quoting State v. Gonzales, 168 Wn.2d 256, 265, 226 P.3d 131, cert. denied, 131 S.Ct. 318 (2010)). The prosecutor, however, misrepresents the Gonzales opinion, which looked at the legislature's statement of intent in interpreting the language of the restitution statute, specifically the word "amount." Id. The opinion does not hold that the statute specifically provides crime victims, who are independently entitled to sue defendants civilly for damages, RCW 9.94A.753(9), equal or greater rights than defendants at a restitution hearing. Nor does the Gonzales opinion suggest a crime victim should receive restitution in absence of proof that his loss or injury was caused by the defendant.

In Dedonado the trial court suggested that in order to have the court consider his objections to the restitution requested by the prosecutor, the defendant was required to waive his right to have

the hearing within 180 days so that the State could prepare. The trial court then ordered the requested restitution when the defendant declined to waive the 180-day requirement. Dedonado, 99 Wn.App. at 255. This Court vacated the portion of the ordered restitution that the State was unable to prove prior to the statutory 180-day deadline. Id. at 257-58.

Here, the trial court granted a continuance beyond the 180-day period over Mr. Danford's objection in order to give the State the opportunity to present a witness to explain the stack of medical bills it had presented to prove restitution. The restitution order was not entered until after mandatory time period had expired, and the restitution order must similarly be vacated. State v. Krall, 125 Wn.2d 146, 148-49, 881 P.2d 1040 (1994) (restitution statute's requirement that court "shall" set restitution within time period is mandatory, reversing restitution order entered after time deadline).

2. THE STATE DID NOT PROVE THE CLAIMED AMOUNT OF RESTITUTION WAS CAUSED BY MR. DANFORD'S CRIMINAL ACT

When the defendant does not agree to the amount of restitution requested by the State, the court must hold an evidentiary hearing. State v. Ryan, 78 Wn.App. 758, 761-62, 899 P.2d 825 (1995). Any restitution ordered must be based upon

“substantial credible evidence.” State v. Pollard, 66 Wn.App. 779, 785, 834 P.2d 51, rev. denied, 120 Wn.2d 1015 (1992) (quoting State v. Mark, 36 Wn.App. 428, 434, 675 P.2d 1250 (1984)). Here, the State provided the trial court with medical bills that contained little or no explanation of what treatment the bills were for, and the court relied upon those bills to order Mr. Danford to pay restitution of \$8,822.46 to Mr. Black and \$37,503.85 to a subrogation company. The restitution must be reversed because the causal connection to Mr. Danford’s crime was not proven by substantial credible evidence.

The State points out that the Superior Court has discretion to determine the amount of restitution. Brief of Respondent at 15-16. The abuse of discretion standard does not lessen the State’s obligation to present sufficient evidence to support the restitution amount, Pollard, 66 Wn.App. at 784-85, and to prove the loss is causally connected to the defendant’s crime. Tobin, 161 Wn.2d at 524. A list of medical expenses, as was presented in this case, is not sufficient to prove the causal connection. State v. Dennis, 101 Wn.App. 223, 227, 6 P.3d 1173 (2000); State v. Hahn, 100 Wn.App. 391, 399-400, 996 P.2d 1125 (2000); State v. Bunner, 86 Wn.App. 158, 160, 936 P.2d 419 (1997).

The State did not produce a witness to testify that all of the medical bills were for treatment for injuries incurred as a result of Mr. Danford's offense. Instead of providing any proof that the medical bills were for injuries caused by Mr. Danford, the State asked the court to assume that all bills dated on or after the date of the robbery were casually connected to the crime:

Court: Are we presuming then anything after the date of the crime is connected to the crime, is that the position of the state?

DPA: Yes, your Honor.

RP 11. The court was then forced to compare the date of the bills with the date of the crime and compare the terse explanation of treatment provided on the billing statements with the limited information in the certification for probable cause. The State thus argues on appeal that the billing statements' explanations, such as "OPEN RX COMPLX CHEEK FX+G," CP 85, 104, are sufficient to establish the causal connection. Brief of Respondent at 21-24.

The State, however, never explains how it proved that "outpatient services" incurred on February 26, March 11, and March 17, 2009, are necessarily related to this crime. Instead, as it did in the trial court, the State asks this Court to "assume" the outpatient

services were connected to the offense. Brief of Respondent at 23 n. 13.

While the rules of evidence do not apply at a restitution hearing, the defendant is still entitled to due process. Pollard, 66 Wn.App. at 784-85. Here, the prosecutor did not produce substantial, credible evidence that all of the medical bills presented to the trial court were for treatment of injuries causally connected to Mr. Danford's offense. Instead, the State asked the court to assume they were. This Court should vacate the restitution for medical expenses or, in the alternative, vacate the portion of the restitution order based upon only "outpatient services." CP 91-92, 95-98.

B. CONCLUSION

The order requiring Mr. Danford to pay restitution must be vacated because it was entered more than 180 days after sentencing. In the alternative, the restitution amounts should be reduced to exclude payments ordered in the absence of proof of a causal connection to Mr. Danford's crime.

DATED this 4th of April 2011.

Respectfully submitted,



Elaine L. Winters – WSBA #7780
Washington Appellate Project
Attorneys for Appellant

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Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, JOSEPH ALVARADO, STATE THAT ON THE 4th DAY OF APRIL, 2011, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- | | | |
|--|----------------------------|--|
| <p>[X] Kristin Ann Relyea
KING COUNTY PROSECUTING ATTORNEY
APPELLATE UNIT
KING COUNTY COURTHOUSE
516 THIRD AVENUE, W-554
SEATTLE, WA 98104</p> | <p>(X)
()
()</p> | <p>U.S. MAIL
HAND DELIVERY
_____</p> |
| <p>[X] Ryan Danford
DOC #306753
Washington State Penitentiary
1313 North 13th Ave.
Walla Walla, WA 99362-1065</p> | <p>(X)
()
()</p> | <p>U.S. MAIL
HAND DELIVERY
_____</p> |

SIGNED IN SEATTLE, WASHINGTON THIS 4th DAY OF APRIL, 2011.

X _____ *JA*

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710