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APR 21 2011

King County Prosecutor
Appellate Unit

NO. 66317-8-I

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

STATE OF WASHINGTON,

Respondent,

v.

R.R.,

Appellant.

2011 APR 21 PM 3:56

COURT OF APPEALS
DIVISION ONE
K

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

The Honorable Helen J. Halpert, Judge

OPENING BRIEF OF APPELLANT

DAVID B. KOCH
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A. ASSIGNMENT OF ERROR

The trial court erred when it ordered appellant to pay \$1,672.99 in restitution.

Issue Pertaining to Assignment of Error

For a portion of the restitution appellant was ordered to pay – pertaining to a television set – the State failed to provide an explanation for the requested amount, an amount that appears inconsistent with the victim’s claimed damages. Should this amount be stricken from the restitution order?

B. STATEMENT OF THE CASE

The King County Prosecutor’s Office charged juvenile R.R. with residential burglary. CP 1-2. According to the certification for determination of probable cause, on May 28, 2010, Jeff Brown found a flat screen television set in his backyard. Believing it might belong to his neighbor, Keith Hunter, Brown called Hunter, who confirmed it was his. Hunter then discovered a broken window on his house and that he was the victim of a burglary. CP 10.

While Hunter waited for police to arrive, he and another neighbor – Carlos Meza – saw a suspicious car driving slowly by with its occupants looking around nervously. A short time later, Hunter found the car parked and saw two individuals standing between his

house and Brown's house. CP 10. Meza entered Hunter's back yard and saw an individual – later identified as R.R. – jump over the fence with a flat screen television in his hand. CP 10-11. R.R. then entered the driver's seat of the suspicious car. Meza noted the car's license plate number. CP 10. Another neighbor also reported seeing two males exiting Thompson's yard around the time of the burglary. CP 10.

Using the license plate number, police went to the home of the car's registered owner and found the car. Several suspects were detained and, based on identifications by Hunter and his neighbors, multiple individuals were arrested, including R.R. CP 11.

R.R. did not contest his guilt. He stipulated to the facts contained in the police reports and certification for determination of probable cause, was found guilty, and received a deferred disposition. CP 8-17. Restitution was to be determined at a later date. CP 16.

The State provided the defense with a "Victim Loss Claim" form listing property that had been unrecovered or damaged during the burglary. The State also provided paperwork from Hunter's Insurance carrier – Allstate – indicating the amount paid on Hunter's

claims. Exhibit 1.¹

The State sought \$1,422.99 for Allstate, which had paid to replace Hunter's televisions (the one recovered in Brown's back yard and the one R.R. had in his hands as he jumped over the fence and got in the car) and the broken window. The State also sought \$250.00 to reimburse Hunter for his deductible on his homeowner's policy for a total sum of \$1,672.99. Exhibit 1, at 2-6; RP 18-20; Supp. CP ___ (sub no. 29, State's Response Brief Re: Restitution).

The defense challenged a portion of the State's request. There was no objection to the \$250.00 deductible or to \$795.29 paid for a Toshiba television set that was never recovered. CP 18, 21; exhibit 1, at 5. But the defense objected to paying \$635.23 for replacement of the second television, a Samsung, without proof it was a total loss and could not be repaired for less. CP 22-24; exhibit 1, at 5.

Despite the defense arguments, the court granted the State's restitution request in its entirety. CP 25-26; RP 21. R.R. timely filed his Notice of Appeal. CP 27.

¹ A copy of exhibit 1 (with added paged numbers for ease of reference) is attached to this brief as an appendix.

C. ARGUMENT

THE SENTENCING COURT ERRED WHEN IT ORDERED
RESTITUTION FOR THE SAMSUNG TELEVISION.

A trial court's authority to impose restitution in juvenile cases is controlled by statute. State v. Hiatt, 154 Wn.2d 560, 563, 115 P.3d 274 (2005). In its dispositional order:

the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent. . . . If the respondent participated in the crime with another person or other persons, all such participants shall be jointly and severally responsible for the payment of restitution. . . .

RCW 13.40.190(1). Restitution orders are reviewed for an abuse of discretion. State v. Dauenhauer, 103 Wn. App. 373, 377, 12 P.3d 661 (2000), review denied, 143 Wn.2d 1011 (2001).

While the precise value of an item of property need not be shown with mathematical certainty, the court must not engage in mere speculation or conjecture. The amount of restitution must be supported by substantial credible evidence. State v. Pollard, 66 Wn. App. 779, 785, 834 P.2d 51, review denied, 120 Wn.2d 1015 (1992); State v. Bush, 34 Wn. App. 121, 124, 659 P.2d 1127, review denied, 99 Wn.2d 1017 (1983).

In the trial court, the State relied on State v. Bennett, 63 Wn.

App. 530, 821 P.2d 499 (1991), to convince the court that the Samsung television was a total loss. See Supp. CP ___ (sub no. 29, State's Response Brief Re: Restitution, at 4-5). In Bennett, the defendant was convicted of burglary after unlawfully entering her mother's home and taking property. Bennett, 63 Wn. App. at 531. In affirming the restitution award, this Court noted that the victim had provided a list of possessions stolen and insurance company worksheets. Id. at 535. As to the latter, this Court said, "We perceive no reason to question the reliability of the insurance company's accounting of Ms. Bennett's loss, given an insurer's strong financial interest in not overpaying claims." Id. at 536 n.4.

While the State similarly submitted a list of losses from Hunter and an insurance worksheet from Allstate in R.R.'s case, in contrast to Bennett, there is indeed a reason to question the amount paid. Unlike the Toshiba television, which Hunter listed under "unrecovered property," the Samsung was listed merely as "damaged property." Exhibit 1, at 1. Therefore, this television is not necessarily a total loss. Neither Hunter, Allstate, nor the prosecutor provided anything documenting why Allstate nonetheless chose to treat it as a total loss. The defense was and is left to rely on speculation and conjecture. See State v.

Dedonado, 99 Wn. App. 251, 253-255, 257, 991 P.2d 1216 (2000) (restitution award improper where supporting documents failed to demonstrate amount spent for replacement of damaged property was appropriate).

Where the defense objects to a particular request for restitution, and the State fails to carry its burden of proof on that request, the proper course is to vacate the restitution amount in question. The State does not get a second chance to prove the proper amount of the claim. State v. Dennis, 101 Wn. App. 223, 228-230, 6 P.3d 1173 (2000).

D. CONCLUSION

This Court should vacate the restitution order and remand for entry of a new order after subtracting \$635.23 for the Samsung television.

DATED this 21st day of April, 2011.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



DAVID B. KOCH
WSBA No. 23789
Office ID No. 91051

Attorneys for Appellant

APPENDIX

VICTIM LOSS CLAIM

Form must be returned by:

6-28-10

(Even if no Loss)

Keith Hunter

RE:

STATE EXHIBIT - 1

KCSO

10123793

05/28/2010

MARKS, JERROD VICTOR II
ROMAN, RONALD R
WILLIAMS, CEQUE

108015908 BURGLARY-RESI
108015924 BURGLARY-RESI
108015916 BURGLARY-RESI

1. UNRECOVERED PROPERTY

List / describe property NOT recovered. Use additional sheets if necessary.

- 1a. HAND GUN - in evidence
- 1b. "42" LCD T.V TOSHIBA
- 1c. NIKON camera
- 1d. GYM BAGS, SHOES, LUGGAGE

You must **INCLUDE RECEIPTS OR ADS** for the same or a similar item.

Unsupported values will not be accepted.

List actual cash value here:

- 1a. \$?
- 1b. \$ 999.00
- 1c. \$ 100.00
- 1d. \$

Total \$

2. DAMAGED PROPERTY

List / describe property damaged. Use additional sheets if necessary.

- 2a. BACK Basement window
- 2b. "50" PLAZMA SAMSUNG
- 2c.

You must **INCLUDE RECEIPTS, INVOICES OR PROFESSIONAL ESTIMATES.**

Unsupported values will not be accepted.

List costs here:

- 2a. \$ 241.00
- 2b. \$ 1199.00
- 2c. \$

Total \$

3. PROPERTY INSURANCE INFORMATION

Did you make an insurance claim? No Yes

If no, please explain why not: _____

If yes, please fill out the following completely:

Insurance Company: Allstate Your Claim #: 0169002268

Deductible: 3A. \$ 250.00 Amount Insurance has paid / will pay: 3B. \$

VAU USE ONLY

Reimbursement from property insurance:

\$ 1422.00

4. MEDICAL / COUNSELING INFORMATION

Insurance Company: _____ Subscriber #: _____

Total amount of all bills to date: \$ _____ Anticipated future medical bills: \$ _____

Deductible or Co-Pay Amount: \$ _____ Amount insurance has paid: \$ _____

Lost wages due to injury: \$ _____ (MUST INCLUDE NOTE FROM EMPLOYER)

You must **INCLUDE MEDICAL / COUNSELING BILLS.**

Unsupported values will not be accepted.

VAU USE ONLY

Medical Expenses:

\$ _____

Reimbursement from insurance:

\$ _____

WARNING HERE: I declare under penalty of perjury, under the laws of the State of Washington that the foregoing is a true and accurate accounting of my financial loss relating to this crime:

Signature: Keith Hunter Printed Name: Keith Hunter Date: 6/15/10
Address: 7610 S MISSION DR City: Zip:

CHECK IF THIS IS A NEW ADDRESS

MAKE A COPY FOR YOUR RECORDS

Contact Phone Number

(206) 661-2301 STOP HERE - BELOW FOR VAU USE ONLY

Total Expenses (Box 1 + Box 2 + Box 4):

\$ 1672.99

Total reimbursements (insurance loss) (Box 3 + Box 4):

\$ 1422.99

Primary Victim's financial loss:

\$ 250.00

RESTITUTION REQUEST:

\$ 250.00 to the Primary Victim

\$ 1422.99 to Victim's insurance

1

JUN. 30. 2010 4:23PM

NO. 046 P. 2/8

JUN. 28. 2010 4:01PM

NO. 999 P. 3



Allstate
You're in good hands.

Hudson Express Office
PO BOX 660636
DALLAS TX 75266

|||||
KING COUNTY PROSECUTING ATTORNEY OFFICE
516 3RD AVE STE W554
SEATTLE WA 98104-2362

June 28, 2010

YOUR FILE: 108015924
DEFENDANT: RONALD ROMAN
OUR INSURED: KEITH HUNTER
OUR CLAIM #: 0169002268 XSJ
LOSS AMOUNT: \$1,672.99

PHONE NUMBER: 888-311-3985
FAX HOURS: 866-447-4293
OFFICE HOURS:
Mon - Fri 8:00 am - 11:00 pm, Sat 8:00 am - 5:00 p

Re: Request for Restitution

Dear KING COUNTY PROSECUTING ATTORNEY OFFICE,

We're writing to let you know that Allstate Insurance Company has paid our insured \$1,422.99 for loss and damage related to the incident listed above. In addition, our insured suffered a loss of \$250.00, which is the policy's deductible amount.

This letter is our request for restitution for these amounts, assuming there is a conviction. We have enclosed copies of our supporting documents related to this request.

If you would like to write to Allstate Insurance Company about this matter, you should send all correspondence to:

Hudson Express Office
PO Box 660636
Dallas, TX 75266
Attn: 0169002268

Allstate Insurance Company values you as a customer and welcomes any opportunity to discuss your concerns or questions regarding the claim process. Please feel free to contact me toll free at 888-311-3985. If I am not available, feel free to ask for any member of the Property Express Team.

Sincerely,

SHARON ORR

SHARON ORR
888-311-3985
Allstate Insurance Company

Enclosure(s)

SUBR002

0169002268 XSJ

CES®

Contents Estimating System

ALLSTATE INSURANCE COMPANY
HUDSON EXPRESS
PO BOX 860636
DALLAS, TX 75266

(888) 311-3985

PERSONAL PROPERTY DAMAGE ESTIMATE
ESTIMATE COPY

(estimate marked completed on June 02, 2010)

CLAIM SUMMARY

Claim Number : 0169002268
Type of Loss : Theft (On Premises)
Date of Loss : May 28, 2010
Policy Type : Deluxe Homeowners - Primary residence
Customer : KEITH HUNTER
Contact Information : Other Phone : (206) 772-5419
Claim Representative : YVETTE M. LEWIS

ESTIMATE SUMMARY

	TOTAL	TOTAL w/Applied Limit
Total FRC Inventory	: \$ 1,773.88	\$ 1,773.88
Total Depreciation	: - \$ 342.36	\$ 342.36
Total Estimate Value	: \$ 1,431.52	\$ 1,431.52
Total Miscellaneous Structure Repairs	: + \$ 241.47	\$ 241.47
Subtotal	: \$ 1,672.99	\$ 1,672.99
Total Recovered Depreciation	: + \$ 0.00	\$ 0.00
Less Deductible	: - \$ 250.00	
Total	: \$ 1,422.99	\$ 1,672.99
Total Loss and Damage Payable (with deductible applied)	: \$ 1,422.99	
Total Prior Payments	: - \$ 0.00	
Amount Payable	: \$ 1,422.99	
Balance of Recoverable Depreciation	: \$ 342.36	

2TV's

COMMENTS

This estimate may include items with pricing from Internet sources. In some cases shipping charges may not be included because they are not known until a purchase is made. If you replace the damaged, destroyed or stolen property from one of these sources and shipping charges are incurred, you may make a claim for these additional charges. Should this

COMMENTS *(continued)*

occur, please contact your claim adjuster at the number listed above and submit a receipt for the shipping charges.

It should be noted that prices can change without notice. Allstate will work with you to resolve your claim regardless of where you purchased your items. If you find the cost of the repairs or replacement is more than reflected in this estimate, please contact your claim adjuster at the number listed above.

PLEASE NOTE: Actual Cash Value is defined as the amount it would take to repair or replace damage to your personal property less depreciation. Depreciation, when applied in this estimate, is the decrease of the property's value due to age, wear and tear (condition) or obsolescence, except where otherwise noted.

WARNING: It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.

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INVENTORY DETAILS

GENERAL

#	Description				Estimate Value						Documented Replacement			
					Unit Cost	Total Cost	Est. Tax	Total Depr.	Other Fees	Total ACV	FRC Total (incl tax)	Recovered Depreciation	Depr. Raim. Complete	
1	Samsung 50" 720p Plasma Tv - Pn50e480 (3hdmi) Comment: Samsung 50" Class 720p 800hz Plasma Hdly Replacement: model #PN50C450B1D from bestbuy.com													
	[042]	1	1y9m	1,199.99	719.99	719.99	68.40	152.16	0.00	635.23	0.00	0.00		
2	Toshiba 42" 1080p Regza Led Hdly - 42rvs30 (4 Hdmi) Comment: Lg 42" Class 1080p 120hz Led Hdly Replacement: model #42LD350 from bestbuy.com													
	[042]	1	1y9m	999.99	899.99	899.99	85.50	190.20	0.00	795.29	0.00	0.00		
Inventory Totals		2				1,619.98	163.90	342.36	0.00	1,431.52	0.00	0.00		

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STRUCTURE REPAIR DETAILS

#	Description	Damage Area	Category	Qty	Unit Cost	Tax	Other Fees	Est. Total
1	Glass Damage Comment: See Attached Estimate	GENERAL	[995]	1	241.47	0.00		241.47
Total Miscellaneous Structure Repairs				1	241.47	0.00	0.00	241.47

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 66317-8-I
)	
RONALD ROMAN,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 21ST DAY OF APRIL, 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **OPENING BRIEF OF APPELANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] RONALD ROMAN
12641 64TH AVENUE S.
SEATTLE, WA 98188

SIGNED IN SEATTLE WASHINGTON, THIS 21ST DAY OF APRIL, 2011.

x *Patrick Mayovsky*