

NO. 71812-6-1

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

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STATE OF WASHINGTON,

Respondent,

v.

JACOB HOLLAR,

Appellant.

\_\_\_\_\_

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

The Honorable Julie Spector, Judge

\_\_\_\_\_

REPLY BRIEF OF APPELLANT

\_\_\_\_\_

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A. ARGUMENT IN REPLY

THE COURT ERRED WHEN IT ORDERED RESTITUTION  
FOR JOHNSON'S CLAIMED PROPERTY LOSSES

To be clear, Hollar claims a failure of proof and due process violation only as to the \$386.00 in restitution awarded for the cell phone, ID card, purse, and makeup. CP 58.

In response, the State relies largely on State v. Deskins, 180 Wn.2d 68, 322 P.3d 780 (2014), State v. Lohr, 130 Wn. App. 904, 125 P.3d 977 (2005), and State v. Tobin, 132 Wn. App. 161, 130 P.3d 426 (2006), aff'd, 161 Wn.2d 517, 166 P.3d 1167 (2007). See Brief of Respondent, at 7-8. But none of these cases (or any other case cited by the State) involved an alleged due process violation based on a total absence of supporting evidence – beyond hearsay estimates – to support the amount of claimed losses. See Deskins, 180 Wn.2d at 83-84 (bills presented in support of request); Lohr, 130 Wn. App. at 910-911 (auto body estimate and additional supporting documents from insurers); Tobin, 132 Wn. App. at 175 (award based on report following extensive investigation that included review of invoices, sales records, witness statements, and bills).

Instead, Hollar's case is like State v. Kisor, 68 Wn. App. 610, 844 P.2d 1038, review denied, 121 Wn.2d 1023, 854 P.2d 1084 (1993). Here, as there, due process has been violated because the proof (a hearsay affidavit merely containing a rough estimate) fails to provide a sufficient basis for rebuttal. Kisor, 68 Wn. App. at 620.

The State also relies on information contained in the "probable cause certification" to bolster Johnson's hearsay declaration. See Brief of Respondent, at 9. Nothing in the certification, however, addresses value of the items taken. See CP 3-4 (merely mentioning that a purse was stolen).

Finally, the parties spar briefly over the remedy if this Court agrees \$386.00 for claimed property losses must be stricken. Hollar asked this Court to simply order the sentencing court to reduce restitution by \$386.00. Brief of Appellant, at 6. The State says there must be another restitution hearing. Brief of Respondent, at 11. Both parties cite State v. Griffith, 164 Wn.2d 960, 195 P.3d 506 (2008). Griffith makes clear, however, that on remand the State would be precluded from offering new evidence. Griffith, 164 Wn.2d at 968. If the current evidence is insufficient to establish the claimed property losses, it is not apparent what would

be accomplished by having another hearing based on the same insufficient and incompetent evidence.

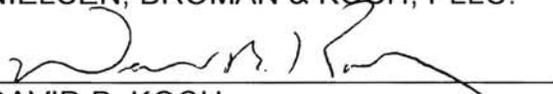
B. CONCLUSION

For all of the reasons discussed in Hollar's opening brief and above, this Court should reverse the restitution order and require a reduction by \$386.00.

DATED this 10<sup>th</sup> day of December, 2014.

Respectfully Submitted,

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\_\_\_\_\_  
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
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| STATE OF WASHINGTON | ) |                   |
|                     | ) |                   |
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|                     | ) |                   |
| JACOB HOLLAR,       | ) |                   |
|                     | ) |                   |
| Appellant.          | ) |                   |

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**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 10<sup>TH</sup> DAY OF DECEMBER 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL AND/OR VIA EMAIL.

[X] JACOB HOLLAR  
2114 S. 6<sup>TH</sup> AVENUE  
UNION GAP, WA 98901

SIGNED IN SEATTLE WASHINGTON, THIS 10<sup>TH</sup> DAY OF DECEMBER 2014.

X Patrick Mayovsky