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COURT OF APPEALS
DIVISION II

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NO. 36842-1-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
BY DIVISION TWO
DEPUTY

STATE OF WASHINGTON,

Respondent

v.

JAYLENE F. MILLNER,

Appellant.

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

The Honorable Michael J. Sullivan, Judge

BRIEF OF RESPONDENT

DAVID BUSTAMANTE
Attorney for Respondent

DAVID J. BURKE
PACIFIC COUNTY PROSECUTING ATTORNEY
P.O. Box 45
South Bend, WA 98586
(360) 875-9361

P.M. 9-8-2008

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A. STATE'S RESPONSE TO APPELLANT'S ASSIGNMENT OF ERROR

1. The trial court did not err in ordering restitution in the amount of \$8,787.00 following the Defendant's conviction for Theft in the Third Degree.

B. STATE'S RESPONSE TO ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. The restitution ordered in this case was properly limited to double the victim's losses arising from the commission of the crime of Theft in the Third Degree, occurring between January 4, 2007 and March 10, 2008. Investigation expenses arising from the underlying crime were properly included in the amount of restitution ordered.

B. STATEMENT OF THE CASE

The Defendant was convicted of Theft in the Third Degree following a bench trial held in the Pacific County Superior Court on June 6, 2007, and June 14, 2007. RP 6/6/07, pp. 2-272; RP 6/14/07, pp. 2-245. Following the trial, the State submitted a Restitution Estimate and Victim Impact Statement on July 19, 2007, CP 30-34. The restitution estimate provided by Jack's Country Store amounted to \$8,787.00, and included money spent on investigating the offense of embezzlement, or theft, by the Defendant. Id. One day prior to this, the Defendant had filed a Memorandum on Restitution on July 18, 2007, CP 27-29. The State filed

its Response to Defendant's Memorandum re Restitution on July 20, 2007, CP 35-37. After considering the matter for more than one month, the Superior Court issued its Memorandum on Restitution dated August 31, 2007, setting forth its award of restitution and the reasons upon which it relied in so doing. CP 38-39. The amount awarded by the court was identical to the amount of the victim's restitution estimate.

A Notice of Appeal to the Court of Appeals was filed on October 11, 2007, CP 23-26.

In her Designation of Record, the Appellant did not include the Restitution Estimate and Victim Impact Statement, the Defendant's Memorandum on Restitution, or the State's Response to the Defendant's Memorandum re Restitution. These documents are necessary to a proper adjudication of the issues of the case. The State filed a Supplemental Designation of Record on September 8, 2008, a copy of which is appended hereto as Exhibit 1.

D. ARGUMENT

The Order of Restitution awarded restitution for losses which were related to the crime of Theft in the Third Degree occurring between January 4, 2007, and March 10, 2007.

In another case, State v. Wilson, 100 Wash.App. 44, 46, 995 P.2d 1260 (2000), which involved the similar situation of an employee

suspected of theft by her employer, the Court of Appeals upheld the awarding of an employer's investigative expenses arising as a result of the Defendant's criminal activity. Wilson pleaded guilty to one count of first degree theft, having admitted to embezzling just over \$1500 from her employer, Jet Set Travel. Id. The employer sought restitution in the amount of \$5,266 on various investigations necessary to reconstruct company records and establish its losses. Wilson at 46. Wilson challenged whether the investigation expenses were proper items of restitution under RCW 9.94A.142. Id. The trial court relied on State v. Johnson, 69 Wash.App. 189, 847 P.2d 960 (1993) in awarding the costs of the investigation. The Court in Johnson had found that the cost of investigating the business records was a reasonable consequence of the defendant's act of embezzlement. Wilson at 49. The Court of Appeals ultimately found that the investigative expenses incurred to prove monetary loss due to embezzlement are causally connected to the crime when they are the reasonable consequence of the defendant's criminal acts. Id at 51.

Here, as in Wilson, a substantial portion of the amount of restitution requested and awarded arose from investigation costs.

It is not necessary to remand this case to the trial judge for additional findings of fact or conclusions of law. The Court's

Memorandum decision of August 31, 2007, CP 38-39, is sufficient to demonstrate the Court's rationale in awarding investigative costs as part of its restitution order.

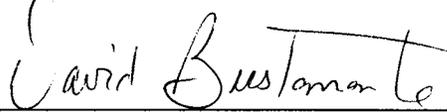
E. CONCLUSION

For the reasons stated herein, this Court should affirm the decision of the lower court.

DATED this 8th day of September , 2008.

Respectfully submitted,

DAVID J. BURKE
PACIFIC COUNTY PROSECUTING ATTORNEY

BY: 

DAVID BUSTAMANTE, WSBA #30668
Attorney for the Respondent

EXHIBIT ONE

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CLERK OF SUPERIOR COURT
PACIFIC COUNTY, WA

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PACIFIC COUNTY

STATE OF WASHINGTON)
Plaintiff,)
v.)
JAYLENE F. MILLNER,)
Defendant.)

NO. **07-1-00059-1**
COURT OF APPEALS
No. 36842-1-II
STATE'S SUPPLEMENTAL
DESIGNATION OF
RECORD

TO: Clerk of Superior Court
County of Pacific

Please prepare and transmit to the Court of Appeals, Division II, the following clerk's papers and exhibits. This request is made pursuant to RAP 9.6(a).

<u>Name of document</u>	<u>Date Filed</u>	<u>Sub #</u>
1. Defendant's Memorandum on restitution	07/18/2007	57
2. Restitution Estimate & Victim Impact Statement	07/19/07	59
3. State's response to Defendant's Memorandum	07/20/07	62
4. Court's Memorandum on Restitution	08/31/07	66

Dated this 8th day of September, 2008.

DAVID J. BURKE, Prosecuting Attorney

By David Bustamante
DAVID BUSTAMANTE, WSBA #30668
Senior Deputy Prosecuting Attorney

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY [Signature]
DEPUTY

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

STATE OF WASHINGTON,)	
)	NO 36842-1-II
Respondent.)	
)	AFFIDAVIT OF MAILING
vs.)	
)	
JAYLENE MILLNER,)	
)	
Petitioner.)	
_____)	

STATE OF WASHINGTON)
) ss.
COUNTY OF PACIFIC)

DAVID BUSTAMANTE, being first duly sworn on oath,
deposes and says:

I am a Chief Deputy Prosecuting Attorney for Pacific County,
Washington.

That on Sept. 8, 2008, I mailed two copies of the
State's Brief of Respondent to Robert Quillian, Attorney for
Appellant at the following address:

Robert Quillian
Attorney at Law
2633 Parkmont Ln SW Ste A
Olympia, WA 98502

Pacific County Prosecuting Attorney
P.O. Box 45
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South Bend, WA 98586
Phone: (360) 875-9361
Fax: (360) 875-9362

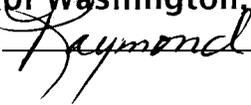
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DAVID BUSTAMANTE

SUBSCRIBED & SWORN to before me this 4th day of
September, 2008.



NOTARY PUBLIC in and for the State
of Washington, residing at:


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