

NO. 49111-7

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

MICHAEL JACKSON, JR., APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Edmund Murphy, Judge  
The Honorable Ronald Culpepper, Judge

No. 15-1-00617-9

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**BRIEF OF RESPONDENT**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the court properly award restitution when the defendant was convicted of assault and all restitution ordered was for medical expenses arising directly from the assault?

2. Are appellate costs appropriate due to recent changes to RAP 14.2 and when the defendant has been found indigent for purposes of appeal?

B. STATEMENT OF THE CASE.

1. Procedure

Michael Jackson, Jr., hereinafter defendant, was charged with two counts of second degree assault, unlawful imprisonment, unlawful possession of a firearm in the first degree, and eight counts of a violation of a protective order. CP 15-21. The first count of second degree assault had a domestic violence enhancement, the second assault count included a firearm enhancement, and all eight counts of a violation of a protective order included a domestic violence enhancement. *Id.*

Following trial, the defendant was convicted of one count of assault in the fourth degree, a lesser included offense, unlawful possession of a firearm, and all eight counts of a violation of a protective order. CP

111-134, 176; 3/16/16RP 983-988<sup>1</sup>. The defendant was acquitted on the remaining counts. The court subsequently sentenced the defendant to 41 months incarceration on the unlawful possession of a firearm conviction, 364 days incarceration on the fourth degree assault conviction, and 364 days incarceration on one count of violation of a protective order. CP 192-196; CP 179-191; 4/19/16RP 1024. All sentences were to run consecutively. *Id.* The court also sentenced the defendant to 364 days on the remaining counts, but had those sentences run concurrent to the other sentences. CP 192-196; 4/19/16RP 1025<sup>2</sup>.

A restitution hearing was held on August 30, 2016. CP 216-217. At the restitution hearing, the State asked for restitution in the amount of \$14,871.87 for medical bills resulting from the victim's injuries.

8/30/16RP 3. The defendant objected asserting that because he was convicted of only the lesser included offense of assault in the fourth degree, his crime did not cause the victim's injuries. 8/30/16RP 4-5. The defendant did concede that the restitution amount were medical bills for treatment the victim received for her injuries. 8/30/16RP. At the hearing, the victim testified that all of the medical bills provided to the court and

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<sup>1</sup> The verbatim reports of proceedings are contained in eleven volumes. Some volumes have multiple hearing or trial dates contained within. References to the VRPs will be by date of the proceeding.

<sup>2</sup> The verbatim reports of proceedings appears to have a scrivener's error that states the court sentenced the defendant to 346, not 364 days in jail to run concurrent to the other sentences. 4/19/16RP 1025. The State relies on the Judgment and Sentence where the sentence is listed as 364 days, as well as such being the statutory maximum, to determine the accurate period of confinement for the suspended sentence. It simply appears that the court reporter accidentally flipped the two digits. CP 192-196.

the damage to her leg were a direct result of the defendant's assault. 8/30/16RP 7. The victim testified that after the defendant broke her leg, he then punched her in the leg, left the room where she was recuperating, would exit the room to calm down, and then return to where she was and punch the leg again. *Id.* There was no other source of the injuries to her leg other than the defendant's assault. 8/30/16RP 11. The court concluded that the injuries were easily ascertainable to the assault on the victim and the medical bills were for injuries consistent with the assault. 8/30/16RP 13. As such, the court ordered restitution for the full amount asked, \$14,871.87. CP 220-224; 8/30/16RP 13-14.

## 2. Facts

On February 8, 2015, the defendant and Trinity Lee had been in a romantic relationship for approximately six months. 3/2/16RP 221. Within a month of beginning their relationship they were living together. 3/2/16RP 223. On February 7, 2015, Lee picked the defendant up from work around 10:15-10:30. 3/2/16RP 225. Eventually that night the defendant and Lee ended up at a bar called Pole Position in Tacoma. 3/2/16RP 227. After ordering drinks, the defendant went outside to smoke a cigarette and drink. *Id.* While the defendant was outside, Lee was approached by a man she had met earlier in the summer. *Id.* After remembering who the man was, they began to have a conversation.

3/2/16RP 227-228. While they were talking, Lee noticed the defendant watching them. 3/2/16RP 228. After finishing his cigarette, the defendant entered the bar again, stepped in between Lee and the man with whom she was speaking and said, "That's my b\*\*\*h." *Id.* Lee immediately left the bar. *Id.* Upon leaving the bar she sent a text message to the defendant telling him to take a cab home and that he had embarrassed her. *Id.* She immediately returned home. 3/2/16RP 229.

Based upon subsequent text messages with the defendant, after being home for 30-45 minutes, Lee decided to pick the defendant up at the bar. 3/2/16RP 229-230. When Lee went to start the car, she noticed the defendant was near her and shouting at her. 3/2/16RP 230. When Lee looked up at the defendant, she saw him pointing a gun at her. 3/2/16RP 231. The defendant told her to roll down the window or he was going to shoot. *Id.* When Lee rolled down the window, the defendant reached into the vehicle and punched her in the face repeatedly in an attempt to get the car door latch to open. 3/2/16RP 231-232.

Lee eventually unlocked the car door. 3/2/16RP 231. After unlocking the car door, she went to put her right leg down on the ground. *Id.* When she did so, the defendant took the door and slammed it against her leg. 3/2/16RP 231-232. The impact of the car door broke her leg. *Id.* The defendant then dragged Lee out of the car and hit her in the face,

knocking her out. 3/2/16RP 232. Lee woke up to the defendant dragging her into their house. *Id.*

In the house the defendant was ranting and raving. *Id.* At this time Lee was on the living room couch. *Id.* The defendant would come out and scream at her. *Id.* He would punch her a couple of times in the face, stomach, and her already broken leg. *Id.* He also would kick her leg. *Id.* He repeated these actions over and over again for a period of approximately two and a half hours. 3/2/16RP 232-233. Eventually Lee tried to get away by crawling to the bathroom and locking the door. 3/2/16RP 233. However, the defendant was able to force his way into the bathroom. *Id.*

After begging the defendant to take her to the hospital, he eventually did so. *Id.* On the way to St. Clare's Hospital, the defendant had a very aggressive demeanor. 3/2/16RP 242. At the hospital Dr. Alejandro Gonzales, an emergency room physician, determined through x-rays that Lee had a broken ankle. 3/10/16RP 718. The x-rays showed there were multiple fractures to her ankle. 3/10/16RP 723-724. Based upon the multiple fractures and their location on a weight-bearing bone, Dr. Gonzalez determined that the fractures were caused by significant trauma or force. 3/10/16RP 724. After being examined, Lee left the hospital and returned home. 3/2/16RP 244.

For the remainder of the day and the following two, Lee remained at their home. 3/2/16RP 245. Two days after the attack, Lee had a cousin pick her up to leave the residence. 3/2/16RP 246. Upon arriving at her cousin's residence, Lee broke down and told her cousin what happened. 3/2/16RP 247. Lee's cousin convinced her to call law enforcement. *Id.* Lee spoke with the deputies when they arrived at the residence, but did not provide them with the defendant's name as the perpetrator of the assault. 3/2/16RP 248. While interviewing Lee, the police took photographs to document her injuries. *Id.*

After speaking with the deputies, Lee returned to the shared residence. 3/2/16RP 250. Two days after speaking with law enforcement, the defendant was arrested during a welfare check on Lee. *Id.*

C. ARGUMENT.

1. THE COURT PROPERLY AWARDED RESTITUTION AS THE VICTIM'S MEDICAL BILLS AROSE DIRECTLY FROM THE DEFENDANT'S ASSAULT.

“Restitution is an integral part of sentencing, and it is the State’s obligation to establish the amount.” *State v. Dedonado*, 99 Wn. App. 251, 257, 991 P.2d 1216 (2000). Restitution *shall be ordered* whenever the offender is convicted of an offense which results in injury to any person. RCW 9.94A.753(5) (emphasis added). When restitution is authorized by statute, imposition of restitution is within the discretion of the sentencing

court and will not be disturbed on appeal absent an abuse of discretion. *State v. Soderholm*, 68 Wn. App. 363, 377, 842 P.2d 1039 (1993). If the defendant disputes facts relevant to restitution, the State must prove such at an evidentiary hearing by a preponderance of the evidence. *State v. Kinneman*, 155 Wn.2d 272, 285, 119 P.3d 350 (2005).

Restitution is appropriate only if a causal connection exists between the defendant's offense and the victim's injuries for which restitution is sought. *State v. Cawyer*, 182 Wn. App. 610, 616-617, 330 P.3d 219 (2014). A causal connection exists if "but for" the offense, the loss or damages to a victim's property would not have occurred. *State v. Kinneman*, 122 Wn. App. 850, 860, 95 P.3d 1277 (2004) *aff'd*, 155 Wn.2d 272, 119 P.3d 350 (2005). The trial court's findings should only be reversed if there is not substantial evidence to support the finding of restitution. *State v. Thomas*, 138 Wn. App. 78, 83, 155 P.3d 998 (2007). Reversal requires that the record lacks a sufficient quantity of evidence from which a rational person could conclude that the challenged finding is true. *Id.*

Restitution provides reparation to victims and helps to prevent future offenses. *State v. Mead*, 67 Wn. App. 486, 490, 836 P.2d 257 (1992). Even when the loss sustained is greater in value than what is shown in support of convictions, the restitution amount is not limited to the amount statutorily defined for the crime charged. *Id.* In *Mead*, the court found that even though the total value of the stolen items exceeded

the statutory maximum for second degree possession of stolen property, because the total amount of damages was supported on the record, a restitution award in excess of the statutory definition for the crime charged was proper. 67 Wn. App. at 491.

Here, the State was able to prove by a preponderance of the evidence the total amount of restitution ordered. The State submitted medical bills for treating the injuries sustained to Lee's leg totaled \$14,871.87. CP 220-224; 8/30/16RP 14. During the restitution hearing defense counsel even conceded that the medical bills relate to the treatment of the victim's leg. 8/30/16RP 10. On appeal, the defendant has not challenged the sufficiency of the State's evidence supporting restitution or the accuracy of the medical bills. Rather, the defendant's sole challenge is that the court exceeded its discretion in awarding restitution. *See* Brf. of App. at 7.

The court properly awarded restitution. During the restitution hearing the court heard from the victim, Lee. Lee testified that all of the medical bills provided to the court and the damage to her leg were a direct result of the defendant's assault. 8/30/16RP 7. The testimony established that the defendant, after breaking Lee's leg, had punched her in the leg, left the room where she was recuperating, would exit the room to calm down, and then return to where the victim was and punch the leg again. *Id.*

There was no other source of the injuries to her leg other than the defendant's assault. 8/30/16RP 11. This evidence is sufficient to find a causal connection between Lee's injuries and the assault which occurred against her.

Fourth-degree assault can be committed by (1) intending to inflict bodily injury on another, accompanied by the present ability to do so; (2) by intentionally creating in another person reasonable apprehension and fear of bodily injury; or by intentionally committing an unlawful touching, regardless of whether physical harm results. *State v. Davis*, 60 Wn. App. 813, 821, 808 P.2d 167 (1991). Only one of these must be done in order to commit fourth-degree assault. *Id.* Here, the testimony and conviction clearly demonstrate that Lee was assaulted by the defendant. Punching another individual shows both an intent to inflict bodily injury on another and would be an unlawful touching, two different means of committing the crime for which the defendant was convicted. Because the assault on Lee's leg resulted in injury, restitution is permissible for any medical bills related to damage to her leg caused by the assault.

The court found the medical bills to be a direct result of the injuries suffered by Lee due to the defendant's assault. 8/30/16RP 13. Similar to the concepts for restitution for stolen property, the exact

statutory language for various degrees of assault does not matter. Rather, all that matters for restitution is that an assault was committed by the defendant against the victim, and the defendant was convicted for such an assault. Restitution is appropriate to compensate the victim for the costs of injuries suffered due to the assault. Here, the court noted that regardless of if the assault was second degree assault or fourth degree assault, the state was able to prove the injuries were “clearly ascertainabl[y] related to the assault.” 8/30/16RP 14. As discussed above, it is clear that from the mere act of punching the defendant in the leg, an assault did occur. Because the victim suffered injuries as a result of the assault, this Court should affirm the restitution order.

2. IT IS UNLIKELY THE STATE WILL SEEK APPELLATE COSTS.

Due to recent changes in RAP 14.2 and that the defendant was found to be indigent for purposes of appeal (*See* CP 211-212), it is unlikely the State will ask for appellate costs in this matter.

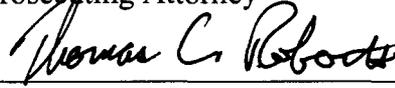
D. CONCLUSION.

Restitution is appropriate when the injuries to the victim are causally connected to the crime for which the defendant was convicted. Because the defendant was convicted of assaulting the victim, the court

properly ordered restitution for the victim's medical bills arising out of the assault. As such, the Court should affirm the restitution order.

DATED: March 14, 2017.

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Nathaniel Block  
Rule 9 Legal Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

3.14.17 Therese Kar  
Date Signature

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