

**FILED**  
**Mar 31, 2014**  
Court of Appeals  
Division III  
State of Washington

NO. 32167-3-III

COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION III

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**STATE OF WASHINGTON,**

Plaintiff/Respondent,

V.

**SANTIAGO VASQUEZ,**

Defendant/Appellant.

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**APPELLANT'S BRIEF**

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## **ASSIGNMENT OF ERROR**

1. The State failed to prove, by a preponderance of the evidence, the correct amount of restitution.

## **ISSUE RELATING TO ASSIGNMENT OF ERROR**

1. Is documentation from the Crime Victim's Unit of the Department of Social and Health Services sufficient, without more, to prove the correct amount of restitution due and owing by a criminal defendant?

## **STATEMENT OF CASE**

An Information was filed on October 19, 2011 charging Santiago Vasquez with one (1) count of second degree assault and escape from community custody. (CP 1)

An initial restitution report was filed with the Court on April 5, 2012. (CP 4)

On April 4, 2013 Mr. Vasquez submitted a detainer demand. (CP 10)

An Amended Information was filed on August 26, 2013 charging Mr. Vasquez with one (1) count of riot and escape from community custody. (CP 14)

Mr. Vasquez entered a guilty plea on August 26, 2013. The guilty plea contained the following language under paragraph 6(b):

The prosecuting attorney will make the following recommendation to the judge: **THREE MONTHS** incarceration to run concurrently with Yakima County charges which the defendant is currently serving through the Department of Corrections; agree to pay restitution to Crime Victims Compensation in the amount of \$1,284.22. No contact with Elias Ibarra.

(CP 16)

Judgment and Sentence was entered on September 4, 2013. The restitution amount of \$1,284.22 was mentioned at the hearing. No restitution was included in the Judgment and Sentence. (CP 25; RP 14, ll.24-25; RP 15, ll. 1-3)

A motion for restitution was filed on September 6, 2013. It requested \$1,284.22. (CP 42)

A restitution hearing was not held until December 3, 2013. Defense counsel objected to the adequacy of the underlying documentation to support the amount of restitution requested. (CP 42; RP 21, l. 23 to RP 22, l. 1; RP 28, ll. 5-9; RP 29, ll. 5-16)

The Court entered a restitution order in the amount of \$1,284.22.

(CP 50)

Mr. Vasquez filed his Notice of Appeal on December 31, 2013.

(CP 52)

### **SUMMARY OF ARGUMENT**

The restitution ordered on December 3, 2013 was not established by a preponderance of the evidence. The matter needs to be remanded to the sentencing court for a hearing to determine the correct amount of restitution. (CP 50)

### **ARGUMENT**

RCW 9.94A.753 provides, in part:

This section applies to offenses committed after July 1, 1985.

...

(7) Regardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. ...

The trial court entered a restitution order in the amount of \$1,284.22 based upon documentation submitted by the Department of Social and Health Services, Crime Victim's Unit.

As held in *State v. Hahn*, 100 Wn. App. 391, 399-400, 996 P.2d 1125 (2000):

Although the record ... contains evidence of the victims' substantial injuries ... there is no statement linking the charged amounts to any particular symptoms or treatments. ... [T]he medical reports merely state the name of the service provider, the service date, date paid, billed amount and amount paid. Even if we infer a connection from the fact that nearly all of the individually listed services were provided within five days of the crime, ... [t]his circumstantial evidence, alone, is insufficient to allow the sentencing court to estimate losses by a preponderance of the evidence without speculation or conjecture.

The *Hahn* Court remanded the matter to the trial court for an additional evidentiary hearing.

## CONCLUSION

There was insufficient evidence for entry of the order of restitution on December 3, 2013. The case needs to be remanded to the trial court for

an evidentiary hearing to determine whether or not the restitution order arose from the offense(s) to which Mr. Vasquez pled guilty.

DATED this 21<sup>st</sup> day of March, 2014.

Respectfully submitted,

s/ Dennis W. Morgan

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**COURT OF APPEALS**

**DIVISION III**

**STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	
	)	GRANT COUNTY
Plaintiff,	)	NO.11 1 00559 6
Respondent,	)	
	)	<b>CERTIFICATE OF SERVICE</b>
v.	)	
	)	
SANTIAGO VASQUEZ,	)	
	)	
Defendant,	)	
Appellant.	)	
	)	

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I certify under penalty of perjury under the laws of the State of Washington that on this 21<sup>st</sup> day of March, 2014, I caused a true and correct copy of the *APPELLANT'S BRIEF* to be served on:

COURT OF APPEALS, DIVISION III  
Attn: Renee Townsley, Clerk  
500 N Cedar St  
Spokane, WA 99201

E-FILE

GRANT COUNTY PROSECUTOR'S OFFICE  
Attn: Ryan Vaalas  
[rvaalas@co.grant.wa.us](mailto:rvaalas@co.grant.wa.us)

E-FILE (per-agreed)

CERTIFICATE OF SERVICE

SANTIAGO VASQUEZ#722269  
Airway Heights Correction Center  
PO Box 2049, RA50  
Airway Heights, Washington 99001

U.S. MAIL

s/ Dennis W. Morgan

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