

**FILED**

AUG 20, 2015

Court of Appeals  
Division III  
State of Washington

32861-9-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JESSE JOHNSON, APPELLANT

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APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

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APPELLANT'S BRIEF

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A. ASSIGNMENTS OF ERROR

1. The court erred in including the vehicle driver's medical expenses in the amount of restitution.

B. ISSUES

1. The State presented evidence the driver of the truck received medical treatment on dates shortly after the passenger was assaulted. Was the evidence sufficient to support including the driver's medical expenses in the restitution award?

C. STATEMENT OF THE CASE

Mr. Johnson pleaded guilty to vehicular assault, attempting to elude a police vehicle, possession of a stolen motor vehicle, and failure to remain at the scene of an accident. (CP 3-4, 18) The charges arose from an incident on October 10, 2012, in which Mr. Johnson crashed a stolen vehicle into a truck driven by William Clary injuring Mr. Clary's passenger, Tiffany Otto. (CP 24) As part of a plea agreement, Mr. Johnson agreed to pay an unspecified amount in restitution. (CP 25)

The State sought restitution for Mr. Clary's medical damages, damages to the truck and Ms. Otto's medical expenses. (CP 2) The State

presented evidence showing Mr. Clary's wife had an insurance policy from Traveler's Insurance that covered medical and collision costs for Mr. Clary. (CP 31) The insurance company provided an affidavit stating that, according to the affidavit of probable cause, Mr. Clary suffered physical injuries and his vehicle was severely damaged as a result of the collision. (CP 31) The insurance company sought restitution of \$4,604.28 for medical expenses and \$35,300.54 for damages to the vehicle. (CP 35)

The medical expenses included payments of \$145.66 to Inland Imaging on October 29, \$3,694.10 to Holy Family Hospital on October 30, \$681 to Emergency Physician Services on December 19, and \$83.52 to Inland Imaging on December 20, 2012. (CP 37-38)

The State provided evidence that the total cost of vehicle repairs, including sales tax, would be \$21,021.59. (CP 44) The State also presented evidence that the market value of the vehicle was \$34,699.90, including sales tax of \$2,835.90. (CP 51)

#### D. ARGUMENT

##### 1. THE STATE FAILED TO PROVE A CAUSAL CONNECTION BETWEEN MR. CLARY'S MEDICAL EXPENSES AND MR. JOHNSON'S OFFENSES.

The authority to impose restitution is entirely statutory. *State v. Tobin*, 161 Wn.2d 517, 523, 166 P.3d 1167 (2007). Under RCW 9.94A.753, the court must order restitution “whenever the offender is convicted of an offense which results in . . . damage to or loss of property.” RCW 9.94A.753(5). Restitution “is allowed only for losses that are ‘causally connected’ to the crimes charged.” *Tobin*, 161 Wn.2d at 524. That is, “but for” the defendant’s criminal acts, the damages for which the State seeks restitution would not have occurred. *Tobin*, 161 Wn.2d at 524, 527.

A sentencing court’s order of restitution is reviewed for abuse of discretion. *Tobin*, 161 Wn.2d at 523. A court abuses its discretion when the restitution decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State v. Enstone*, 137 Wn.2d 675, 679–80, 974 P.2d 828 (1999). Application of an incorrect legal analysis or other error of law can constitute abuse of discretion. *Tobin*, 161 Wn.2d at 523.

In determining whether the requisite causal connection exists, the court considers those facts admitted in the plea agreement or admitted, acknowledged, or proved at the restitution hearing. *State v. Dedonado*, 99 Wn. App. 251, 256, 991 P.2d 1216 (2000). “Absent agreement from the defendant as to the amount of restitution, the State must prove the amount by a preponderance of the evidence.” *Tobin*, 161 Wn.2d at 524. “A causal connection is not established simply because a victim or insurer submits proof of expenditures[.]” *State v. Dedonado*, 99 Wn. App. 251, 991 P.2d 1216 (2000) (per curiam). “[A] summary of medical treatment that ‘does not indicate why medical services were provided[ ] fails to establish the required causal connection between the victim’s medical expenses and the crime committed.’ ” *State v. Bunner*, 86 Wn. App. 158, 160, 936 P.2d 419 (1997).

The State’s documentation merely establishes that Mr. Clary incurred medical expenses for unspecified services on unspecified dates, for which the insurance company paid the health care providers. No evidence indicates why the services were provided or otherwise establishes a causal connection between the collision caused by Mr. Johnson and the medical expenses incurred by Mr. Clary. The court erred in ordering restitution for such expenses.

E. CONCLUSION

The amount of restitution in this matter should be reduced by the amount of \$4,604.28 sought by the insurance company for Mr. Clary's medical expenses.

Dated this 20th day of August, 2015.

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Attorney for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 32861-9-III
	)	
vs.	)	CERTIFICATE
	)	OF MAILING
JESSE JOHNSON,	)	
	)	
Appellant.	)	

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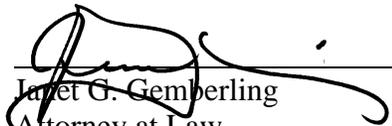
I certify under penalty of perjury under the laws of the State of Washington that on August 20, 2015, I served a copy of the Appellant's Brief in this matter by email on the following party, receipt confirmed, pursuant to the parties' agreement:

Brian O'Brien  
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I certify under penalty of perjury under the laws of the State of Washington that on August 20, 2015, I mailed a copy of the Appellant's Brief in this matter to:

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Signed at Spokane, Washington on August 20, 2015.

  
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