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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 S. JOHNSON, APPELLANT

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. APPELLANT'S ASSIGNMENT OF ERROR

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

II. ISSUES PRESENTED

1. Did the trial court abuse its discretion when it ordered the defendant pay restitution to Travelers Insurance Company for medical expenses of its insured, William Clary, who suffered medical damages from a collision caused by the defendant?

2. Did the State provide sufficient documentation to establish a causal connection between the medical damages suffered by victim Mr. Clary after the collision and Travelers Insurance?

III. STATEMENT OF THE CASE

On October 1, 2012, the defendant eluded a Spokane County Sheriff's Deputy. CP 118-119. His vehicle reached speeds of 80 mph in a 45 mph zone on Elk-Chattaroy Road in north Spokane County, passed three cars, and, ultimately, ran a stop sign at 70 mph colliding with a Dodge pickup driven by William Clary. CP 118. Seconds before the collision, Mr. Clary observed the defendant's vehicle at a high rate of speed. CP 119. After being struck, the victim's pickup was rendered a total loss. CP 119.

Tiffany Otto, a passenger in the defendant's vehicle, suffered a fractured left leg as a result of the crash. CP 118-119.

Ultimately, the defendant pleaded guilty on March 31, 2014, in superior court to reduced charges of vehicular assault, possession of a stolen vehicle, attempt to elude, and failure to remain at the scene of an accident – attended vehicle, to potentially avoid being sentenced as a persistent offender. CP 120-129, 130-132. The defendant stipulated and agreed to a recommended exceptional sentence upward of 180 months based upon the plea bargain. CP 123. The defendant was sentenced to 180 months of incarceration. CP 8. The defendant agreed to pay restitution as part of the plea agreement. CP 123 §(g).

On September 25, 2014, a restitution hearing was held before the Honorable Linda G. Tompkins¹, regarding the medical damages suffered by Mr. Clary. CP 83. Ultimately, the court ordered the defendant pay restitution to Mr. Clary in the amount of \$100.00, to Travelers Home and Marine Insurance company (\$34,779.15 for loss of the pickup and \$4,604.28 for medical damages), and to First Recovery Group (\$2,053.93 for Ms. Otto's medical damages). CP 84. After reviewing the

¹ The report of proceedings for the September 25, 2015, restitution hearing incorrectly states the proceeding was heard on September 25, 2015, by Judge Kathleen M. O'Conner. The trial minutes (CP 83) and Statement of Arrangements correctly indicate it was September 15, 2014, before Judge Linda G. Tompkins.

documentation provided by the insurance companies with counsel, the court stated:

Then [insurance companies] go through with their microscope and they do that analysis. I'm satisfied the standard of proof is such that by identifying the claim numbers and the payees, the court has sufficient evidence to establish the relationship between the accident. The date of the transactions, again, October 24th, 25th, 29th, 30th, all in 2012. That there is a preponderance of the evidence that those are related to the damages, personal injury damages suffered by the victim. So I will sustain that claim as identified in the restitution document for those reasons.

RP 7.

IV. ARGUMENT

A. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT ORDERED THE DEFENDANT PAY RESTITUTION TO TRAVELERS INSURANCE FOR MEDICAL TREATMENT AND DAMAGES INCURRED BY VICTIM WILLIAM CLARY.

The defendant complains on appeal, after agreeing to pay restitution as a part of a plea bargain, the State's restitution documentation was insufficient to establish a causal connection between the collision caused by the defendant and the medical expenses incurred by the victim Mr. Clary.

Standard of review.

An appellate court generally reviews the trial court's imposition of restitution for an abuse of discretion. *State v. Enstone*, 137 Wn.2d 675, 679, 974 P.2d 828 (1999).

The State must prove a causal connection between the victim's expenses and the crime by a preponderance of the evidence. *State v. Kinneman*, 155 Wn.2d 272, 285, 119 P.3d 350 (2005).

The sentencing court's authority to order restitution is derived entirely from statute. *State v. Smith*, 119 Wn.2d 385, 389, 831 P.2d 1082 (1992). RCW 9.94A.753 authorizes the sentencing court to impose restitution against a criminal defendant. RCW 9.94A.753(3)² places limits on this authority, stating in part:

[R]estitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury.... The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime.

“‘Easily ascertainable’ damages are those tangible damages which are proved by sufficient evidence to exist. Precise determination is not required.” *State v. Bush*, 34 Wn. App. 121, 123, 659 P.2d 1127 (1983). Evidence of damages is sufficient if it provides the trial court with a reasonable basis for estimating losses and requires no speculation or conjecture. *State v. Hahn*, 100 Wash. App. 391, 399, 996 P.2d 1125, 1130

² The Legislature has granted broad power to the trial court to order restitution. *Enstone*, 137 Wn.2d at 679; *State v. Smith*, 119 Wn.2d 385, 389, 831 P.2d 1082 (1992).

(2000). This determination does not require specific accuracy. *State v. Fleming*, 75 Wn. App. 270, 274, 877 P.2d 243 (1994).

Restitution is appropriate if a causal connection exists between the defendant's offense and the victim's injuries for which restitution is sought. *State v. Vinyard*, 50 Wn. App. 888, 893, 751 P.2d 339 (1988). A causal connection exists if “but for” the offense, the loss or damages to a victim's property would not have occurred. *State v. Tobin*, 161 Wn.2d 517, 519, 524–25, 166 P.3d 1167 (2007).

The sentencing court may award restitution only to victims. *State v. Kinneman*, 122 Wn. App. 850, 866, 95 P.3d 1277 (2004). A victim is “any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.” RCW 9.94A.030(53). While restitution is limited to victims, the definition of “victim” is not limited to the offense's *immediate* victim. *Tobin*, 161 Wn.2d at 524; *Kinneman*, 122 Wn. App. at 866. An insurance company can be a victim for purposes of restitution. *State v. Ewing*, 102 Wn. App. 349, 354, 7 P.3d 835 (2000) (“insurance companies are damaged when they are required to pay claims because of crimes” and “[the court] see[s] no reason that the of crime should be borne by the large pool of law-abiding policy holders whose premiums will be the source of payments to victims.” *Ewing*, 102 Wn. App. at 356-57.

A causal connection is not established simply because a victim or insurer submits proof of expenditures. *State v. Dennis*, 101 Wn. App. 223, 227, 6 P.3d 1173 (2000). 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)

In *State v. Dennis, supra*, the defendant was convicted of assaulting two police officers. The court ordered him to pay restitution for the cost of their treatment at a hospital. The defendant objected on the basis of lack of evidence that his offense caused their injuries.

The evidence included a letter from the victim/witness unit and the probable cause affidavit, stating the officers were treated at a particular hospital. The letter from the victims unit stated the amount paid on each officer's claim. For one officer, the State also provided a letter from the Seattle Worker's Compensation Unit claims specialist noting the date of the injury, which was the same day the assault occurred, and attaching a report of payment reflecting an unpaid balance for the amount paid to the hospital on one officer's behalf. *Dennis*, 101 Wn. App. at 228. Division One of this Court found the State had established the required causal connection only with respect to that officer. The evidence was insufficient

as to the other officer because it established only that he was treated for injuries at the hospital on an unknown date. *Dennis*, 101 Wn. App. at 228.

In *Bunner*, where the defendant's crime was second degree rape of a child, the sole evidence presented was a medical recovery report by the Department of Social and Health Services listing medical services charged and amounts the State had paid, which included more than \$10,000 to the hospital. The State conceded, and Division One of this court agreed, that this document alone was insufficient to establish a causal connection between the crime and the victim's damages. The State attempted to supply the missing link by reference to a presentence investigation report wherein a caseworker stated that the victim's hospitalization was entirely due to the defendant's sexual contact with her. The court of appeals rejected this argument because the presentence report was not mentioned or included in the record below. *Bunner*, 86 Wn. App. at 160-61.

B. THE STATE PROVIDED SUFFICIENT DOCUMENTATION TO ESTABLISH A CAUSAL CONNECTION BETWEEN THE MEDICAL DAMAGES SUFFERED BY VICTIM MR. CLARY AFTER THE COLLISION AND TRAVELERS INSURANCE.

Here, unlike in *Dennis* and *Bunner*, in addition to the defendant's agreement to pay restitution, the State provided uncontroverted documents that included dates, medical providers, billed amounts, amounts paid, and a brief description of the medical services provided to Mr. Clary, in

addition to certificates of the victims connecting the medical expenses to the collision. CP 30-79.

The Travelers Insurance's documentation states the date of loss for Mr. Clary's medical expenses was the day of the crime, October 1, 2012, occurring in Chatteroy, Washington. CP 35-79. It also outlines the payment details for Mr. Clary including the monetary amount for the loss of his vehicle, rental vehicle expenses (Enterprise), x-rays (Inland Imaging), emergency medical treatment (Emergency Physician Services of Spokane), and medical treatment (Holy Family Hospital).

The documentation also includes a certificate from a Travelers Insurance representative stating Mr. Clary suffered physical injuries when his vehicle was struck by the defendant on October 1, 2012, and that the insurance company paid his medical and collision costs resulting from that collision. CP 31-32. The documentation also includes a certificate from Mr. Clary stating Travelers Insurance managed his claim for damages as a direct result of the collision on October 1, 2012. CP 30.

This additional evidence including the probable cause affidavit provides sufficient proof to establish that the collision caused by the defendant led to the necessity for the medical services paid by Travelers Insurance for expenses incurred by Mr. Clary, which was not unexpected

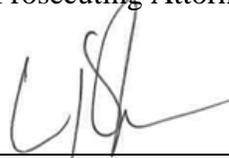
for a motorist being struck by a car travelling at 70 miles per hour at impact.

V. CONCLUSION

The trial court did not abuse its discretion and this court should affirm the order of restitution regarding Mr. Clary's medical damages.

Dated this 16 day of November, 2015.

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Attorney for Respondent

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
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Respondent

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JESSE SWEDE JOHNSON

Appellant.

NO. 32861-9-III

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on November 16, 2015, I e-mailed a copy of the Brief of Respondent to defendant's attorney Janet Gemberling, at jan@gemberlaw.com.

Dated this 16 day of November 2015.

Spokane, WA

(Place)

Kim Cornelius

(Signature)