

66600-2

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No. 66600-21

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

STATE OF WASHINGTON,

Respondent,

v.

PAUL A. DROPELMAN,

Appellant.

2011 JUN -9 PM 3:36
COURT OF APPEALS
CLERK

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

The Honorable Hollis R. Hill
The Honorable Bruce E. Heller

BRIEF OF APPELLANT

THOMAS M. KUMMEROW
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

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STATUTES

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A. ASSIGNMENT OF ERROR

The trial court exceeded its statutory authority when it ordered restitution in an amount that was not supported by substantial evidence.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

The trial court has statutory authority to impose restitution where the evidence provides a reasonable basis for estimating losses and requires no speculation or conjecture. Restitution may not be based solely on a list provided by the victim of expenses paid without more. Here, the insurance companies merely provided a list of expenditures without any relation to injuries suffered. Is Mr. Droppelman entitled to reversal of the order of restitution?

C. STATEMENT OF THE CASE

Paul Droppelman pleaded guilty to one count of vehicular assault. CP 8-18. As part of his plea, Mr. Droppelman agreed to pay restitution to the two victims injured in the vehicle accident, the amount to be determined at a subsequent restitution hearing. CP 17; 5/12/2010RP 7; 6/4/2010RP 7.

At the restitution hearing, the court heard no testimony; the evidence consisting solely of itemized lists of charges from Regence BlueShield and Allstate Insurance. CP 52-85. The

request for restitution was split between victim Cory Brandt, covered by Allstate Insurance, and Rhonda Brandt, covered by Regence BlueShield. CP 52-85.

Mr. Droppelman objected to the evidence presented, insisting the itemized lists did not establish a causal connection to the injuries suffered. CP 46-51; 12/9/2010RP 4-8. The trial court agreed with Mr. Droppelman on several items, but, relying solely on the fact the bills listed the date of loss as the date of the accident, the court imposed restitution. CP 40-41; 12/9/2010RP 5-6.

The court awarded the full amount requested and paid by Allstate Insurance, but declined to accept several of the Regence BlueShield bills, awarding less than the amount requested. 12/9/2010RP 5-6; 12/17/2010RP 3.

D. ARGUMENT

THE TRIAL COURT EXCEEDED ITS STAUTORY AUTHORITY IN SETTING AN AMOUNT OF RESTITUTION WHICH WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

1. The amount of restitution must be causally related to the amount of restitution and the offense committed. The trial court's authority to order restitution is purely statutory. *State v. Smith*, 119 Wn.2d 385, 389, 831 P.2d 1082 (1992). Under RCW 9.94A.753(5), the trial court "shall" order restitution whenever an offender is convicted of an offense resulting in injury to another. RCW 9.94A.753(3) sets forth in relevant part that restitution by court order after a criminal conviction "shall be based on easily ascertainable damages for ... actual expenses incurred for treatment for injury to persons."

This Court will reverse an order of restitution if the trial court abused its discretion. *State v. Vinyard*, 50 Wn.App. 888, 891, 751 P.2d 339 (1988). A trial court abuses its discretion when it orders restitution for a loss that is not causally related to the defendant's crime. *Id.* The application of an incorrect legal analysis or other error of law by the trial court also constitutes an abuse of discretion. *State v. Tobin*, 161 Wn.2d 517, 523, 166 P.3d 1167 (2007).

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. Fleming*, 75 Wn.App. 270, 877 P.2d 243 (1994); *State v. Pollard*, 66 Wn.App. 779, 834 P.2d 51, review denied, 120 Wn.2d 1015 (1992). The trial court may determine the amount of restitution “by either (1) the defendant’s admission or acknowledgment or (2) a preponderance of the evidence.” *State v. Ryan*, 78 Wn.App. 758, 761, 899 P.2d 825 (1995), citing *State v. Tindal*, 50 Wn.App. 401, 403, 748 P.2d 695 (1988).

2. A laundry list of medical expenses paid is not sufficient to support an award of restitution. “A causal connection is not established simply because a victim or insurer submits proof of expenditures for replacing property stolen or damaged by the person convicted.” *State v. Dedonado*, 99 Wn.App. 251, 256, 991 P.2d 1216 (2000); *State v. Woods*, 90 Wn.App. 904, 907, 953 P.2d 834, review denied, 136 Wn.2d 1021 (1998). “A causal connection exists when, ‘but for’ the offense committed, the loss or damages would not have occurred.” *State v. Enstone*, 89 Wn.App. 882, 886, 951 P.2d 309 (1998), *aff’d*, 137 Wn.2d 675, 974 P.2d 828 (1999), citing *State v. Hunotte*, 69 Wn.App. 670, 676, 851 P.2d 694 (1993).

In *Dedonado*, the defendant pleaded guilty to taking a motor vehicle. At the restitution hearing, the State presented a form titled "Property Restitution Estimate" from the victim. The form was signed under penalty of perjury, and stated that the property damage included a glass window for 753.41 and an irreparable Adret Signal Generator that was replaced with an HP ESG 3000A for 10,968.60. Mr. Dedonado objected to the requested amount of restitution. The State claimed that the property damage estimate constituted sufficient evidence because it was signed by the victim and indicated that the damage to the generator was irreparable, and because "there hasn't been any showing from the defense that would challenge that in any way." This Court reversed the order of restitution:

As pointed out by Dedonado at the hearing in the instant case, it is not possible to determine from the documentation provided by the State whether the HP generator was a proper replacement of the Adret generator. Similarly, it is not possible to determine from the documentation provided by the State whether all of the repairs to the van were related to the damaged ignition switch. The State did not meet its burden of proving the restitution amounts here by a preponderance of the evidence because the documentation it provided did not establish a causal connection between Dedonado's actions and the damages.

Id. at 257.

Similarly, in *State v. Bunner*, the trial court relied on a DSHS medical recovery report that itemized amounts the State had paid for the victim's treatment but did not indicate why medical services were provided. 86 Wn.App. 158, 160, 936 P.2d 419 (1997). This Court reasoned that the only purported link was the inference that DSHS would not have paid the bill if the services were not related to the crime, and this was insufficient. *Bunner*, 86 Wn.App. at 162.

Although the record here contains evidence of the victims' substantial injuries, as in *Bunner*, there is no statement linking the charged amounts to any particular symptoms or treatments. The medical reports merely identify numerous medical services rendered either on the date of the crime or shortly thereafter. This circumstantial evidence, alone, is insufficient to allow the sentencing court to estimate losses by a preponderance of the evidence without speculation or conjecture. *Bunner*, 86 Wn.App. at 162. See also *State v. Hahn*, 100 Wn.App. 391, 399-400, 996 P.2d 1125 (2000) (a summary report itemizing amounts DSHS paid to various health care providers was insufficient to establish a causal link to the crime, and as in *Bunner*, there was "no statement linking the charged amounts to any particular symptoms or treatments."

Rather, the report only listed the service provider, dates, and dollar amounts).

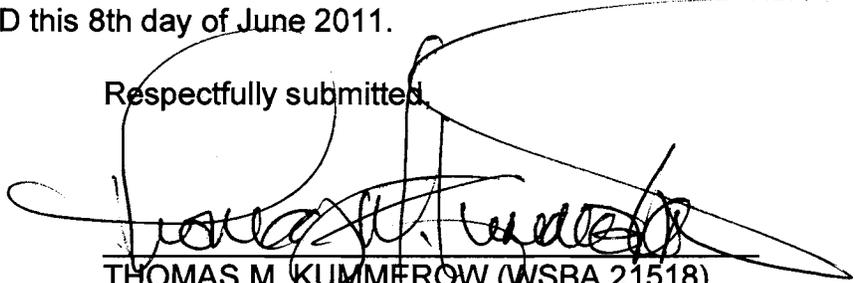
3. This Court should vacate the order of restitution. The remedy for the State's failure to prove the amount of restitution is to vacate the restitution order and remand to the sentencing court so that it can fix the proper amount of restitution. *Dedonado*, 99 Wn.App. at 257-258.

E. CONCLUSION

For the reasons stated, Mr. Droppelman requests this Court vacate the award of restitution and remand for the trial court to impose the correct amount of restitution.

DATED this 8th day of June 2011.

Respectfully submitted,



THOMAS M. KUMMEROW (WSBA 21518)
tom@washapp.org
Washington Appellate Project – 90152
Attorneys for Appellant

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DIVISION I

STATE OF WASHINGTON,)	
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PAUL DROPPELMAN)	
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Appellant.)	

DECLARATION OF SERVICE

I, ANN JOYCE, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

1. THAT ON THE 9 DAY OF JUNE, 2011, A COPY OF **APPELLANT'S OPENING BRIEF** WAS SERVED ON THE PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL TO THE ADDRESSES INDICATED:

King County Prosecuting Attorney
Appellate Division
W554 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Paul Droppelman
6704 Fawcett Avenue
Tacoma, WA 98408

SIGNED IN SEATTLE, WASHINGTON THIS 9TH DAY OF JUNE, 2011

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