

67718-7

NO. 67718-7

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

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL MARKNSEN,

Appellant.

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

BRIEF OF APPELLANT

LILA J. SILVERSTEIN
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711
lila@washapp.org

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 FEB 22 PM 4:51

TABLE OF CONTENTS

A. ASSIGNMENTS OF ERROR..... 1

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR..... 1

C. STATEMENT OF THE CASE..... 2

D. ARGUMENT 5

 1. The restitution order should be reversed because the State did not prove the losses were caused by the crimes to which Mr. Marknsen pled guilty 5

 a. The sentencing court may impose restitution only for loss caused by the crime of conviction, not for loss caused by the defendant’s general scheme or other alleged crimes. 5

 b. The sentencing court erred in imposing restitution for losses the State showed were caused by the abusive relationship between Mr. Marknsen and Ms. Theotig, rather than by the financial crimes to which Mr. Marknsen pled guilty..... 6

 2. The sentencing court erred in imposing over \$77,000 in attorney’s fees because Mr. Marknsen is indigent and lacks the ability to pay 13

E. CONCLUSION..... 15

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

Nordstrom Credit, Inc. v. Dep't of Revenue, 120 Wn.2d 935, 845 P.2d 1331 (1993)..... 13

State v. Brockob, 159 Wn.2d 311, 150 P.3d 59 (2006) 13

State v. Curry, 118 Wn.2d 911, 829 P.2d 166 (1992) 13

State v. Kinneman, 155 Wn.2d 272, 119 P.3d 350 (2005) 10

Washington Court of Appeals Decisions

State v. Acevedo, 159 Wn. App. 221, 248 P.3d 526 (2011)..... 5, 6

State v. Dauenhauer, 103 Wn. App. 373, 12 P.3d 661 (2000) 11

State v. Dennis, 101 Wn. App. 223, 6 P.3d 1173 (2000)..... 6, 12

State v. Hahn, 100 Wn. App. 391, 996 P.2d 1125 (2000) 8

State v. Oakley, 158 Wn. App. 544, 242 P.3d 886 (2010)..... 5, 9, 11

State v. Osborne, 140 Wn. App. 38, 163 P.3d 799 (2007) 4

State v. Vinyard, 50 Wn. App. 888, 751 P.2d 339 (1988)..... 11

State v. Woods, 90 Wn. App. 904, 953 P.2d 834 (1998)..... 5

Statutes

RCW 10.01.160..... 13

RCW 9.94A.753 5

A. ASSIGNMENTS OF ERROR

1. The sentencing court erred in ordering restitution for losses the State did not prove were causally connected to the crimes to which Mr. Marknsen pled guilty.

2. The sentencing court erred in ordering Mr. Marknsen to pay over \$77,000 in attorney's fees because Mr. Marknsen does not have the ability to pay.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. A sentencing court may impose restitution only for loss or damage caused by the crime of conviction, not by a defendant's "general scheme" or acts related to the crimes of conviction. Mr. Marknsen pled guilty to four financial crimes and one of the victims was an ex-girlfriend with whom he apparently had an abusive relationship. Did the sentencing court err in imposing restitution for the girlfriend's lost wages, civil attorney's fees, and medical bills, where she took 15 weeks off of work three years after the crimes at issue, and where the State presented evidence that her time off, medical costs, and attorney's fees were due primarily to alleged stalking, assaults, and rape, rather than the financial crimes to which he pled guilty in this case?

2. Courts may not impose costs on defendants unless they have a present or future ability to pay. Here, the court ordered Mr. Marknsen to pay over \$77,000 to the King County Office of Public Defense for his court-appointed counsel, even though the evidence showed Mr. Marknsen was indigent at the time of sentencing and is still indigent now. Although the judgment and sentence included boilerplate language regarding ability to pay, the court did not make an individualized finding that Mr. Marknsen had the present or future ability to pay. Did the sentencing court err in ordering Mr. Marknsen to pay the costs of court-appointed counsel?

C. STATEMENT OF THE CASE

On December 20, 2010, Michael Marknsen pled guilty to two counts of first-degree theft, one count of first-degree attempted theft, and one count of obtaining a signature under duress for incidents occurring between July and September of 2007. CP 27, 64. One of the victims was Mr. Marknsen's then-girlfriend, Kirsten Theotig. According to Ms. Theotig, in addition to committing these crimes, Mr. Marknsen "was both physically and emotionally abusive" to her during their relationship. CP 42. Indeed, in separate cases he had been charged with and/or convicted of "a handful" of other crimes, including witness tampering and violation

of a no-contact order. 8/15/11 RP 16-17. Ms. Theotig also believed Mr. Marknsen stalked her and raped her roommate. Appendix B at 2.¹

At a contested hearing, the State sought a total of \$62,611.26 in restitution for the crimes to which Mr. Marknsen pled guilty in this case. Of that, \$21,129.42 was to go to the FDIC for losses it incurred as a result of the crimes and \$2,520 was to go to Ms. Theotig for bankruptcy fees she incurred as a result of the crimes. Appendix A.

However, \$24,300 was to go to Ms. Theotig for wages she lost when she took 15 weeks off of work from November 7, 2010 through February 19, 2011. Another \$224.18 was to go to Ms. Theotig and \$1,467.66 to Anthem Blue Cross for prescription and counseling costs incurred from 2008 through the beginning of 2011. An additional \$12,970 was to go to Ms. Theotig to reimburse her for fees she had paid an attorney to obtain a restraining order and to investigate the possibility of filing a civil lawsuit against Mr. Marknsen. Appendix A; 8/15/11 RP 1-14.

¹ Appendices A and B are the restitution packets the State presented to the sentencing court but which were not filed. The prosecutor's office and Mr. Marknsen's trial attorney provided them to the Washington Appellate Project. We have filed them in the trial court and filed a supplemental designation of clerk's papers.

Mr. Marknsen argued these costs were not causally related to the crimes to which he pled, and stated that “case law is very clear that restitution has to be awarded based on the conduct of the specific criminal case.” 8/15/11 RP 21. The prosecutor claimed there was no authority for that proposition. 8/15/11 RP 25. Mr. Marknsen’s attorney reminded the court that she had cited authority in her restitution brief, including State v. Osborne, 140 Wn. App. 38, 42, 163 P.3d 799 (2007), which states “the court cannot impose restitution based on a defendant’s ‘general scheme’ or acts ‘connected with’ the crime charged, when those acts are not part of the charge.” 8/15/11 RP 26; CP 88.

The court nevertheless imposed all of the restitution requested, stating, “it would be hard to parse out exactly the source of Ms. Theotig’s emotional upset, given that there are incidents of domestic violence, there’s incidents of fraud, and so on, that Mr. Marknsen perpetrated on her.” 8/15/11 RP 26. Also over Mr. Marknsen’s objections, the court ordered him to pay \$77,942.12 to the King County Office of Public Defense for the costs of representation.

Mr. Marknsen appealed from the order setting restitution and the order requiring recoupment of attorney’s fees. CP 97.

D. ARGUMENT

1. **The restitution order should be reversed because the State did not prove the losses were caused by the crimes to which Mr. Marknsen pled guilty.**

a. The sentencing court may impose restitution only for loss caused by the crime of conviction, not for loss caused by the defendant's general scheme or other alleged crimes.

RCW 9.94A.753(5) authorizes a sentencing court to order restitution when a person "is convicted of an offense which results in injury to any person or damage to or loss of property." The authority conferred by the statute is "limited to ordering restitution for those losses causally connected to [the defendant's] crime." State v. Acevedo, 159 Wn. App. 221, 229, 248 P.3d 526 (2011). Losses are causally connected if the victim would not have incurred the loss "but for" the crime. Id. at 230.

"The trial court cannot impose restitution based on a defendant's 'general scheme' or acts 'connected with' the crime charged, when those acts are not part of the charge." State v. Oakley, 158 Wn. App. 544, 552, 242 P.3d 886 (2010) (internal citations omitted). Rather, "restitution may be ordered only for losses incurred as a result of the precise offense charged." State v. Woods, 90 Wn. App. 904, 907, 953 P.2d 834 (1998).

The State bears the burden of proving the amount of restitution by a preponderance of the evidence. State v. Dennis, 101 Wn. App. 223, 226, 6 P.3d 1173 (2000). “A causal connection is not established simply because a victim or insurer submits proof of expenditures.” Id. at 227. The question of whether the loss is causally connected to the crime for which the defendant was convicted is a question of law that this Court reviews de novo. Acevedo, 159 Wn. App. at 229-30.

- b. The sentencing court erred in imposing restitution for losses the State showed were caused by the abusive relationship between Mr. Marknsen and Ms. Theotig, rather than by the financial crimes to which Mr. Marknsen pled guilty.

Despite the above rules, the State sought and the trial court imposed restitution for Mr. Marknsen’s alleged general scheme or acts connect with the crimes charged, rather than limiting restitution to losses incurred as a result of the precise offenses of conviction. The evidence the State presented showed Ms. Theotig took 15 weeks off of work and incurred counseling, medication, and legal costs as a result of the generally abusive relationship between her and Mr. Marknsen.

The financial crimes to which Mr. Marknsen pled guilty occurred in the summer of 2007. CP 64. Yet Ms. Theotig took 15 weeks off of work in the fall-winter of 2010-2011, and incurred medical costs from 2008-2011. Appendix A at 6-11. Ms. Theotig made clear that her lost wages and medical expenses were not simply due to Mr. Marknsen's financial crimes, but to the physical and emotional abuse he allegedly perpetrated upon her throughout their relationship. CP 42; Appendix A at 5; Appendix B at 2; 8/15/11 RP 2, 13-14. Indeed, the letter from Ms. Theotig's psychiatrist, which the State submitted at the restitution hearing, stated:

I first saw Ms. Theotig on 11/10/2010 for a psychiatric evaluation because of severe depression following her broken relationship with her boyfriend Mark [sic] Marknsen. He was physically abusive and illegally did away with all her money causing her to be a financial wreck. He stalked her after his is [sic] release from prison. He had raped her roommate. Ms. Theotig became extremely anxious, fearful, could not go to work and went on disability.

Appendix B at 2.

This letter makes clear that the cause of the missed work and medical treatment was the alleged stalking and rape that occurred years after the thefts at issue here. But Mr. Marknsen was not convicted of stalking or rape; he was convicted of financial

crimes. Thus, restitution may not be imposed for these damages.²
See State v. Hahn, 100 Wn. App. 391, 399, 996 P.2d 1125 (2000)
("there must be a causal relationship between the victims' medical
expenses and the crime committed").

As with the doctor's letter, the "Medical Restitution Estimate"
Ms. Theotig filled out indicated that the damages were caused by
an alleged crime not at issue in this case. In that form, Ms. Theotig
described the charge as "felony violation of a no contact order" and
entered a different cause number than the one for this case.
Appendix A at 5. The charges to which Mr. Marknsen pled guilty
here were for financial crimes that occurred in 2007. The restitution
Ms. Theotig sought was for a different charge that occurred at least
two years later. Whether the imposition of restitution would be
appropriate in that case is not at issue here, but it certainly may not
be imposed in this case for different crimes which occurred years
before the expenses at issue were incurred.

At the restitution hearing, Ms. Theotig acknowledged that
she took time off of work not just because of the crimes at issue
here but because of "all of the domestic violence" that Mr.
Marknsen allegedly perpetrated against her. 8/15/11 RP 14. She

² If Mr. Marknsen is charged with and convicted of stalking and rape,
restitution for lost work and psychiatric treatment may be imposed in that case.

said there were “a handful” of crimes Mr. Marknsen perpetrated against her, including witness tampering, violation of a no-contact order, and another charge that was pending at the time of the restitution hearing for the instant case. 8/15/11 RP 16-17. She acknowledged she sought a doctor’s help because Mr. Marknsen was allegedly stalking her. 8/15/11 RP 21; Appendix B at 2. The prosecutor similarly averred that “Ms. Theotig was visiting her psychiatrist because of the abuse she suffered from Mr. Marknsen, because of the damage it caused to her life emotionally and financially and physically.” 8/15/11 RP 2.

But the crimes charged and to which Mr. Marknsen pleaded guilty did not include stalking, physical abuse, violation of a no-contact order, or any sex offense. If Ms. Theotig missed work and sought treatment for these alleged acts, restitution for the loss would have to be imposed in a case in which Mr. Marknsen was convicted of assault, stalking, felony violation of a no-contact order, rape, or other relevant crime. It was not properly imposed in this case, because “[t]he trial court cannot impose restitution based on a defendant’s ‘general scheme’ or acts ‘connected with’ the crime charged, when those acts are not part of the charge.” Oakley, 158 Wn. App. at 552.

For the same reason, the imposition of restitution for attorney's fees was improper. Ms. Theotig hired an attorney "to obtain a couple different restraining orders or no-contact orders, as well as filing a civil suit to recover monies that he had stolen from me, and the credit card debt as well as the refinance debt and a few other -- he had stolen some money out of my checking account, like that." 8/15/11 RP 8.

Ms. Theotig stated that she sought a restraining order for "all of the bad incidents," not for the charges in this case specifically. 4/15/11 RP 10. Indeed, the hiring of an attorney to obtain no-contact orders was obviously not for this case, because a no-contact order was already in place under this cause number. Supp. CP ____ (sub no. 7). It was presented by the prosecutor, not a private civil attorney. Id.

Ms. Theotig stated she also hired this attorney "to file a suit against [Mr. Marknsen] for going into my 401k without my permission, and changing the beneficiary to his name instead of my sister's name." 4/15/11 RP 12. This alleged act was not a crime to which Mr. Marknsen pled guilty in this case, and therefore any costs associated with it may not be imposed as restitution here. State v. Kinneman, 155 Wn.2d 272, 288, 119 P.3d 350 (2005)

(restitution for attorney's fees is improper if not sufficiently causally connected to the offense of conviction); see also State v. Vinyard, 50 Wn. App. 888, 894, 751 P.2d 339 (1988) (restitution for attorney's fees improperly imposed where defendant was convicted of custodial interference but attorney's fees were connected with victim's representation in challenging defendant's visitation rights).

In addition to the above-cited cases, Oakley and Dauenhauer are instructive. In Oakley, the defendant was involved in a fight after which he fled in a car that crashed into a garage door and another car. Oakley, 158 Wn. App. at 547-48. The defendant was convicted of assault and drive-by shooting, and was ordered to pay restitution for the damage to the garage door and car he hit after fleeing the scene of the crimes. Id. at 549. This Court reversed, because even though the damage was "connected with" the crimes of conviction, it was not caused by those crimes. Id. at 553.

Similarly, in Dauenhauer, the defendant stole items from storage units, then sped away from the scene. State v. Dauenhauer, 103 Wn. App. 373, 375, 12 P.3d 661 (2000). He crashed through two fences, ran a stop sign, and hit another person's truck. Id. He was convicted of three counts of burglary

following trial. Id. At sentencing, the court imposed restitution for the damage to the fences and the truck the defendant hit when fleeing the scene of the burglaries. This Court reversed that portion of the restitution order because even though the damage occurred during the general criminal scheme, it was not part of the specific crimes of conviction. Id. at 378-79. This Court thus held that those damages had to be parsed out. Id.

The trial court in Mr. Marknsen's case refused to bother parsing out the amount of loss or damage attributable to each alleged act. 8/15/11 RP 26. But that is exactly what it was required to do. Because the court improperly imposed restitution for Mr. Marknsen's alleged general scheme and acts not charged in this case, this Court should reverse and remand for the imposition of restitution limited to the losses the State proved were caused by the crimes of conviction. The portion of the restitution order pertaining to lost wages, medical bills, and attorneys' fees should be vacated. Dennis, 101 Wn. App. at 229 (State may not be given second opportunity to prove causal connection after failing to do so in face of specific objection).

2. The sentencing court erred in imposing over \$77,000 in attorney's fees because Mr. Marknsen is indigent and lacks the ability to pay.

Over Mr. Marknsen's objection that he lacked the ability to pay, the sentencing court ordered him to pay \$77,942.12 to the Office of Public Defense for court-appointed counsel. 8/15/11 RP 28-29; CP 95. The court did not make an oral finding that Mr. Marknsen had the ability to pay these costs, and the judgment and sentence contains only boilerplate language on ability to pay. It was improper for the court to impose this extraordinary fee given Mr. Marknsen lacks the ability to pay.

Courts may not require an indigent defendant to reimburse the state for the costs unless the defendant has or will have the means to do so. State v. Curry, 118 Wn.2d 911, 915-16, 829 P.2d 166 (1992); RCW 10.01.160(3). The court must consider the financial resources of the defendant before imposing costs. Id. This requirement is both constitutional and statutory. Id. A trial court's findings of fact must be supported by substantial evidence. State v. Brockob, 159 Wn.2d 311, 343, 150 P.3d 59 (2006) (citing Nordstrom Credit, Inc. v. Dep't of Revenue, 120 Wn.2d 935, 939, 845 P.2d 1331 (1993)).

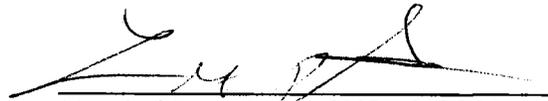
The sentencing court erred in imposing discretionary costs and fees upon Mr. Marknsen without finding he had the ability to pay. Nor would substantial evidence support such a finding. Mr. Marknsen was indigent and was represented by court-appointed counsel in the trial court. The order authorizing appointment of counsel on appeal indicates Mr. Marknsen is still indigent, stating, “the defendant is unable by reason of poverty to pay for any of the expenses of appellate review.” Supp. CP ____ (sub no. 148). The attached declaration shows Mr. Marknsen has no income and no other assets. Because Mr. Marknsen is indigent and lacks the ability to pay, this Court should strike the order requiring recoupment of attorney’s fees.

E. CONCLUSION

For the reasons set forth above, Mr. Marknsen respectfully requests that this Court reverse the restitution order and remand for entry of an order requiring restitution only for losses caused by the crimes of conviction. Mr. Marknsen also asks this Court to reverse the order requiring payment of attorney's fees and to remand for imposition of mandatory fees only.

DATED this 22nd day of February, 2012.

Respectfully submitted,



Lila J. Silverstein – WSBA 38394
Washington Appellate Project
Attorneys for Appellant

APPENDIX A

OFFICE OF THE PROSECUTING ATTORNEY
KING COUNTY, WASHINGTON
Victim Assistance Unit

Daniel T. Satterberg
Prosecuting Attorney

W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9552
Hours: 8:30 AM to 4:30 PM

July 21, 2011

MEMORANDUM

TO: Lindsay Lennox-NDA
Or Supervising Attorney-NDA

FROM: Allison McGrath *am*
Victim Assistance Unit

SUBJECT: STATE V. MICHAEL MARKNSEN
Cause # 09-1-06224-9 SEA
Restitution Hearing: August 2, 2011 @ 8:30 a.m.
Defendant waives presence

If Lindsay Lennox is no longer with your office or has withdrawn from the above-mentioned case, please make sure that another attorney from your office is assigned to represent the defendant regarding all restitution matters.

Attached you will find an Order Setting Restitution and supporting documentation for expenses incurred as a result of the above case. **Kirsten Theotig** requests restitution in the amount of **\$40,014.18** to reimburse her for her time loss from work (\$24,300.00), her out of pocket prescription costs (\$103.18), her counseling expenses (\$121.00), and her attorney/bankruptcy fees (\$15,490.00). Restitution is requested in the amount of **\$1,467.66** to **Anthem Blue Cross** for payments made on behalf of Ms. Theotig's prescription and counseling costs (\$614.54 and \$853.12 respectively). Restitution is also requested in the amount of **\$21,129.42** to the **FDIC** for the losses they incurred (taxes, insurance, processing costs, etc.) as a result of the charged crime.

If I receive a signed order before August 2, 2011, I will strike the restitution hearing.

Should you have any questions, please contact me at (206) 296-9557.

cc: Judge Douglass North
file

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,)	
)	
)	Plaintiff,
)	
vs.)	
)	ORDER SETTING RESTITUTION
MICHAEL MARKNSEN,)	
)	
)	Defendant,

No. 09-1-06224-9 SEA

The court ordered payment of restitution as a condition of sentencing. The Court has determined that the following persons are entitled to restitution in the following amounts;
IT IS ORDERED that defendant make payments through the registry of the clerk of the court as follows:

Kirsten Theotig C/O King County Clerk's Office 516 3 rd Ave., 6 th Floor Seattle, WA 98104	AMOUNT	\$ 40,014.18
Anthem Blue Cross N17 W24340 Riverwood Drive Waukesha, WI 53188 RE: Kirsten Theotig-Washington State	AMOUNT	\$ 1,467.66
FDIC Restitution Payments PO Box 971774 Dallas, TX 75397 RE: Washington Mutual Bank #0730298288	AMOUNT	\$ 21,129.42

Per RCW 9.94A.753(4), this Order Setting Restitution may be modified to reflect additional losses incurred by the FDIC for expenses directly related to this crime.

1 DONE IN OPEN COURT this _____ day of July, 2011.

2
3 JUDGE DOUGLASS NORTH

4 Presented by:

Copy received; Notice
Presentation waived:

5 _____
6 Deputy Prosecuting Attorney

Lindsay Lennox-NDA
Attorney for Defendant

7 Order Setting Restitution
8 CCN# 1852891

REF# 2090929101

AM

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
ORDER SETTING RESTITUTION - 2

APPENDIX A

Daniel T. Satterberg, Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000, FAX (206) 296-0955

THE EVERGREEN CLINIC
INTEGRATIVE PSYCHIATRY AND WELLNESS MEDICINE

13128 Totem Lake Blvd NE
S 206
Kirkland, WA 98034
425-821-1810
Intake: 425-825-9644

225 S. Civic Drive
S 2-11
Palm Springs, CA 92262
760-289-4314

73211 Fred Waring Drive
Sun Life Bulding
S 200
Palm Desert, CA 92260
760-289-4314

25 July, 2011

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

Daniel Satterberg
Prosecuting Attorney

This is to confirm that Kirsten Thotig is suffering from stress and anxiety due t the actions of

Michael Marknsen.

Sincerely,



Nawar Al Naquib, MD

MEDICAL RESTITUTION ESTIMATE

King County Cause Number 111027712

Form must be returned by 4/29/2011 or restitution may not be ordered.

RE: State vs. Michael Marknben CCN: 1852891 PLEASE COMPLETE & RETURN TO:

CCN: _____ KING COUNTY VICTIM ASSISTANCE UNIT
King County Courthouse
Date of Crime: 11/26/2011 Referral: 2110222301 516 3rd Avenue, Room W554
Seattle, WA 98104-2312
Charge: Felony Violation of a No Contact order (206) 296-9552 FAX (206) 205-6104

PART ONE MEDICAL EXPENSES (Include copies of bills received resulting from the crime)

Out of pocket medical expenses not covered by insurance or other government agencies: \$ n/a
Number of hours missed from work due to injury: _____ Total wage loss: \$ 36,336.00
If covered, by whom? (Include letter from victim's employer) see attachment from my Employer

A. Travel
Hospital bills \$ 125.00
If covered, by whom? n/a

D. Counseling bills \$ 121.00 copies
If covered, by whom? _____

B. Prescriptions
Doctor's bills \$ 103.10
If covered, by whom? _____

E. Attorneys Fees / Bankruptcy
~~Assurance bill~~ \$ 15,490.00
If covered, by whom? n/a

C. Mortgage Fraud / monetary Theft
Other bills/costs _____
If covered, by whom? please assist! see exhibit C.

Will there be medical/counseling costs in the future?
Yes No _____

F. Insurance Coverage \$ 1467.66
 Anthem Blue Cross
 payments by insurance to
 cover office visits / medical.

PART TWO INSURANCE COVERAGE

NAME OF INSURANCE COMPANY: n/a
ADDRESS: n/a
ADJUSTER'S NAME: n/a PHONE NUMBER: n/a
CLAIM #: n/a POLICY#: n/a DEDUCTIBLE: \$ n/a
Total amount your insurance company paid for this loss: \$ n/a

Crime Victim's Compensation ID # _____ DSHS _____
Social Security Number: _____ (Medicaid or Medicare ID #)

PART THREE NO RESTITUTION IS REQUESTED

I do not wish to pursue restitution I have no losses to claim

Sign Here: I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is a true and correct summary of the losses I incurred as a result of the crime investigated under the above cause number.

Kristen Theobald Signature Print Name PLEASE MAKE

Address _____ City _____ State _____ Zip _____ A COPY FOR

TRADER JOE'S COMPANY

Unique foods and beverages at prices everyone can afford

CORPORATE OFFICE

P.O. BOX 5049 • 800 S Shamrock

Monrovia, CA 91016

(626) 599-3700 • FAX (626) 301-4483

July 1, 2011

To Whom It May Concern:

This is to advise you that Kirsten Theotig is an employee of Trader Joe's Company. While on leave of absence (November 7, 2010 through February 19, 2011), she held the position as a 1st Mate. Kirsten's salary was \$1620.00 a week. Store Management employees are exempt and are normally scheduled to work 55 hours per week.

If you have any questions, please call me at (626) 599-3732.

Sincerely,



Noreen Soria
Senior Human Resource Generalist

*Voicemail message from Noreen on Tuesday July 5, 2011
verifying that Kirsten missed a full 15 weeks at
a weekly pay of \$1,620.00.*

\$1,620.00 x 15 weeks = \$ 24,300.00

am 7/6/11

TRADER JOE'S COMPANY

Unique foods and beverages at prices everyone can afford

CORPORATE OFFICE
P.O. BOX 5049 • 800 SOUTH SHAMROCK AVE.
MONROVIA, CA 91016-6346
(626) 599-3700 • FAX (626) 301-4441

June 9, 2011

To Whom It May Concern:

This letter is to inform you that Kirsten Theotig is an employee of Trader Joe's Company. She was out on a medical leave of absence from November 7, 2010 through February 19, 2011.

If you have any questions, please call me at (626) 599-3732.

Sincerely,



Noreen Soria
Senior Human Resource Generalist

B.

The attached exhibit B shows "I" for Anthem Blue Cross Insurance portions (to add to Exhibit F)

\$614.54

...as well as the amounts marked "M" are to indicate what I paid out of pocket for medications due to anxiety, ulcers, migraines all from Post Traumatic Stress Disorder.

\$103.10



Customer Statement Report
Date Range: 01/01/2008 to 06/07/2011

B

Patient: **KIRSTEN THEOTIG**
Address: [REDACTED]

Date of Birth: [REDACTED]

Statement prepared at: **FRED ME**

Phone: [REDACTED]
NPI#: 11947606

Date	RX #	Drug Name	NDC #	Qty	Days Supply	Prescriber Name	Insurer(s) 1st / 2nd	TP Auth #
1/08	70100391-6917985	Sertraline Hcl 50 Mg Tablet	60505018103	30	30	Schubert, Mary	Wellpoint <i>Zoloff</i>	70100391053528367
1/08	70100391-6930721	Galantamine Hcl 8 Mg Tablet	52746027205	6	3	[REDACTED]	Wellpoint	7010039100074354
1/08	70100391-6931326	[REDACTED]	[REDACTED]	9	3	[REDACTED]	Wellpoint	[REDACTED]
1/09	70100391-6002515	[REDACTED]	[REDACTED]	14	7	[REDACTED]	Wellpoint	701003911001000001
1/09	70100391-6010109	Doxonolate 200 Mlg Capsule	00020024001	20	6	Miyabuchi, Dale	Wellpoint	701003911001043001
1/09	70100391-4501590	Quetiapine Fumarate Syrup	00104037010	100	2	Miyabuchi, Dale	Wellpoint	701003911001043001
1/09	70100391-6931326	Axert 12.5 Mg Tablet	00062208512	9	5	Kelley, Robert	Wellpoint	70100391100164562
1/09	70100391-6010557	Phenazopyridine 200 Mg Tab	65162052010	15	5	Schubert, Mary	Wellpoint	70100391100166167
1/09	70100391-6010556	[REDACTED]	00185012201	14	7	[REDACTED]	Wellpoint	70100391100166167
1/09	70100391-6012605	[REDACTED]	20336061024	10	20	[REDACTED]	Wellpoint	70100391100174024
1/09	70100391-6015080	[REDACTED]	50746027205	6	3	[REDACTED]	Wellpoint	70100391100184650
1/09	70100391-6016160	[REDACTED]	52746027205	6	3	[REDACTED]	Wellpoint	70100391100185427
1/10	70100391-6021763	[REDACTED]	[REDACTED]	00	00	[REDACTED]	Wellpoint	70100391100185427
1/10	70100391-6021762	[REDACTED]	52746027205	6	3	[REDACTED]	Wellpoint	70100391100203022
1/10	70100391-6024602	[REDACTED]	50746027205	6	3	[REDACTED]	Wellpoint	70100391100185427
1/10	70100391-6024603	[REDACTED]	32344038328	20	10	[REDACTED]	Wellpoint	70100391100185427
1/10	70100391-6024601	[REDACTED]	05460050010	3	3	[REDACTED]	Wellpoint	70100391100185427
1/10	70100391-6025779	[REDACTED]	45802046564	120	00	[REDACTED]	Wellpoint	70100391100185427
1/10	70100391-6025776	[REDACTED]	62020040100	100	30	[REDACTED]	Wellpoint	70100391100216637
1/10	70100391-2302417	[REDACTED]	00406061201	12	1	[REDACTED]	Wellpoint	70100391100185427
1/10	70100391-6025953	[REDACTED]	[REDACTED]	1	1	[REDACTED]	Wellpoint	70100391100217438
1/10	70100391-6026773	[REDACTED]	50746027205	6	3	[REDACTED]	Wellpoint	70100391100185427
1/10	70100391-6026868	Prevacid 30 Mg Solutab	64764054411	10	10	Ummat, Sunil	Wellpoint	70100391100220633
1/10	70100391-6026867	Carafate 1 Gm/10 Ml Susp	58914017014	150	3	Ummat, Sunil	Wellpoint	70100391100220633
1/10	70100391-4504117	[REDACTED]	00701101010	15	1	[REDACTED]	Wellpoint	70100391100225425
1/10	70100391-6028337	[REDACTED]	99073012001	200	16	[REDACTED]	Wellpoint	70100391100226638
1/10	70100391-6028338	[REDACTED]	55411024301	00	00	Payne, Patricia	Wellpoint	70100391100226638
1/10	70100391-6028339	Freestyle Lite Test Strip	99073070827	200	16	Payne, Patricia	Wellpoint	70100391100226638
1/10	70100391-6029301	[REDACTED]	00000010100	100	25	[REDACTED]	Wellpoint	70100391100226638

Confidential Information

D.

Counseling Co-pays plus Exhibit F

PATIENT FINANCIAL HISTORY BY DT SERVICE

EVERGREEN OFFICES

Accounts 29243 - 29243 All Dates

Anthem Blue Cross payments

Acct	Date	Dep #	Name	Dr#	Procedure	Ref Dt	Diag	Units	Amount		
29243			THEOTIG, KIRSTEN		Previous Balance :				0.00		
	11/10/10	0	THEOTIG, KIRSTEN	92	99205		OUT PT INITIAL EVALU	309.81	1.00	375.00	
	11/17/10	0	THEOTIG, KIRSTEN	92	99215		OUTPATIENT FOLLOW-UP	309.81	1.00	195.00	
	11/29/10		Check Payment	12079014		11/29/10	Ins #49			-226.88 I	
	11/29/10		Adjustment (2)			11/29/10	General Write-Off			-128.12	
	12/01/10		Check Payment	12092186		12/01/10	Ins #49			-152.32 H	
	12/01/10		Adjustment (2)			12/01/10	General Write-Off			-22.68	
	12/08/10		Other Payment	debit		12/08/10	Patient			-20.00 M	
	12/08/10	0	THEOTIG, KIRSTEN	92	99214		OUTPATIENT FOLLOW-UP	309.81	1.00	150.00	
	12/22/10		Check Payment	12195070		12/22/10	Ins #49			-107.46 I	
	12/22/10		Adjustment (2)			12/22/10	General Write-Off			-22.54	
	01/03/11	0	THEOTIG, KIRSTEN	92	99214		OUTPATIENT FOLLOW-UP	309.81	1.00	150.00	
	01/03/11		Other Payment	debit		01/03/11	Patient			-20.00 M	
	01/13/11		Other Payment	DEBIT		01/13/11	Patient			-20.00 M	
	01/20/11		Check Payment	12283239		01/20/11	Ins #49			-107.46 H	
	01/20/11		Adjustment (2)			01/20/11	General Write-Off			-22.54	
	02/01/11	0	THEOTIG, KIRSTEN	92	INTEREST		Finance Charge	INTEREST	1.00	0.30	
	02/01/11		Adjustment (2)			02/01/11	General Write-Off			-0.30	
	02/07/11	0	THEOTIG, KIRSTEN	92	99214		OUTPATIENT FOLLOW-UP	309.81	1.00	150.00	
	02/17/11		Other Payment	DEBIT		02/17/11	Patient			-20.00 M	
	02/22/11		Other Payment	Debit		02/22/11	Patient			-21.00 M	
	02/28/11	0	THEOTIG, KIRSTEN	92	99214		OUTPATIENT FOLLOW-UP	309.81	1.00	150.00	
	02/28/11		Other Payment	EDS		02/28/11	Patient			-20.00 M	
	03/01/11		Check Payment	12432333		03/01/11	Ins #49			-107.46 I	
	03/01/11		Adjustment (13)	12432333		03/01/11	BLUECROSS			-21.54 H	
	03/17/11		Check Payment	12516183		03/17/11	Ins #49			-107.46 H	
	03/17/11		Adjustment (13)	12516183		03/17/11	BLUECROSS			-22.54 H	
TOTALS FOR ACCOUNT 29243				PAYMENTS :	930.04	ADJUSTS :	240.26	CHARGES :	1170.30	7.00	0.00
				REFUNDS:	0.00						
					930.04		240.26		1170.30		0.00

THE EVERGREEN CLINIC
 13128 Totem Lake Blvd
 Ste 206
 Kirland, WA 98034

"I" =

my insurance (Anthem Blue Cross) paid \$853.12 exhibit 1

"M" =

My expense: \$121.00

Amount: \$245.00
Account: [REDACTED]
Bank Number: 12500002

Sequence Number: 750933295
Capture Date: 03/17/2008
Check Number: 2024

KIRSTEN R. THEOTIG

2024

DATE 3-16-08

19-2/1250 WA
60103

PAY TO THE
ORDER OF

Link Land Group LLC \$ 245.00

Two hundred & Forty Five DOLLARS

Bank of America

Kirkland 060103 A
Washington

FOR

Kirsten Theotig

⑆ 125000024 ⑆

2024

⑆0000024500⑆

© 2004 Bank of America

IN THE WORLD™

BANK OF AMERICA, NA SEA
⑆125000024⑆ E1282 01 PG1
03/17/08

0750933295

Payment to order

E

Amount: \$1,000.00
Account: [REDACTED]
Bank Number: 12500002

Sequence Number: 550978910
Capture Date: 05/13/2008
Check Number: 2049

KIRSTEN R. THEOTIG

2049

DATE 5.9.08

19-2/1250 WA
60103

PAY TO THE
ORDER OF

Janyce Fork

\$ 1000.00

One Thousand

DOLLARS

Security Features
See Reverse
Details on Back

Bank of America



Kirkland 060103 A
Washington

230 1030 1707 08

FOR

1,000.00
Janyce Fork

⑆ 125000024⑆

2049

⑆0000100000⑆

© 2005 Bank of America

IN THE WILD™

13

1276

96

BANK OF AMERICA NP SELF
⑆125000024⑆ E1855 01 P01
05/13/08

0550978910

Janyce Fork

Amount: \$25.00
Account: [REDACTED]
Bank Number: 12500002

Sequence Number: 850892335
Capture Date: 06/25/2008
Check Number: 2066

KIRSTEN R. THEOTIG
[REDACTED]

2066

DATE 6-24-08

19-2/1250 WA
60103

PAY TO THE
ORDER OF

Jayne Fink

\$ 25

Twenty Five & no/100

DOLLARS

Bank of America

Kirkland 060103 A
Washington

FOR

Kirsten Theotig

⑆ 25000024⑆ [REDACTED]

2066

⑆0000002500⑆

IN THE WORLD™

JUN 25 2008

TECH

00117

60

BANK OF AMERICA NA
125000024 ⑆0000002500⑆

00117 60

E

Amount: \$10,200.00
Account: [REDACTED]
Bank Number: 12500002

Sequence Number: 650247696
Capture Date: 09/21/2007
Check Number: 50

Kirsten Theatig
203 1st Ave S.
Kirkland WA 98033

0050
19-2/1250 WA

Date: 9.20.07

Pay to the Order of Fink Law Group \$ 10,200

Ten thousand, two hundred Dollars
Bank of America

Washington

For *Kirsten Theatig*

⑆ 125000024⑆ [REDACTED] 0050 ⑆0001020000⑆

©2007 America

12500003744
KEYBANK
09/20/07

032

KEYBANK

*For deposit
only
02091144/4 19*

0920070050



Federal Deposit Insurance Corporation
1601 Bryan Street, Dallas, TX 75201

Division of Resolutions and Receiverships

July 5, 2011

David Seaver
Senior Deputy Prosecuting Attorney
Criminal Division
Office of the King County Prosecuting Attorney
516 Third Avenue
Seattle, WA 98104

Re: *State of Washington vs. Markensen, No. 09-1-06224-9 SEA*
VICTIM IMPACT STATEMENT OF THE FDIC
TOTAL LOSS: \$281,510.40

Dear Mr. Seaver,

The Federal Deposit Insurance Corporation ("FDIC"), as receiver of Washington Mutual Bank is a victim in the above-referenced case. As evidenced by the enclosed documentation regarding the loan on the property located at 1855 1st Street, Kirkland, WA, 98033, the total actual loss from the crime committed by the defendant is \$281,510.40. Our records reflect that this property has not yet been sold at foreclosure. Due to the failure of the property to sell, our loss amount reflects the outstanding principal amount of the loan, together with specifically documented fees incurred and disbursements made, less the quick sale Market Value of the property as of February 28, 2011.

Under Section 1821, Title 12 of the United States Code, when a financial institution fails the FDIC is appointed its receiver. As receiver, the FDIC is charged with collecting all obligations and monies due to the failed institution, including those of its wholly owned subsidiaries. Therefore, the FDIC is the only party entitled to restitution for losses suffered by the failed financial institution. The depositors and creditors of the failed institution are then paid from available assets of the receivership in accordance with federal law. Restitution payments are among the assets of the receivership available for distribution. In multiple-victim cases, the FDIC is entitled to its *pro rata* share of any payments made by the defendant or payments made on the defendant's behalf.

Should restitution be ordered in this case, we request that the restitution be ordered paid to "FDIC, Receiver of Washington Mutual Bank." Furthermore, so that we may ensure that the defendant receives credit for restitution payments made, payments should be accompanied by the defendant's name and case number, and sent to the following address:

FDIC Restitution Payments
P.O. Box 971774
Dallas, TX 75397-1774

Please let me know if you have any questions or need any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis R. Rogers". The signature is stylized with a large, sweeping initial "D" and "R".

Dennis R. Rogers
Resolution & Receiverships Specialist

Enclosures (2)

APPENDIX B

Lindsay Lennox

From: Seaver, David [David.Seaver@kingcounty.gov]
Sent: Friday, August 12, 2011 9:25 AM
To: Chen, Ava; Lindsay Lennox
Cc: McGrath, Allison
Subject: State v. Marknsen -- restitution hearing 8/15
Attachments: Letter from Dr. al Naquib.pdf

Dear Court and counsel,

The Court has scheduled a restitution hearing for Monday, 8/15, in the case of State v. Marknsen, 09-1-06224-9 SEA. The State has submitted a memorandum to the Court previously, and would like to also present the attached letter from victim Kirsten Theotig's psychiatric caregiver. I apologize for not presenting this letter sooner. I received it yesterday afternoon.

On Monday, I am required to be present in Presiding at 8:30 a.m. for two defense motions to continue. I will report to your Court as soon as those motions have been heard in 1201. Thank you very much for your patience, and I apologize for any inconvenience.

David Seaver
Senior Deputy Prosecuting Attorney
Criminal Division
Office of the King County Prosecuting Attorney
(206) 296-9070
david.seaver@kingcounty.gov

The Evergreen Clinic

Integrative Psychiatry and Wellness Medicine

225 S. Civic Drive
Suite 2-11
Palm Springs, CA 92262
760.289.4314

13128 Totem Lake Blvd. Suite 206
Kirkland, WA 98034
425.821.1810 Intake 425.825.9644
theevergreenclinic.com

41-865 Boardwalk
Suite 103
Palm Desert, CA 92211
760.289.4314

August 11, 2011

David Seavor, King County Prosecutor
King County Courthouse
Seattle, WA 98104
Fax 206-296-9009

Subject: Kirsten Theotig

Dear Sir:

I am writing in response to your letter dated 07/25/2011 concerning my patient Ms. Kirsten Theotig. I present you with more details as you're requesting.

I first saw Ms. Theotig on 11/10/2010 for a psychiatric evaluation because of severe depression following her broken relationship with her boyfriend Mark Marknsen. He was physically abusive and illegally did away with all her money causing her to be a financial wreck. He stalked her after his release from prison. He had raped her roommate. Ms. Theotig became extremely anxious, fearful, could not go to work and went on disability. She is extremely depressed. She continues therapy and medication. She is extremely compromised emotionally and financially.

DSMIV DIAGNOSIS:

Axis:

1. PTSD-chronic
2. Major Depression Disorder with SI
- II. Defer
- IV. 4 Social Strenuous-severe legal
- V. GAF=60

Sincerely,



Nawar Alnaquib MD
The Evergreen Clinic
13128 Totem Lake Blvd #206
Kirkland, WA 98034

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 67718-7-I
v.)	
)	
MICHAEL MARKNSEN,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 22ND DAY OF FEBRUARY, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	U.S. MAIL HAND DELIVERY _____
<input checked="" type="checkbox"/> MARK MARKNSEN 12018 89 TH PL NE KIRKLAND, WA 98034	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 22ND DAY OF FEBRUARY, 2012.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710