

SUPREME COURT NO. 91312-9
COURT OF APPEALS NO. 45646-0-II

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

JOANNA KRYSTIN SPEAKS,

Petitioner.

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

The Honorable Rich Melnick, Judge

PETITION FOR REVIEW

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FILED
FEB 19 2015
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON CRF

TABLE OF CONTENTS

	Page
A. IDENTIFY OF PETITIONER	1
B. COURT OF APPEALS' DECISION	1
C. ISSUE PRESENTED FOR REVIEW	1
<p style="margin-left: 40px;">The restitution statute limits awards to “easily ascertainable damages for injury or loss to property.” RCW 9.94A.753(3). The State’s claim for restitution pertaining to personal property failed to provide any information regarding the date of purchase, degree of use, or condition of the item prior to it being damaged. In the absence of this rudimentary information, did the Court of Appeals err when affirming the trial court’s restitution order?</p>	
D. STATEMENT OF THE CASE.....	1
E. ARGUMENT WHY THE SUPREME COURT SHOULD ACCEPT REVIEW OF THE COURT OF APPEALS' RULING AFFIRMING THE TRIAL COURT'S ORDER OF RESTITUTION FOR STOLEN AND DAMAGED PROPERTY.....	4
F. CONCLUSION	8
CERTIFICATE OF SERVICE	9

TABLE OF AUTHORITIES

Page

Cases

State v. Burns, 159 Wn. App. 74, 244 P.3d 988 (2010)..... 7

State v. Dedonado, 99 Wn. App. 251, 991 P.2d 1216 (2000)..... 6

State v. Fleming, 75 Wn. App. 270, 877 P.2d 243 (1994)..... 6

State v. Ford, 137 Wn.2d 472, 973 P.2d 452 (1999)..... 5

State v. Griffith, 164 Wn.2d 960, 195 P.3d 506 (2008)..... 5, 8, 7

State v. Kinneman, 155 Wn.2d 272, 119 P.3d 350 (2005)..... 5

State v. Pollard, 66 Wn. App. 779, 834 P.2d 51, *review denied*, 120 Wn.2d 1015 (1992)..... 5, 6

State v. Tobin, 161 Wn.2d 517, 166 P.3d 1167 (2007)..... 5

Statutes

RCW 9.94A.753(3)..... i, 1, 6

RCW 9.94A.753(5)..... 5

RCW 9A.56.200..... 1

RCW 9A.72.120..... 1

Other Authorities

RAP 13.4(b)(3) 4

RAP 13.4(b)(4) 4

A. IDENTIFY OF PETITIONER

The Petitioner is appellant Joanna Krystin Speaks.

B. COURT OF APPEALS' DECISION

Ms. Speaks seeks review of the November 25, 2014, Court of Appeals' Commissioner Schmidt's Ruling Affirming Restitution Order (Appendix A) and Judge Johanson's January 16, 2015, Order Denying Motion to Modify (Appendix B).

C. ISSUE PRESENTED FOR REVIEW

The restitution statute limits awards to "easily ascertainable damages for injury or loss to property." RCW 9.94A.753(3). The State's claim for restitution pertaining to personal property failed to provide any information regarding the date of purchase, degree of use, or condition of the item prior to it being damaged. In the absence of this rudimentary information, did the Court of Appeals err when affirming the trial court's restitution order?

D. STATEMENT OF THE CASE

Joanna Speaks pleaded guilty to robbery in the first degree¹ and tampering with a witness.² In exchange, the State dismissed four counts including Attempted Murder in the First Degree. RP³ 1-8; CP 9. Ms.

¹ RCW 9A.56.200

² RCW 9A.72.120

³ There is a single volume of verbatim report of proceedings ("RP").

Speaks was charged with having committed these crimes as an accomplice or as a principle. CP 7. The robbery victim was Freddy Landstrom. RP 7.

The State's plea offer required Ms. Speaks to agree to pay restitution. CP 10. The State's plea offer did not provide a specific amount of restitution. It also did not obligate Ms. Speaks to pay restitution for damages not causally related to her crimes. CP 10.

Post plea, the State filed a restitution report. CP 29-34. The report noted \$17,780.94 owing in restitution to include \$2,044.99 to Mr. Landstrom for "damaged clothing per phone conversation." CP 30. The report broke down the clothing list.

jacket \$490.00

shirt \$39.99

pants \$179.00

shoes \$217.00

socks \$15.00

The list also included costs for "stolen property."

cash \$650.00

phone \$349.00

wallet \$17.00

damaged car head-rest \$88.00

CP 30.

The trial court held a restitution hearing. RP 17-61. Mr. Landstrom testified Ms. Speaks called him to her apartment. RP 24. Moments after he was inside, Mr. Godinez appeared and was holding a gun. RP 24, 28. Mr. Landstrom thought both he and Ms. Speaks were going to be robbed. RP 31. However, Ms. Speaks took personal property (cash, phone, wallet) from him while Mr. Godinez held the gun. RP 28.

Mr. Godinez and Mr. Landstrom left the apartment. RP 27. Mr. Godinez drove Mr. Landstrom around in Landstrom's car all the while holding a gun to Landstrom's head. RP 27. The drive ended at Vancouver Lake where Mr. Godinez told Mr. Landstrom, "Joanna, and him had planned this" and [T]hat he'd be an idiot not to follow through since I know what he looks like." RP 30. Mr. Godinez shot Mr. Landstrom six times. RP 19. Mr. Landstrom received medical treatment for his injuries. RP 20-21.

Ms. Speaks made two arguments against the proposed restitution. First, she should not have to pay restitution because it did not relate to a crime she committed. RP 49. The shooting was "a whole separate act" from the robbery. RP 50. Second, mere itemization of the stolen property was insufficient to support a restitution claim. RP 50.

The trial court disagreed. The court found that the shooting of Mr. Landstrom was an ongoing part of the robbery which included the taking of Landstrom's car. RP 54. The court did not address the itemization argument. RP 53-56.

The trial court imposed the State's requested restitution. The total amount attributed to the compensable stolen and damaged property was \$2,044.99. CP 35-36. Ms. Speaks appealed the sentencing court's restitution determination. CP37-38. Division Two Commissioner Schmidt rejected Ms. Speaks' claim in his Ruling Affirming Restitution Order. (Appendix A.) A panel of judges denied Ms. Speaks' motion to modify the Commissioner's ruling. (Appendix B.)

E. ARGUMENT WHY THE SUPREME COURT SHOULD ACCEPT REVIEW OF THE COURT OF APPEALS' RULING AFFIRMING THE TRIAL COURT'S ORDER OF RESTITUTION FOR STOLEN AND DAMAGED PROPERTY.

Under RAP 13.4(b)(3) and RAP 13.4(b)(4), this court will accept review if a petition involves a significant question of law under the Constitution of the State of Washington or of the United States or involves an issue of substantial public interest. Restitution issues are a matter of substantial public interest because it is a common component of a criminal sentence and is one of the primary means by which a victim of a crime is compensated for his injury.

The Sentencing Reform Act (SRA) requires a sentencing court to 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 limited to loss “causally connected to the crime charged.” *State v. Griffith*, 164 Wn.2d 960, 965-66, 195 P.3d 506 (2008) (quoting *State v. Tobin*, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007)). “Restitution ordered by a court ... shall be based on easily ascertainable damages or injury to or loss of property.” RCW 9.94A.753(3).

When an offender disputes the factual basis of a restitution claim, the prosecution is burdened with proving damages by a preponderance of the evidence at an evidentiary hearing. *State v. Kinneman*, 155 Wn.2d 272, 285, 119 P.3d 350 (2005). Although the rules of evidence do not apply at a sentencing hearing or a restitution hearing, the hearing must comply with due process. *State v. Ford*, 137 Wn.2d 472, 484, 973 P.2d 452 (1999); *State v. Pollard*, 66 Wn. App. 779, 784-85, 834 P.2d 51, review denied, 120 Wn.2d 1015 (1992). Due process requires the defendant not be sentenced based upon information that is false, lacks minimum indicia of reliability, or is not supported by the record. *Ford*, 137 Wn.2d at 481.

The evidence supporting a restitution order is only sufficient “if it affords a reasonable basis for estimating loss and does not subject the trier

of fact to mere speculation or conjecture.” *State v. Fleming*, 75 Wn. App. 270, 274, 877 P.2d 243 (1994); *accord Pollard*, 66 Wn. App. at 785. Although a victim’s loss need not be established with complete accuracy, there must be substantial credible evidence providing a reasonable basis for estimating the loss and not mere speculation or conjecture. *Griffith*, 164 Wn.2d at 965.

The list of personal items Mr. Landstrom lost or had damaged, without any further supporting documentation to establish the actual value at the time of the robbery, failed to meet the statutory or constitutional standard for an order of restitution. The simple list of items left the trial court to speculate as to the actual loss of personal property caused by the robbery. Proof of anticipated expenditures for replacing stolen property is not sufficient. *State v. Dedonado*, 99 Wn. App. 251, 257, 991 P.2d 1216 (2000).

In *Dedonado* the court explained:

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. Such expenditures may be for items of substantially greater or lesser value than the actual loss. 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.

While the claimed loss need not be established with specific accuracy, it must be supported by substantial credible evidence. *State v. Burns*, 159 Wn. App. 74, 78, 244 P.3d 988 (2010). In the absence of receipts, bills of sale, or other documentation establishing what the items had cost when purchased, how long Mr. Landstrom owned them, and what a current replacement would cost, the record failed to satisfy either the constitutional standards of due process of law or the statutory requirements for proof of “easily ascertainable for injury to or loss of property,” by preponderance of the evidence.

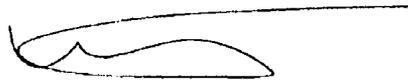
When reviewing restitution orders, appellate courts must determine whether a causal connection exists between the losses and the criminal act. *Griffith*, 164 Wn.2d at 966. In his ruling, the appellate court commissioner correctly noted the amount of restitution must be based on “easily ascertainable damages, ... but need not be established with specific accuracy.” Commissioner Ruling at 3. Here, Mr. Landstrom had already sustained significant “losses” to the value of his clothing, his wallet, and his phone through everyday use. The trial court erred in failing to take that into consideration. The appellate court commissioner compounded

the error in his ruling. This court should accept review and reverse that portion of the restitution order for lost and damaged property.

F. CONCLUSION

Ms. Speaks asks this Court to accept her Petition for Review and reverse the Order of Restitution.

DATED this 16th day of February 2015.



LISA E. TABBUT/WSBA #21344
Attorney for Joanna Krystin Speaks

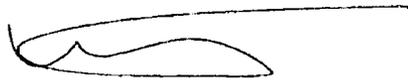
CERTIFICATE OF SERVICE

Lisa E. Tabbut declares as follows:

On today's date, I efiled the Petition for Review to (1) Anne Mowry Cruser, Clark County Prosecutor's Office, at prosecutor@clark.wa.gov; (2) the Court of Appeals, Division II; and (3) I mailed it to Joanna Krystin Speaks/DOC# 367475, Mission Creek Corrections Center for Women 3420 NE Sand Hill Rd., Belfair, WA 98528.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed February 16, 2015, in Longview, Washington.



Lisa E. Tabbut, WSBA No. 21344
Attorney for Joanna Krystin Speaks

APPENDIX A

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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JOANNA KRYSTIN SPEAKS,

Appellant.

No. 45646-0-II

RULING AFFIRMING ORDER
OF RESTITUTION

Joanna Speaks appeals from the order of restitution imposed following her plea of guilty to first degree robbery. She argues that the trial court erred in calculating the amount of restitution as to the victim's personal property and that she received ineffective assistance of counsel as to the calculation of that amount. This court considered her appeal as a motion on the merits under RAP 18.14. Concluding that the trial court did not abuse its discretion and that she has not demonstrated ineffective assistance of counsel, this court affirms Speaks' order of restitution.

On November 28, 2012, Speaks invited Freddy Landstrom¹ into her apartment. After he entered, Speaks' boyfriend, Pedro Godinez, entered the apartment, armed with a firearm, and demanded that Landstrom give his wallet and cell phone to Speaks. Godinez then took Landstrom to another location and shot him six times.

Speaks entered an *Alford*² plea of guilty to first degree robbery and to tampering with a witness. In that plea, Speaks acknowledged that she would be required to pay restitution in an amount to be determined. The trial court accepted her plea and ordered her to pay restitution, in an amount to be determined, jointly and severally with Godinez.

Before the restitution hearing, Landstrom provided the following list of personal property damaged or stolen by Speaks and Godinez:

Jacket	\$490.00
Shirt	\$39.99
Pants	\$179.00
Shoes	\$217.00
Socks	\$15.00
Stolen property:	
Cash:	\$650.00
Phone	\$349.00
Wallet	\$17.00
Damaged Car head-rest	\$88.00
Total	\$2,044.99

Clerk's Papers (CP) at 30.

¹ The Court notes that during the restitution hearing, the victim spelled his first name as "Freddy." Report of Proceedings (RP) at 18.

² *North Carolina v. Alford*, 400 U.S. 25, 37, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970). See also *State v. Newton*, 87 Wn.2d 363, 373, 552 P.2d 682 (1976).

Landstrom testified at the restitution hearing. Speaks' counsel did not cross-examine him as to the amounts he claimed as damaged or stolen personal property. The trial court imposed restitution by Speaks, jointly and severally with Godinez, of \$2,044.99 for the damaged or stolen personal property and \$16,373.34 in crime victim compensation for Landstrom's medical expenses. She appeals from the restitution for the personal property but not from the restitution for the crime victim compensation.

First, Speaks argues that the trial court erred in calculating the amount of restitution for personal property because the record did not establish the values of the items of property at the time of the crimes. This court reviews restitution orders for an abuse of discretion. *State v. Hughes*, 154 Wn.2d 118, 154, 110 P.3d 192 (2005); *abrogated on other grounds by Washington v. Recuenco*, 548 U.S. 212 (2006); *State v. Dedonado*, 99 Wn. App. 251, 257, 991 P.2d 1216 (2000). The amount of restitution must be based on "easily ascertainable damages," RCW 9.94A.753(3), but "need not be established with specific accuracy." *Hughes*, 154 Wn.2d at 154 (quoting *State v. Fleming*, 75 Wn. App. 270, 274, 877 P.2d 243 (1994), *petition dismissed*, 129 Wn.2d 529 (1996)). Even assuming that the values of the personal property provided by Landstrom, other than the cash, were replacement values rather than actual values, Speaks does not show that the trial court abused its discretion in basing the amount of restitution on those values. They were easily ascertainable and were established with sufficient accuracy. The trial court did not err in ordering restitution for damaged or stolen personal property of \$2,044.99.

Second, Speaks argues that she received ineffective assistance of counsel when her trial counsel did not cross-examine Landstrom as to the values of the personal

property damaged or stolen or otherwise challenge those values. To establish ineffective assistance of counsel, she must demonstrate that her counsel's performance fell below an objective standard of reasonableness and that as a result of that deficient performance, the result of her case probably would have been different. *State v. McFarland*, 127 Wn.2d 322, 335-36, 899 P.2d 1251 (1995); *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Even assuming that Speaks' trial counsel performed deficiently in not cross-examining Landstrom as to the values of the personal property damaged or stolen or in not otherwise challenging those values, Speaks does not show that the trial court probably would have calculated an amount of restitution less than that based on the values Landstrom provided. Thus, she does not demonstrate ineffective assistance of counsel.

In her Statement of Additional Grounds, Speaks contends that she should not be responsible for restitution for Landstrom's medical expenses because she did not cause his injuries. Similarly, she contends that she should not be responsible for restitution for Landstrom's property damaged by the shooting because she was not there. But the trial court specifically found that the shooting was causally connected to Speaks' crime of first degree robbery, making restitution appropriate under *State v. Griffith*, 164 Wn.2d 960, 965-66, 195 P.3d 506 (2008).

Because the amount of restitution ordered was not an abuse of discretion and because the claims of ineffective assistance of counsel and of non-responsibility for restitution are clearly controlled by settled law, Speaks' appeal is clearly without merit under RAP 18.14(e)(1). Accordingly, it is hereby

ORDERED that the motion on the merits to affirm is granted and Speaks' order of restitution is affirmed. She is hereby notified that failure to move to modify this ruling terminates appellate review. *State v. Rolax*, 104 Wn.2d 129, 135-36, 702 P.2d 1185 (1985).

DATED this 25th day of November, 2014.



Eric B. Schmidt
Court Commissioner

cc: Lisa E. Tabbut
Anne M. Cruser
Hon. Barbara Johnson
Joanna K. Speaks

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,
Respondent,

v.

JOANNA KRYSTIN SPEAKS,
Appellant.

No. 45646-0-II

ORDER DENYING MOTION TO MODIFY

APPELLANT filed a motion to modify a Commissioner's ruling dated November 25, 2014, in the above-entitled matter. Following consideration, the court denies the motion.

Accordingly, it is

SO ORDERED.

DATED this 16th day of January, 2015.

PANEL: Jj. Johanson, Melnick, Sutton

FOR THE COURT:

Johanson, C. J.
CHIEF JUDGE

cc:

Anne Mowry Cruser
Lisa Elizabeth Tabbut

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COWLITZ COUNTY ASSIGNED COUNSEL

February 16, 2015 - 6:59 PM

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Court of Appeals Case Number: 45646-0

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Sender Name: Lisa E Tabbut - Email: ltabbutlaw@gmail.com

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