

FILED  
June 10, 2015  
Court of Appeals  
Division I  
State of Washington

No. 72847-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

MICHAEL MELVIN,

Appellant.

---

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

The Honorable James D. Cayce

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The court erred in imposing the full amount of restitution requested.

2. The State failed to prove that the requested restitution was not solely for the purpose of recouping the costs of litigation.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

The State bears the burden of proving the amount of restitution. Recoupment for the costs of litigation is not compensable pursuant to restitution. Here, several of the medical professionals that were consulted and evaluated the child did so solely for the purpose of providing the proof necessary to charge and convict Mr. Melvin. Did the trial court err in imposing restitution where the State never proved any of these restitution amounts were solely for the recoupment of the costs of litigation?

C. STATEMENT OF THE CASE

Michael Melvin was charged with two counts of second degree assault of a child. CP 7-8. He proceeded to trial which resulted in a mistrial. Mr. Melvin subsequently pleaded guilty to a single count of second degree assault of a child. CP 20-42. Mr. Melvin was sentenced to a 60 month term of imprisonment. CP 14.

The State thereafter sought restitution in the amount of \$2254.10; \$866.94 to the child's mother for out-of-pocket expenses related to the incident, and \$1,387.16 to the mother's insurance provider, Delta Health Systems. CP 44. Mr. Melvin objected to the request for restitution. CP 53-56; RP 2-4. Following a hearing, the trial court imposed the full amount of requested restitution. CP 57-58. The trial court was persuaded that the restitution requested did not include any reimbursement for the trial testimony of the medical professionals. RP 3.

D. ARGUMENT

**The State failed prove that none of the requested restitution was for the purpose of recouping the costs of litigation.**

A court's authority to impose restitution is derived solely from statute. *State v. Martinez*, 78 Wn.App. 870, 881, 899 P.2d 1302 (1995), *review denied*, 128 Wn.2d 1017 (1996). RCW 9.94A.753(5) provides that "[r]estitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property."

Restitution must be based upon easily ascertainable damages, in other words, the court finds there is a causal connection between the

crime proved and the injuries suffered. RCW 9.94A.753(3); *State v. Fleming*, 75 Wn.App. 270, 274, 877 P.2d 243 (1994); *State v. Johnson*, 69 Wn.App. 189, 190, 847 P.2d 960 (1993) (*per curiam*). “While damages need not be proved with certainty, the evidence of damages must be sufficient to afford a reasonable basis for estimating the loss and must not subject the trier of fact to mere speculation or conjecture.” *State v. Awawdeh*, 72 Wn.App. 373, 379, 864 P.2d 965 (1993), *review denied*, 124 Wn.2d 1004, *cert. denied*, 513 U.S. 970 (1994). A causal connection exists if “but for” the offense, the loss or damages to the victim would not have occurred. *State v. Tobin*, 161 Wn.2d 517, 519, 524-25, 166 P.3d 1167 (2007). The State must prove this causal connection between the expenses and the offense by a preponderance of the evidence. *State v. Kinneman*, 122 Wn.App. 850, 860, 95 P.3d 1277 (2004) *aff’d*, 155 Wn.2d 272, 119 P.3d 350 (2005).

A trial court determines the amount of restitution either by relying on an express admission or acknowledgment of the amount of restitution, or by a preponderance of the evidence. *State v. Ryan*, 78 Wn.App. 758, 761, 899 P.2d 825, *review denied*, 128 Wn.2d 1006 (1995). The amount of restitution must be supported by substantial credible evidence. *State v. Pollard*, 66 Wn.App. 779, 785, 834 P.2d 51,

*review denied*, 120 Wn.2d 1015 (1992). The court's determination is reviewed for an abuse of discretion. *Fleming*, 75 Wn.App. at 274.

“[C]ompensation is not the primary purpose of restitution, and the criminal process should not be used as a means to enforce civil claims.” *Martinez*, 78 Wn.App. at 881.

Several of the doctors listed in the restitution documentation treated C.N.N.D. for her injuries. But, doctors such as Dr. Naomi Sugar and Dr. Maneesh Batra were consulted solely for the purpose of establishing a crime had been committed and were thus, part of the cost of litigation. Some of these medical professionals collected evidence, including photographs. In addition, the medical professionals, who were also experts in child abuse, were consulted and evaluated the child. This was all part of a forensic examination that was part of the investigative process used in charging and ultimately convicting Mr. Melvin.

The trial court ruled that since these doctors did not testify, the restitution amounts were not for the purpose of litigation. RP 4. The fact that these doctors did not testify is of no moment. The doctors were consulted solely for the purpose of providing the proof necessary to establish a crime had been committed.

It must be remembered that the State bears the burden of proving the amount of restitution. *State v. Hughes*, 154 Wn.2d 118, 154, 110 P.3d 192 (2005), *overruled on other grounds*, *Washington v. Recuenco*, 548 U.S. 212 (2006). Thus, in light of Mr. Melvin's objection to the costs as an attempt to recover costs of litigation, it was incumbent on the State to prove the amounts requested were not an attempt to recover the costs as restitution. This did not mean that the State merely had to show the medical professionals did not testify at the trial; it required the State to prove the costs, whether in court or out-of-court were not for the recoupment of litigation costs. Since the State did not prove this factor, Mr. Melvin is entitled to reversal of the order of restitution and remand for a new restitution hearing.

E. CONCLUSION

For the reasons stated, Mr. Melvin asks this Court to reverse the order imposing restitution and remand for a new hearing.

DATED this 10<sup>th</sup> day of June 2015.

Respectfully submitted,

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Respondent,	)	
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v.	)	NO. 72847-4-I
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MICHAEL MELVIN,	)	
	)	
Appellant.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 10<sup>TH</sup> DAY OF JUNE, 2015, 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:

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[X] MICHAEL MELVIN 352089 MCC-WASHINGTON STATE REFORMATORY PO BOX 777 MONROE, WA 98272	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 10<sup>TH</sup> DAY OF JUNE, 2015.



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