

NO. 71812-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JACOB HOLLAR,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JULIE SPECTOR

BRIEF OF RESPONDENT

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COURT OF APPEALS
STATE OF WASHINGTON
JULIE SPECTOR

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A. ISSUE PRESENTED

Courts are vested with broad power to grant restitution for crime victims. The victim in this case submitted a declaration of loss listing the value of each item stolen during the defendant's crime, the declaration was signed under penalty of perjury, and the court found that the amount requested for each item was reasonable. Did the trial court act within its discretion in ordering restitution?

B. STATEMENT OF THE CASE

On June 20, 2013, at around 11:45 p.m., Michael Johnson was brutally beaten and robbed by defendant Jacob Hollar and two of his accomplices. CP 3-4.¹ Johnson was walking on Second Avenue in Seattle when three men approached. CP 3. Hollar struck Johnson in the back of the head with a skateboard and caused a laceration to Johnson's scalp that required several staples to close. CP 3-4. The other men hit Johnson's body and face after Johnson fell to the ground. CP 3. Johnson's purse was stolen during the incident, but Johnson was unsure which one of

¹ Because this case resolved with a guilty plea, the facts of the crime are taken from the probable cause certification.

the men took it. CP 3. Hollar and his companions fled on foot after the attack. CP 3.

At a showup a short time later, Johnson positively identified Hollar as the individual who struck Johnson with a skateboard. CP 3. Hollar told police that he assaulted Johnson because Johnson had been flirting with Hollar and he wanted to "take care of the problem." CP 4. Although Hollar admitted to the assault, he denied taking Johnson's purse. CP 4.

Hollar was charged with robbery in the first degree. CP 1. The case resolved when Hollar pled guilty to assault in the second degree and theft in the third degree. CP 37-38. He signed a plea agreement requiring him to pay restitution in full, in an amount to be determined, for all losses to Johnson. CP 34. At the sentencing hearing, the court imposed a standard range sentence of four months of confinement. CP 43-51.

At a later restitution hearing, the State presented medical bills for Johnson's injuries and a victim loss statement that was signed under penalty of perjury.² CP 58. In response, Hollar's attorney objected to the personal property included in the victim

² The total amount of restitution was \$1,396.39. Of that, \$908.82 was for Johnson's medical bills paid by the Crime Victim's Compensation Program (CVC); \$487.57 was for Johnson's stolen personal property and a medical bill that CVC did not pay for reasons unknown. CP 53.

loss statement based on a lack of documentation. RP 3.³ These items included a cell phone (\$100), an ID card (\$16), a Coach purse (\$250), and makeup (\$20). CP 58. Counsel did not object to restitution for medical expenses. RP 3. Judge Spector stated that she could take judicial notice of what a Coach purse was worth since she owned one. RP 3.

Hollar's attorney explained her objection to the cost of the purse, but she did not provide a rationale for objecting to the other items. RP 4. Defense counsel acknowledged that the cost of the Coach purse Johnson listed seemed accurate, but she challenged the amount because the age of the item was unknown. "My concern is-is obviously I know that Coach purses are around that amount. My concern is just that we don't know if she had a used Coach purse or something that she had bought from a consignment store. Just the fact that we have no idea." RP 4. Counsel agreed that Johnson reported that the purse was taken during the crime. RP 3-4.

Judge Spector noted that the applicable standard was a preponderance of the evidence and that in her view, Johnson was

³ The report of proceedings consists of one volume from the restitution hearing on March 12, 2013, referred to in this brief as RP.

not overreaching. RP 5. She explained why the amount of compensation was reasonable: (1) the value of a Coach purse, regardless of whether it was used or new, was appropriate, (2) cell phones can cost between \$50 and a couple of hundred dollars, and (3) the cost of makeup seemed reasonable. RP 4-5.

The prosecutor mentioned, and the court acknowledged, that Johnson signed the statement of loss under penalty of perjury. RP 5. Before signing the order for \$1,396.39, Judge Spector reiterated that the amount of losses claimed was reasonable.⁴ RP 5; CP 53. Hollar appeals. CP 59.

C. ARGUMENT

THE TRIAL COURT ACTED WITHIN ITS DISCRETION IN SETTING RESTITUTION BECAUSE THE LOSS WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

Hollar argues that the court abused its discretion and violated his right to due process by ordering restitution for Johnson's personal property in the absence of supporting documentation establishing value. This claim fails. In granting damages, the court relied on Johnson's declaration of loss for

⁴ The order provides that restitution is a joint and several obligation with juvenile co-defendant Camerean Rojas-Espino, charged under King County Superior Court cause #13-8-07093-8, if convicted and ordered to pay under separate orders. CP 53.

specific items that were stolen during the crime. Restitution can be ordered based on a declaration from the victim and need not be established with specific accuracy. The trial court properly exercised its discretion in granting restitution.

The decision to impose restitution is within the discretion of the trial court and will not be overturned unless the court abused its discretion. State v. Gray, 174 Wn.2d 920, 924, 280 P.3d 1110 (2012). An abuse of discretion occurs only when the court's order is manifestly unreasonable or untenable. Id. The relevant statute provides, "Restitution 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..." RCW 9.94A.753(5).

The plain language of the restitution statutes demonstrates the legislature's intent "to grant broad powers of restitution" to trial courts; for example, restitution may be equal to twice the defendant's gain or the victim's loss. State v. Davison, 116 Wn.2d 917, 920, 809 P.2d 1374 (1991); RCW 9.94A.753(3). Courts recognize that Washington's restitution statutes were "intended to require the defendant to face the consequences of his or her criminal conduct" and that the purpose of restitution is both punitive and compensatory. State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d

1167 (2007); State v. Kinneman, 155 Wn.2d 272, 279-80, 119 P.3d 350 (2005). As a result, courts “do not engage in overly technical construction that would permit the defendant to escape from just punishment.” Tobin, 161 Wn.2d at 524.

When a defendant disputes a restitution amount, facts supporting the damages must be proved by a preponderance of the evidence. State v. Deskins, 180 Wn.2d 68, 82, 322 P.3d 780 (2014). Although restitution must be based on “easily ascertainable damages,” the amount of harm “need not be established with specific accuracy.” Kinneman, 155 Wn.2d at 285.

Evidence supporting restitution is 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. Hughes, 154 Wn.2d 118, 154, 110 P.3d 192 (2005), abrogated on other grounds by Washington v. Recuenco, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006). Nonetheless, the evidence must satisfy due process requirements, such as reliability and affording the defendant an opportunity to refute the amount of compensation. State v. Pollard, 66 Wn. App. 779, 784-85, 834 P.2d 51 (1992). Losses need to be supported by “substantial credible evidence,” but Washington law permits *estimated* damages for restitution.

State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008); State v. Tobin, 132 Wn. App. 161, 174, 130 P.3d 426 (2006), aff'd, 161 Wn.2d 517, 166 P.3d 1167 (2007) (italics in original).

Courts may rely on a broad range of evidence, including hearsay, to support a restitution claim because the rules of evidence do not apply to sentencing proceedings. Deskins, 180 Wn.2d at 83. Information concerning the amount of loss can be provided via letters and declarations. Tobin, 132 Wn. App. at 175; State v. Lohr, 130 Wn. App. 904, 910-11, 125 P.3d 977 (2005).

Here, substantial evidence supported the court's restitution order for four items that were stolen from Johnson during the assault. CP 58.⁵ In support of the State's restitution request, the court reviewed a declaration that listed individually each piece of stolen property and its value. CP 58; RP 3-6. At the hearing, the court confirmed that Johnson reported the purse was taken during the crime. RP 3-4. Moreover, the evidence was reliable because Johnson signed and dated the victim loss statement under the

⁵ On appeal, Hollar objects to \$487.57 of the \$1,396.39 restitution award as unsupported by documentation establishing value; however, Johnson's loss for personal property totals only \$386. The \$487.57 figure on the restitution order comes from adding a medical bill from the University of Washington Medical Center for \$101.57 that Johnson paid. CP 53-54, 56-58. In the trial court and on page 2 of his brief, Hollar's position was that he does not dispute compensation for medical bills. RP 3. Therefore, the State understands his challenge to apply to \$386 of the total restitution award.

caption “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.” CP 58. In light of this information, the court correctly concluded that the amount of restitution was reasonable compensation for the stolen items. RP 4-5.

Contrary to Hollar’s assertions, corroborating documentation of a victim’s losses is not required under Washington law. Even without supporting records, a victim’s declaration estimating damages, executed under penalty of perjury, is sufficient evidence supporting a restitution order where the defendant presents no contradictory evidence. See Tobin, 132 Wn. App. at 180. Notably, Johnson’s ability to obtain supporting documentation for these items was limited because they were taken during the crime. CP 3.

Hollar had the opportunity to challenge the amount of restitution at a court hearing. He neither called witnesses to testify nor produced any contradictory evidence to either rebut Johnson’s losses or to show that the declaration was unreliable. RP 3-6. Instead, his attorney conceded that the value of a Coach purse is “around” the amount Johnson documented, yet argued that there

may be a price difference between a used purse and a new purse. RP 4. Further, defense counsel did not state any specific objection to the cost of the cell phone, ID card, or makeup that Johnson claimed as losses. RP 3-6.

To support his argument, Hollar relies on State v. Kisor, 68 Wn. App. 610, 844 P.2d 1038 (1993). The facts of Kisor are distinguishable. In that case, the court found that restitution of \$17,380 was based on a hearsay affidavit that only provided a “rough estimate” of costs associated with purchasing a new police dog and training the dog and its handler. Id. at 614, 620. The affidavit referenced an advertisement, but the advertisement did not support the sum requested by the victim. Id. For these reasons, the court found Kisor’s due process rights were violated because the affidavit was not substantial credible evidence. Id. In contrast, here Johnson’s declaration described losses of a different nature: the individual cost of a discrete number of personal items. CP 58. The declaration, combined with the probable cause certification, provided substantial evidence to establish the amount of losses that Johnson suffered.

Hollar further contends that it was improper for Judge Spector to take judicial notice of the value of a Coach purse.

A judge may take judicial notice of any fact that is not subject to reasonable dispute because it is either (1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by sources whose accuracy cannot reasonably be questioned. ER 201(b). Even assuming that it was error for the court to take judicial notice of a Coach purse's worth, a trial court can be affirmed on any basis supported by the record. State v. Poston, 138 Wn. App. 898, 905, 158 P.3d 1286 (2007). Because the State offered sufficient evidence to prove the value of Johnson's purse by a preponderance of the evidence, Judge Spector's comments regarding judicial notice, if erroneous, were harmless.

Although the compensation awarded in this case was proper, Hollar is incorrect as to the remedy should this Court find otherwise. If the State does not establish a causal connection between the defendant's actions and the victim's losses, then a restitution order must be vacated and a remand hearing is precluded. State v. Dennis, 101 Wn. App. 223, 229-30, 6 P.3d 1173 (2000). On the contrary, when substantial evidence does not support a restitution award, the remedy is to remand the matter to the trial court for a new restitution hearing. Griffith, 164 Wn.2d at

967-68; Kisor, 68 Wn. App. at 620. Thus, if this Court finds insufficient evidence to support the amount of loss, this case should be remanded to the trial court for another restitution hearing.

In light of the reliable evidence presented, and the lack of any contrary evidence produced by Hollar, the restitution amount was appropriate. The trial court did not abuse its discretion in granting Johnson compensation for the cost of Hollar's crime.

D. CONCLUSION

For the reasons set forth above, the State asks this court to affirm the restitution order.

DATED this 9th day of October, 2014.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

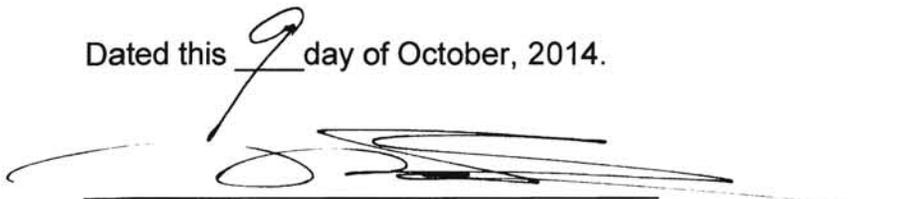
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to David Koch, the attorney for the appellant, at Nielsen, Broman & Koch PLLC, 1908 E Madison Street, Seattle, WA, 98122, containing a copy of the Brief of Respondent, in State v. Jacob Nelson Hollar, Cause No. 71812-6, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 7 day of October, 2014.

A handwritten signature in black ink, appearing to read 'Bora Ly', is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

Bora Ly
Done in Seattle, Washington