

FILED  
Feb 22, 2016  
Court of Appeals  
Division I  
State of Washington

No. 73837-2-I

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

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STATE OF WASHINGTON,

Respondent,

v.

RENO DUANE DOOLITTLE,

Appellant.

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

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APPELLANT'S OPENING BRIEF

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MAUREEN M. CYR  
Attorney for Appellant

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

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A. ASSIGNMENTS OF ERROR

1. The court erred in imposing restitution absent sufficient proof of loss, in violation of the sentencing statute and constitutional due process.

2. Given Reno Doolittle's indigency, this Court should not impose appellate costs if the State substantially prevails.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. If the defendant disputes the amount of restitution requested in a criminal case, the State must present substantial evidence to prove the victim's actual damages. Principles of constitutional due process require that the evidence be reliable and refutable. Here, the State requested restitution to compensate the Crime Victim's Compensation Fund for money it paid to the victim for lost wages. Mr. Doolittle disputed the amount requested but the State presented no corroborating evidence to prove the amount of the victim's actual lost wages. Did the restitution award violate the sentencing statute and constitutional due process?

2. Given that the trial court found Mr. Doolittle is indigent and his indigency is presumed to continue throughout review, should this Court disallow appellate costs if the State substantially prevails?

### C. STATEMENT OF THE CASE

The State charged Mr. Doolittle with one count of fourth degree assault. CP 7. The charge arose out of an incident in which Mr. Doolittle punched his girlfriend Elizabeth Clement and pushed her to the floor. CP 18. Mr. Doolittle and Ms. Clement had been living together for about a year before the incident. RP 32-33. Ms. Clement was treated at the hospital for a broken wrist and broken bones in her foot. CP 18. Mr. Doolittle pled guilty to the charge. CP 8-23.

At sentencing, the court imposed a suspended sentence and 12 months of probation. CP 25. One of the conditions of probation was that Mr. Doolittle pay restitution in an amount to be determined at a later hearing. CP 25.

In support of its restitution request, the State submitted a memorandum from an individual at the Victim Assistance Unit of the King County Prosecutor's Office. CP 28. The memo stated the prosecutor was requesting restitution in the amount of \$97.39 to compensate Ms. Clement for out-of-pocket prescription expenses. CP 28. The prosecutor was also requesting restitution in the amount of \$10,079.68 to compensate the Crime Victims' Compensation Fund (the

Fund), which included \$9,065.02 the Fund had paid to Ms. Clement for lost wages, and \$1,014.66 it had paid in medical expenses. CP 34-35.

A restitution hearing was held. Mr. Doolittle did not object to the restitution requested for Ms. Clement's out-of-pocket or medical expenses. RP 32. But he objected to the amount requested for lost wages. RP 33. He disputed that Ms. Clement's salary was actually as high as the State claimed. RP 33. He pointed out he had lived with Ms. Clement for a year before the incident and therefore had some idea of how much money she made. RP 32-33. He argued the State was required to present additional evidence, such as paystubs or other verification, to prove how much in wages Ms. Clement actually lost as a result of the crime. RP 33, 36.

Rather than present additional documentary evidence, the prosecutor merely described an email she had received from Mary Peters, a claims manager for the Fund. RP 31. According to the prosecutor, Ms. Peters said Ms. Clement had sent in employment paystubs covering one year prior to the injury date. RP 31. The paystubs were added together to arrive at a gross yearly wage of \$154,378.78. RP 31. That amount was then divided by 12 to arrive at a monthly wage of \$12,864.90. CP 31. According to the prosecutor,

Ms. Peters said the payments made by the Fund to Ms. Clement were related to injuries she suffered as a result of the criminal act and were authorized by chapter 7.68 RCW, the Crime Victim Compensation Act. RP 32.

The court overruled Mr. Doolittle's objection to the lack of evidence. RP 37. The court reasoned it must order Mr. Doolittle to pay restitution to the Fund in whatever amount the Fund requested, even absent evidence that the amount was reasonably related to Ms. Clement's actual damages. RP 37. The court explained, "the Court is supposed to accept their [the Fund's] determination of what the appropriate amount owing to the crime victim as a result of the crime should be." RP 37.

Thus, the court entered a restitution order awarding \$97.39 to Ms. Clement and \$10,079.68 to the Crime Victims' Compensation Program. CP 40.

D. ARGUMENT

**1. The court violated the sentencing statute and constitutional due process by ordering restitution without requiring the State to prove the actual amount of the victim's lost wages.**

When a defendant disputes the amount of restitution requested by the State, the court must require the State to present substantial evidence to prove its allegations. Principles of constitutional due process require that the evidence be reliable and refutable. Here, Mr. Doolittle disputed the State's unsupported allegation that the victim lost \$9,065.02 in wages as a result of the assault. Despite the objection, the court did not require the State to present additional evidence to prove the actual amount of the victim's loss. Because the restitution award rests on insufficient evidence, it must be reversed.

*a. The sentencing statute required the State to prove Ms. Clement's damages that resulted from Mr. Doolittle's criminal act.*

A court's authority to impose restitution is wholly statutory. State v. Deskins, 180 Wn.2d 68, 81, 322 P.3d 780 (2014). The authority to award restitution in misdemeanor cases is not provided by the Sentencing Reform Act, which applies only to felonies. State v. Marks, 95 Wn. App. 537, 539, 977 P.2d 606 (1999). When a person is convicted of a misdemeanor and the court imposes a suspended

sentence and probation, the court's authority to impose restitution is derived from RCW 9.92.060(2) and RCW 9.95.210. Id. at 539-40.

Here, Mr. Doolittle was convicted of fourth degree assault, a gross misdemeanor. CP 24; RCW 9A.36.041(2). The court suspended his sentence and imposed 12 months of probation. CP 25. Therefore, the court's authority to impose restitution was governed by RCW 9.92.060(2)<sup>1</sup> and RCW 9.95.210. Marks, 95 Wn.. App. at 539-40.

When the State seeks restitution to cover expenses paid by the Crime Victims' Compensation Fund, restitution is authorized by RCW

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<sup>1</sup> RCW 9.92.060(2) provides:

As a condition to suspension of sentence, the superior court shall require the payment of the penalty assessment required by RCW 7.68.035. In addition, the superior court may require the convicted person to make such monetary payments, on such terms as the superior court deems appropriate under the circumstances, as are necessary: (a) To comply with any order of the court for the payment of family support; (b) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement; (c) to pay any fine imposed and not suspended and the court or other costs incurred in the prosecution of the case, including reimbursement of the state for costs of extradition if return to this state by extradition was required; and (d) to contribute to a county or interlocal drug fund.

9.95.210(3). That statute provides, “[t]he superior court shall order restitution in all cases where the victim is entitled to benefits under the crime victims’ compensation act, chapter 7.68 RCW.” RCW

9.95.210(3).<sup>2</sup> A “victim” is a person who “suffers bodily injury or death as a proximate result of a criminal act of another person.” RCW 7.68.020(15). A victim is entitled to benefits under the act if he or she was “injured as a result of a criminal act.” RCW 7.68.070(1). Benefits may include “financial support for lost wages,” if the victim lost wages due to a temporary total disability resulting from the criminal act. RCW 7.68.070(1), (5).

Thus, in this case, the court was authorized to order Mr. Doolittle to pay restitution to the Fund to cover Ms. Clement’s lost

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<sup>2</sup> RCW 9.95.210(3) provides in full:

The superior court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the superior court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims’ compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the superior court within one year of imposition of the sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the superior court shall hold a restitution hearing and shall enter a restitution order.

wages if she lost wages as a result of Mr. Doolittle's criminal act.

RCW 7.68.020(15); RCW 7.68.070(1), (5); RCW 9.95.210(3).

When disputed, the facts supporting a restitution award must be proved by a preponderance of the evidence. Deskins, 180 Wn.2d at 82. Here, Mr. Doolittle disputed the amount Ms. Clement lost in wages as a result of the assault. Therefore, the State was required to prove that amount by a preponderance of the evidence. Id.

*b. The statute and constitutional due process required the State to present reliable, refutable evidence to prove the actual amount of Ms. Clement's lost wages.*

Setting the restitution amount is an integral part of the sentencing proceeding that must be performed with the same care and deliberation as other aspects of the sentencing decision. State v. Pollard, 66 Wn. App. 779, 784-85, 834 P.2d 51 (1992). Sentencing is a critical step in our criminal justice system and courts have an important duty to ensure that sentencing decisions rest upon reliable facts and information. State v. Hunley, 175 Wn.2d 901, 910, 287 P.3d 584 (2012).

A court's discretion to determine the amount of restitution must be based upon sufficient evidence. State v. Mark, 36 Wn. App. 428, 433, 675 P.2d 1250 (1984). While the claimed loss need not be

established with specific accuracy, it must be supported by substantial credible evidence. Deskins, 180 Wn.2d at 82. Evidence is substantial only if it affords a reasonable basis to estimate loss and does not subject the trier of fact to speculation or conjecture. Id. “Although the Rules of Evidence do not apply at restitution hearings, the evidence presented to the trial judge must nevertheless be sufficient to support a finding of restitution in the amount ordered.” Pollard, 66 Wn. App. at 784.

In addition, restitution proceedings must comply with principles of constitutional due process. Pollard, 66 Wn. App. 779, 784-85; Const. art. I, § 3; U.S. Const. amend. XIV. The Due Process Clause places the burden on the State to ensure that the record before the court is adequate to support a court’s sentencing decision. State v. Mendoza, 165 Wn.2d 913, 920, 205 P.3d 113 (2009). Due process requires that the court’s decision be based upon information bearing “some minimal indicium of reliability *beyond mere allegation*.” Id. (internal quotation marks and citations omitted). A defendant may not be sentenced on the basis of information that is false, lacks a minimum indicia of reliability, or is unsupported by the record. State v. Ford, 137 Wn.2d 472, 481, 973 P.2d 452 (1999). Any action taken by the sentencing

judge that fails to comport with due process requirements is constitutionally impermissible. Id.

The Due Process Clause requires the court's restitution award be based upon evidence that is reliable and refutable. Pollard, 66 Wn. App. at 784-85. If the State relies upon hearsay statements, the record must be adequate to provide the defendant with a sufficient basis to rebut the State's evidence. State v. Kisor, 68 Wn. App. 610, 620, 844 P.2d 1038 (1993). By the same token, "the record must permit a reviewing court to determine exactly what figure is established by the evidence." Pollard, 66 Wn. App. at 785.

These principles were violated in this case because the State did not present sufficient reliable and refutable evidence to prove the actual amount of Ms. Clement's losses.

*c. The State did not present sufficient evidence to support the restitution amount.*

According to the above well-established principles, the State was required to present sufficient reliable evidence to prove the amount in wages Ms. Clement actually lost as a result of the assault. The State's evidence was insufficient because it consisted merely of hearsay allegations about how much the Fund had paid to Ms. Clement, with no evidence to show the amount paid was the same amount Ms. Clement

actually lost. The State's evidence of actual loss consisted only of a third-hand report, made purportedly by a claims manager at the Fund, alleging that the amount the Fund paid to Ms. Clement was based on her paystubs for the preceding year. RP 31. But the State did not produce the actual paystubs or any other corroborative evidence to support the hearsay allegations regarding the amount of loss. The State's evidence was insufficient because it was double hearsay and Mr. Doolittle had no opportunity to refute or rebut it.

The State also relied on vague unsupported allegations that the benefits provided by the Fund to Ms. Clement were related to injuries she suffered as a result of the crime and were authorized by the Crime Victims' Compensation Act. RP 32. But it was the duty of the *court*, not the State or the Fund, to determine whether restitution was authorized and how much restitution to impose. RCW 9.95.210(3). To allow a court to impose restitution based on a third party's assessment of how much restitution is due, without requiring the State to present evidence to support the allegations, or offering the defense an opportunity to refute them, is a violation of constitutional due process. Mendoza, 165 Wn.2d at 920; Ford, 137 Wn.2d at 481; Pollard, 66 Wn. App. at 784-85; Kisor, 68 Wn. App. at 620.

The hearsay evidence relied upon by the State in this case was insufficient to meet its burden of proof. Hearsay evidence may be sufficient to support a restitution award if it consists of documentary evidence submitted by the victim of the crime setting forth the actual amount of the victim's losses. In Deskings, for example, the evidence was sufficient to establish the actual costs of caring for the defendant's animals, where the State presented bills submitted to the sheriff's office by the organization taking care of the animals. Deskings, 180 Wn.2d at 83.

But hearsay evidence is not adequate to support a restitution award if it consists only of an out-of-court statement containing alleged statements by the victim regarding the amount of loss, without additional proof of the loss claimed. Pollard, 66 Wn. App. at 785-86. In Pollard, the only evidence supporting the amount of restitution ordered was a police report containing alleged statements by bank personnel regarding the amount of money lost. Id. The State did not present any bank records or the testimony of bank personnel to corroborate the amount claimed. Id. The Court deemed the evidence to consist of "double hearsay" and held it was insufficient to support the amount ordered. Id.

Similarly, in Kisor, the Court held the restitution award violated due process, where the State presented only an affidavit from a risk manager for the county estimating the costs to the county of purchasing a new police dog and training it. Kisor, 68 Wn. App. at 613-14, 620-21. The evidence was inadequate because the State did not present corroborating evidence to support the amount of loss claimed. Id.

As in Pollard and Kisor, the evidence was insufficient in this case to satisfy constitutional due process. The State's evidence consisted only of an out-of-court statement by a third party containing purported allegations by the victim about the amount she made in wages for the preceding year. RP 31. The State presented no documentary evidence—such as paystubs—to support the amount of loss claimed and no testimony by the victim herself. Because the evidence consisted of double hearsay, Mr. Doolittle had no meaningful opportunity to rebut the allegations. As in Pollard and Kisor, the evidence was insufficient to support the restitution award. Kisor, 68 Wn. App. at 613-14, 620-21; Pollard, 66 Wn. App. at 785-86.

Moreover, when a third party seeks restitution as reimbursement for amounts it paid to the victim of a crime, it must do more than simply present proof of the amounts it paid. State v. Dedonado, 99

Wn. App. 251, 257, 991 P.2d 1216 (2000). For example, if an insurer reimbursed a victim for stolen or damaged property, the State must show the amount paid by the insurer was equal to the amount of the victim's actual loss. Id. In other words, the State must show the insurer did not pay for items of greater or lesser value. Id.

Here, the State merely presented evidence of how much the Fund paid to Ms. Clement without also showing that the amount paid was equal to the amount of Ms. Clement's actual loss. Because Mr. Doolittle disputed the restitution amount, the State was required to present additional evidence to show the amount paid by the Fund was equal to the amount of Ms. Clement's actual losses. Dedonado, 99 Wn. App. at 257. The State failed to do so. For this reason, and also because the State merely relied on double hearsay that Mr. Doolittle had no opportunity to rebut, the restitution award violated both the statute and constitutional due process. Mendoza, 165 Wn.2d at 920; Ford, 137 Wn.2d at 481; Dedonado, 99 Wn. App. at 257; Kisor, 68 Wn. App. at 620; Pollard, 66 Wn. App. at 784-85.

- d. *State v. McCarthy* is factually distinguishable and, if it can be read to hold that a court may impose restitution without requiring the State to present reliable, refutable evidence when the defense raises an objection, the case violates constitutional due process and should not be followed.

The trial court relied on State v. McCarthy, 178 Wn. App. 290, 313 P.3d 1247 (2013), in ruling that it was required to impose restitution in whatever amount the Fund requested, without requiring the State to present additional evidence of Ms. Clement's actual loss. RP 37. The court's reliance on McCarthy was erroneous. McCarthy is distinguishable because in that case the defendant did not challenge the amount of restitution requested by the State. McCarthy, 178 Wn. App. at 302. Moreover, if McCarthy can be read to hold that a court must impose restitution in whatever amount requested by the Fund, without requiring the State to present additional evidence of the amount of the victim's actual loss when there is an objection by the defense, the case violates both the sentencing statutes and constitutional due process and should not be followed.

In McCarthy, McCarthy pled guilty to first degree robbery, residential burglary, and attempted first degree extortion. McCarthy, 178 Wn. App. at 293. At sentencing, the court ordered McCarthy to

pay restitution to the Crime Victims' Compensation Fund for amounts the Fund had paid in funeral expenses for two victims who died during the incident. Id. The Court held that under RCW 9.94A.753(7)<sup>3</sup>, the trial court was not required to find a direct causal relationship between the crimes for which McCarthy was convicted and the funeral expenses. Id. at 299-301. This is different from the general rule, which holds that a court may not impose restitution unless it finds the victim's damages were a direct result "of the precise charges filed." Id. at 298. According to McCarthy, when the Fund requests restitution, the general rule requiring a finding of direct causation does not apply. The court may award restitution to the Fund and "d[oes] not need to independently find a direct causal relationship between the conviction and the restitution ordered." Id. at 301.

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<sup>3</sup> RCW 9.94A.753(7) provides:

Regardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the judgment and sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

McCarthy is distinguishable from this case for at least two reasons. First, the defendant in McCarthy did not challenge the amount of restitution requested at the sentencing hearing. Id. at 293, 302. Here, by contrast, Mr. Doolittle *did* challenge the amount of restitution requested. He specifically argued the amount requested to compensate the Fund for Ms. Clement's lost wages was excessive. RP 32-33, 36. This was not an idle objection. Mr. Doolittle had good reason to question the amount. He had lived with Ms. Clement for a year before the incident and had good reason to know how much she had made. RP 32-33.

As discussed above, when a defendant challenges the State's allegations supporting a restitution request, the court must require the State to present sufficient evidence to prove its allegations by a preponderance of the evidence. Deskins, 180 Wn.2d at 82. This is a general rule that applies to all of a court's sentencing decisions that rely upon disputed facts. It is well-established that, "where a defendant raises a timely and specific objection to sentencing facts, the court must either not consider the fact or hold an evidentiary hearing." State v. Grayson, 154 Wn.2d 333, 339, 111 P.3d 1183 (2005); RCW 9.94A.530(2).

Here, Mr. Doolittle disputed the amount of Ms. Clement's losses resulting from the crime. Therefore, the State was required to prove those disputed facts by a preponderance of the evidence. Deskins, 180 Wn.2d at 82. The State was required to support its claims with substantial, credible evidence. Id.

This case is distinguishable from McCarthy for the additional reason that here, Mr. Doolittle did not dispute that Ms. Clement's injuries were caused by his criminal act; he disputed only the *amount* of her damages. The issue in McCarthy was whether the same direct causation requirement that applies to most restitution awards applies to awards granted to the Fund as compensation for amounts paid to the victim. McCarthy, 178 Wn. App. at 299 (framing issue as whether the trial court could impose restitution under RCW 9.94A.753(7) "without finding the same causal connection between the death expenses and [the defendant's] convictions that is demanded under subsection (5)<sup>[4]</sup> of the statute").

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<sup>4</sup> Subsection (5) of the statute, which applies to most restitution awards under the Sentencing Reform Act, states, "[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." RCW 9.94A.753(5).

It is well-established that when a defendant disputes the *amount* of restitution requested, the State must present substantial credible evidence to support a finding of restitution in the amount ordered. Deskins, 180 Wn.2d at 82; Pollard, 66 Wn. App. at 784; Mark, 36 Wn. App. at 433. McCarthy does not hold that this general principle does not apply when restitution is requested by the Fund. Nothing in the statute or the case law suggests that when restitution is requested by the Fund but the amount is disputed by the defense, the State need not come forward with substantial credible evidence to support the claimed amount.

Finally, if McCarthy *does* stand for the proposition that the State need not come forward with substantial credible evidence to support a restitution request made by the Fund, when the underlying facts are disputed by the defense, the decision violates constitutional due process. As discussed above, sentencing is a critical step in our criminal justice system and restitution is an integral part of the court's sentencing decision. Hunley, 175 Wn.2d at 910; Pollard, 66 Wn. App. at 784-85. Sentencing proceedings *must* conform to the principles of constitutional due process. Hunley, 175 Wn.2d at 914-15; Ford, 137Wn.2d at 481.

Constitutional due process requires the State to come forward with substantial, reliable and refutable evidence to support its restitution request. Ford, 137 Wn.2d at 481; Pollard, 66 Wn. App. at 784-85; Kisor, 68 Wn. App. at 620. “[I]t is inconsistent with the principles underlying our system of justice to sentence a person on the basis of [facts] that the State either could not or chose not to prove.” Ford, 137 Wn.2d at 480. “The State does not meet its burden through bare assertions, unsupported by evidence.” Id at 482. These requirements of the Due Process Clause are not suspended simply because a restitution request is made by the Fund rather than by the victim herself or some other third party.

Historically, the Department of Labor and Industries has been treated like an insurance provider in determining whether it is entitled to restitution. See, e.g., State v. Jeffries, 42 Wn. App. 142, 709 P.2d 819 (1985). In Jeffries, the Department of Labor and Industries requested restitution for amounts it paid to an assault victim for disability and medical expenses. Id. at 143-44. The Court held restitution was authorized because the Department’s loss was analogous to the loss of an insurance company that compensated a victim for losses from the criminal actions of another person. Id. at

144-45. But it is still up to *the court* to fix the actual amount to be paid back to the Department, following a hearing. Id. at 146.

As discussed above, when an insurer requests restitution as reimbursement for expenses paid to a victim of a crime, the State bears the burden to prove restitution should be awarded in the amount requested. Dedonado, 99 Wn. App. at 257 (“Restitution is an integral part of sentencing, and it is the State’s obligation to establish the amount of restitution.”). If the defense disputes the amount requested, the State must come forward with substantial evidence to prove its factual claims. Id. These principles should have been followed in this case but they were not.

In sum, McCarthy is distinguishable and does not control the outcome here. If McCarthy is *not* distinguishable, it should not be followed because it violates constitutional due process.

*e. The restitution order must be reversed and remanded for resentencing.*

When the record is inadequate to support a restitution award, the Court must reverse the restitution order and remand for a new hearing. Pollard, 66 Wn. App. at 786-87. On remand, the court may enter a new restitution order only if the State presents sufficient evidence to support it. Id. Because the record is inadequate to sustain the restitution award

in this case, the Court must reverse and remand for a new hearing at which the State must present sufficient, credible, refutable evidence to support the restitution award.

**2. Any request that costs be imposed on Mr. Doolittle for this appeal should be denied because the trial court determined he does not have the ability to pay legal financial obligations.**

This Court has discretion to disallow an award of appellate costs if the State substantially prevails on appeal. RCW 10.73.160(1); State v. Nolan, 141 Wn.2d 620, 626, 8 P.3d 300 (2000); State v. Sinclair, \_\_\_ Wn. App. \_\_\_, 2016 WL 393719 (No. 72102-0-I, Jan. 27, 2016); RCW 10.73.160(1).

A defendant's inability to pay appellate costs is an important consideration to take into account in deciding whether to disallow costs. Sinclair, 2016 WL 393719 at \*6. Here, the trial court did not require Mr. Doolittle to pay discretionary legal obligations. CP 25. The trial court found he is indigent and lacks the ability to pay any of the expenses of appellate review. Sub #54. Mr. Doolittle's indigency is presumed to continue throughout review absent a contrary order by the trial court. Sinclair, 2016 WL 393719 at \*7; RAP 15.2(f). Given Mr. Doolittle's continued indigency, it is appropriate for this Court to

exercise its discretion and disallow appellate costs should the State substantially prevail. Sinclair, 2016 WL 393719 at \*7.

E. CONCLUSION

Because the State did not present sufficient evidence to prove the amount of restitution, the restitution order must be reversed. If the State substantially prevails, this Court should exercise its discretion and disallow appellate costs because Mr. Doolittle is indigent.

Respectfully submitted this 22nd day of February, 2016.

/s/ Maureen M. Cyr

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MAUREEN M. CYR (WSBA 28724)  
Washington Appellate Project - 91052  
Attorneys for Appellant

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

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STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 73837-2-I
v.	)	
	)	
RENO DOOLITTLE,	)	
	)	
Appellant.	)	

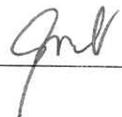
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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 22<sup>ND</sup> DAY OF FEBRUARY, 2016, 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:

[X] KING COUNTY PROSECUTING ATTORNEY	( )	U.S. MAIL
[paoappellateunitmail@kingcounty.gov]	( )	HAND DELIVERY
APPELLATE UNIT	(X)	AGREED E-SERVICE
KING COUNTY COURTHOUSE		VIA COA PORTAL
516 THIRD AVENUE, W-554		
SEATTLE, WA 98104		
[X] RENO DOOLITTLE	(X)	U.S. MAIL
2000 S 308 <sup>TH</sup> ST	( )	HAND DELIVERY
FEDERAL WAY, WA 98003	( )	_____

**SIGNED** IN SEATTLE, WASHINGTON THIS 22<sup>ND</sup> DAY OF FEBRUARY, 2016.

X \_\_\_\_\_ 

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