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NO. 88140-5

RECEIVED BY E-MAIL  
IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

PAMELA DESKINS,

Petitioner.

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

The Honorable Allen C. Nielson, Judge

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SUPPLEMENTAL BRIEF OF PETITIONER PAMELA DESKINS

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A. ISSUES

1. Whether the general suspended sentence provision of RCW 3.66.068 gave the district court authority to order forfeiture of animals on terms broader than those specified in RCW 16.52.200(3)?

2. Whether the general probation provision of RCW 3.66.068 gives a district court authority to impose greater prohibitions than what is specifically allowed by RCW 16.52.200(3)?

3. Whether the district court, in ordering a partially suspended sentence, had authority to impose both a fine and restitution?

4. Whether the district court violated due process in awarding restitution to the sheriff's office?

B. STATEMENT OF THE CASE

Pamela Deskins (born 1952) lives in rural Stevens County on multiple acres of land surrounded by fencing. 1RP 78-79, 143, 213, 396-407, 441-46; CP 52. She was in the commercial animal business since the mid-1980's and owned horses, donkeys and llamas. 1RP 155-56, 170, 422, 448-49. Deskins also thought of her property as an animal sanctuary where she took in unwanted animals. 1RP 417-18. She had housedogs and outside dogs. 1RP 422, 429.

The State charged Deskins in Stevens County District Court with unlawful confinement of domestic animals (count I), second degree animal

cruelty (count II), harassment (count III), and tampering with physical evidence (count IV). CP 19-20. In 2008, three episodes occurred in which a group of dogs attacked another dog inside the fenced enclosure, resulting in the death of two dogs. 1RP 7-9, 29-30, 147-48, 105-09, 133-34, 151-55, 157-59, 178-80, 214-17, 229-30, 237-40. In another instance, a neighbor's dog was bitten and injured by a group of Deskins's dogs that had escaped from the fenced property. 1RP 43-44, 69, 77, 80-81, 100-04.

The Sheriff's Office and Spokanimal, an animal control organization, subsequently seized 39 dogs from Deskins's property. 1RP 260, 265, 268, 294, 339. There were no structures on Deskins's property to separate the dogs from one another. 1RP 260, 292, 312. A Spokanimal employee testified a large group of dogs is unsafe because the dominant dogs tend to injure the other dogs. 1RP 317.

A jury returned guilty verdicts. CP 43-46. The district court imposed 850 days total confinement with 300 days suspended, two years of probation, and various sentencing conditions, including forfeiture of animals and a prohibition on owning, acquiring or living with pets or livestock. CP 2-4. Deskins appealed to the superior court, which reversed the convictions for counts III and IV. CP 1-4, 226-31.

In the Court of Appeals, Deskins challenged the convictions under counts I and II, the amount of fine imposed on count I, restitution, the

forfeiture of animals, and the prohibition on owning, acquiring or living with pets or livestock. Brief of Appellant at 10-41. The Court of Appeals reversed the animal cruelty conviction under count II and the excessive fine, but otherwise affirmed. Slip op. at 1, 18, 23. This Court granted review of the forfeiture, prohibition and restitution issues.

C. ARGUMENT

1. THE SENTENCING ORDER REQUIRING FORFEITURE OF ALL PETS AND LIVESTOCK IS OVERBROAD AND VOID DUE TO LACK OF STATUTORY AUTHORITY.

The district court ordered "All pets or livestock, domestic or commercial at 5522 Wallbridge Rd shall be forfeit to Stevens County Sheriff on 3/5/2010 except for proof of ownership by others." CP 4. The court lacked statutory authority to order forfeiture of all pets and livestock that were not held by authorities.

a. The Forfeiture Order Exceeds The Scope Of What Is Authorized By The Animal Cruelty Statute.

Former RCW 16.52.200(3) (2003)<sup>1</sup> provides in "In addition to the penalties imposed by the court, the court shall order the forfeiture of all

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<sup>1</sup> Laws of 2003, ch. 53 § 113 (eff. July 1, 2004). This version of the statute was in effect as of the date of the offenses and is applicable to Deskins because courts must look to the statute in effect when an offense was committed. State v. Varga, 151 Wn.2d 179, 191, 86 P.3d 139 (2004); State v. Schmidt, 143 Wn.2d 658, 673-74, 23 P.3d 462 (2001). All citations are to the 2003 version of the statute unless otherwise noted.

animals held by law enforcement or animal care and control authorities under the provisions of this chapter if any one of the animals involved dies as a result of a violation of this chapter or if the defendant has a prior conviction under this chapter. In other cases the court may enter an order requiring the owner to forfeit the animal if the court deems the animal's treatment to have been severe and likely to reoccur."

When the meaning of a statute is clear on its face, the appellate court assumes the legislature means exactly what it says, giving criminal statutes literal and strict interpretation. State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). The plain language of the statute limits forfeiture to animals held by authorities.<sup>2</sup> Deskins owned horses, donkeys and llamas, none of which were ever held by law enforcement or animal control. 1RP 155-56, 170, 292. Moreover, the animals held and subject to forfeiture are in the class of "any one of the animal involved" that died. RCW 16.52.200(3). Dogs died.<sup>3</sup> Livestock did not. The court lacked authority to order forfeiture of Deskins's livestock.

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<sup>2</sup> Notwithstanding the prosecutor's request, the district court did not find the animal's treatment to have been severe and likely to reoccur. 1RP 623-24; CP 4, 118.

<sup>3</sup> One dog died in an episode that formed a basis for count I. 1RP 151, 229-30; CP 19. The other dog died during an episode that formed the basis for count II, but that conviction was ultimately reversed by the Court of Appeals and therefore cannot form a lawful predicate for the forfeiture order. 1RP 7-9, 29-31, 108-09, 155, 214-17, 237-40; CP 20.

Moreover, animal control authorities returned 15 of the 39 dogs to Deskins long before this case went to trial. 1RP 349. The returned dogs are not subject to forfeiture because their return to Deskins meant they did not continue to be held. One reasonable interpretation of legislative intent is that forfeiture is appropriate when the animals cannot safely remain with their owner. Another reasonable interpretation is that forfeiture is inappropriate when animal control authorities return animals to their owner after initially being held because their return demonstrates their safety is no longer in danger. "Under the rule of lenity, any ambiguity in the meaning of a criminal statute must be resolved in favor of the defendant." In re Pers. Restraint of Hopkins, 137 Wn.2d 897, 901, 976 P.2d 616 (1999). The 15 returned dogs are not subject to forfeiture.

b. The General Probation Statute Does Not Authorize Forfeiture.

The Court of Appeals did not contest that the forfeiture order failed to comply with the requirements of RCW 16.52.200(3). The Court of Appeals nevertheless upheld the forfeiture order on the theory that the general suspended sentence provision of RCW 3.66.068<sup>4</sup> gave the district

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<sup>4</sup> RCW 3.66.068 provides in relevant part: "For a period not to exceed . . . two years after imposition of sentence for all other offenses, the court has continuing jurisdiction and authority to suspend or defer the execution of all or any part of its sentence upon stated terms."

court authority to condition probation on forfeiture terms other than those specified in RCW 16.52.200(3). Slip op. at 16-17.

That is unprecedented. The Court of Appeals claims to find a broad statutory power of forfeiture in a statute that does not even mention forfeiture. This approach conflicts with the established principle that forfeiture statutes are strictly construed against the government because seizure of private property is disfavored under our constitutional system. Snohomish Regional Drug Task Force v. Real Property Known as 20803 Poplar Way, 150 Wn. App. 387, 392, 208 P.3d 1189 (2009); United States v. \$191,910.00 in U.S. Currency, 16 F.3d 1051, 1068 (9th Cir. 1994).

The power to order forfeiture is purely statutory. State v. Alaway, 64 Wn. App. 796, 800-01, 828 P.2d 591, review denied, 119 Wn.2d 1016, 833 P.2d 1390 (1992). Forfeitures should be enforced only when within the letter of the law. Bruett v. Real Property Known as 18328 11th Ave. N.E., 93 Wn. App. 290, 295, 968 P.2d 913 (1998). In this case, the letter of the law concerning animal forfeiture is found at RCW 16.52.200(3) and nowhere else. That forfeiture statute requires strict compliance. RCW 3.66.068 does not have anything to say about forfeiture. No power of forfeiture can be read into a statute that is silent on the issue.

The Court of Appeals' conclusion is also undermined by the language of RCW 16.52.200(3) itself: "The court may delay its decision

on forfeiture under this subsection until the end of the probationary period." The authority to decide forfeiture after the probation period is over further shows the forfeiture provision under RCW 16.52.200(3) is not tied to the probation provision under RCW 3.66.068.

Even assuming RCW 3.66.068 could apply to the subject of forfeiture as a general matter, the Court of Appeals ignored the fundamental principle that "[a] specific statute will supersede a general one when both apply." Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Comm'n, 123 Wn.2d 621, 630, 869 P.2d 1034 (1994). "[W]here there is a conflict between a general and a special statute, covering the subject in a more definite and minute way, the specific statute will prevail." City of Mercer Island v. Walker, 76 Wn.2d 607, 613, 458 P.2d 274 (1969).

RCW 3.66.068 is the general statute. RCW 16.52.200(3) is the special statute specifically geared to the forfeiture of animals under chapter 16.52 RCW. See Walker, 76 Wn.2d at 613-14 (RCW Title 9 statutes relating to probation and suspension of sentences were general statutes, whereas the subsequently enacted RCW 46.61.515 was the special statute that controlled sentencing); State v. McCullum, 28 Wn. App. 145, 155, 622 P.2d 873 (1981) (sentencing statute for first degree murder was the special sentencing law and therefore prevailed over the

general language of the probation statute, RCW 9.95.200 et seq.), rev'd on other grounds, 98 Wn.2d 484, 656 P.2d 1064 (1983).

RCW 3.66.068 has been around since 1969. RCW 16.52.200 did not exist until 1987. "[W]here a general statute and a subsequent special law relate to the same subject, the provisions of the special statute must prevail." State v. Walls, 81 Wn.2d 618, 622, 503 P.2d 1068 (1973); see also Wark v. Wash. Nat'l Guard, 87 Wn.2d 864, 867, 557 P.2d 844 (1976) ("It is a fundamental rule that where the general statute, if standing alone, would include the same matter as the special act and thus conflict with it, the special act will be considered as an exception to, or qualification of, the general statute, whether it was passed before or after such general enactment."). Any ambiguity in this regard must be resolved in favor of Deskins under the rule of lenity. Hopkins, 137 Wn.2d at 901. The special statute controls the breadth of forfeiture here. The Court of Appeals' unprecedented expansion of forfeiture power into the probation statute must be condemned.

2. THE SENTENCING ORDER PROHIBITING OWNING, ACQUIRING OR LIVING WITH PETS AND LIVESTOCK DURING THE PROBATIONARY PERIOD IS OVERBROAD AND VOID DUE TO LACK OF STATUTORY AUTHORITY.

A court may impose only a sentence that is authorized by statute. State v. Paulson, 131 Wn. App. 579, 588, 128 P.3d 133 (2006). "If the

trial court exceeds its sentencing authority, its actions are void." Paulson, 131 Wn. App. at 588.

As a condition of the sentence, the district court ordered "Do not own, acquire or live with pets or livestock during the probationary period." CP 4. Unlike a later legislative amendment, the statute applicable to Deskins does not prohibit offenders from *living* with similar animals. It only prohibits owning or caring for such animals. The district court lacked authority to prohibit Deskins from living with animals.

The court also exceeded its statutory authority by including livestock and pets among the class of prohibited animals because livestock are not "similar animals" in relation to the forfeited dogs, while pets that are not "similar" to dogs are likewise excluded from prohibition.

a. The Court Lacked Authority To Prohibit Deskins From "Living" With Animals.

Former RCW 16.52.200(3) provides "If forfeiture is ordered, the owner shall be prohibited from owning or caring for any similar animals for a period of two years."<sup>5</sup> A later amendment to the statute, not applicable to Deskins, added a prohibition on "residing" with similar animals; "Any person convicted of animal cruelty shall be prohibited from owning, caring for, *or residing* with any similar animals for a period of

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<sup>5</sup> Laws of 2003, ch. 53 § 113.

time as follows: (a) Two years for a first conviction of animal cruelty in the second degree under RCW 16.52.207[.]" RCW 16.52.200(4)(a) (Laws of 2011, ch. 172 § 4, eff. July 22, 2011) (emphasis added).

The addition of a prohibition on "residing" with similar animals shows no such prohibition existed before the amendment took effect. "[W]hen a material change is made in the wording of a statute, a change in legislative purpose must be presumed." WR Enterprises, Inc. v. Dep't of Labor & Indus., 147 Wn.2d 213, 222, 53 P.3d 504 (2002). Furthermore, the legislature "does not engage in unnecessary or meaningless acts, and we presume some significant purpose or objective in every legislative enactment." John H. Sellen Constr. Co. v. Dep't of Revenue, 87 Wn.2d 878, 883, 558 P.2d 1342 (1976). Under these established rules of statutory construction, an offender was not prohibited from residing with similar animals until the 2011 amendment took effect.

The legislative history of the amended statute shows there was no prohibition on residing with animals before the 2011 amendment. Staff described the bill to the House Judiciary Committee in the following terms: "Substitute Senate Bill 5065 makes several changes in the state's law for the prevention of cruelty of animals. First, the bill makes animal cruelty in the second degree a gross misdemeanor in all contexts, and the restrictions on owning or caring for similar animals is *expanded* to include

residing with animals." Hearing on S.S.B. 5065 Before the H. Jud. Comm. (March 9, 2011) at 15 min. 24 sec., recording by TVW, Washington State's Public Affairs Network, available at [http:// www. tvw. org](http://www.tvw.org).<sup>6</sup>; see State v. Evans, \_\_\_ Wn.2d \_\_\_, 298 P.3d 724, 731-32 (2013) (considering committee hearings as probative of legislative intent).

A committee member said "I'm looking on the brief summary of substitute bill; it talks about modifies prohibition on owning or caring for similar animals imposed on persons convicted of animal cruelty; skim through the bill, I can't find exactly how it modifies it, could you clarify that for me please?" Id. at 16:42. Staff responded "Sure, it modifies it by also adding a prohibition on residing with animals, so currently you can't own or care for animals but doesn't necessarily exclude you from residing with animals, so it adds that provision." Id.

The sponsor of the bill explained to the Senate Judiciary Committee that the main part of the bill was to take care of a "loophole" where a person claims they do not own an animal but merely live with it, leaving them free to continue harming animals. Hearing on S.S.B. 5065 Before the S. Jud. Comm. (Jan. 28, 2011) at 2 hr. 8 min. 10 sec.; see In re Marriage of Kovacs, 121 Wn.2d 795, 807-08, 854 P.2d 629 (1993) (noting

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<sup>6</sup> Recordings of all committee hearings cited herein are available at <http://www.tvw.org>.

the "remarks of . . . a prime sponsor and drafter of the bill" can assist in determining legislative intent). The sponsor made similar remarks to the House Judiciary Committee. See Hearing on S.S.B. 5065 Before the H. Jud. Comm. (March 9, 2011) at 19 min. 26 sec.

Consistent with basic principles of statutory construction, the subsequent legislative history makes clear that there was no statutory prohibition on living with similar animals under the previous version of the statute applicable to Deskins. The court order prohibiting Deskins from living with similar animals is void for lack of statutory authority.

b. The Prohibition Order Is Too Sweeping In Prohibiting Animals That Are Not "Similar" To The Forfeited Dogs.

The district court also lacked authority to broadly prohibit Deskins from owning, acquiring or living "with pets or livestock during the probationary period." Livestock and any pet not "similar" to a dog fall outside the statutory prohibition under RCW 16.52.200(3).

At the time of Deskins's offense, the term "similar animals" was not defined by statute. The dictionary defines the adjective "similar" as "having characteristics in common : very much alike" or "alike in substance or essentials : corresponding." Webster's Third New Int'l Dictionary 2120 (1993); see State v. Webb, 162 Wn. App. 195, 206, 252

P.3d 424 (2011) (in the absence of statutory definition, the meaning of a term may be ascertained from a standard dictionary).

As set forth in section C. 1. a., supra, the only animals lawfully subject to forfeiture are *the dogs* held by SpokAnimal. Only animals "similar" to dogs may be prohibited. Under no reasonable stretch of the imagination can livestock be considered a "similar" animal subject to prohibition under RCW 16.52.200(3). "Criminal statutes generally are construed strictly against the state and in favor of the accused" — loose definitions of prohibited conduct are unacceptable. City of Seattle v. Green, 51 Wn.2d 871, 874-75, 322 P.2d 842 (1958).

The term "similar animals" was not defined by the legislature until 2009, when it was defined as "an animal classified in the same genus." Former RCW 16.52.011(2)(k) (Laws of 2009, ch. 287 § 1).<sup>7</sup> The director of Joint Animal Services, testifying in support of the 2009 bill, lamented there had been a great deal of confusion over what "similar animal" meant in the absence of a statutory definition. Hearing on S.S.B. 5402 Before the S. Jud. Comm. (Feb. 6, 2009) at 1 hr. 22 min. 19 sec. "Where the statute has not been interpreted to mean something different and where the

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<sup>7</sup> RCW 16.52.011(2)(m) (Laws of 2011, ch. 172 § 1) currently defines the term "similar animal" as "(i) For a mammal, another animal that is in the same taxonomic order; or (ii) for an animal that is not a mammal, another animal that is in the same taxonomic class."

original enactment was ambiguous to the point that it generated dispute as to what the Legislature intended a subsequent amendment can enlighten courts as to a statute's original meaning." Ravsten v. Dep't of Labor & Indus., 108 Wn.2d 143, 150-51, 736 P.2d 265 (1987). Such is the case here. Livestock are not in the same genus as dogs, and thus are not similar animals for purposes of prohibition. The prohibition on "pets" suffers from the same infirmity insofar as those pets, such as a bird or a cat, could encompass animals dissimilar to dogs.

Furthermore, any ambiguity about whether "livestock" or pets not in the same genus as dogs are subject to prohibition must be resolved in favor of Deskins under the rule of lenity. Hopkins, 137 Wn.2d at 901. "The policy behind the rule of lenity is to place the burden squarely on the legislature to clearly and unequivocally warn people of the actions that expose them to liability for penalties and what those penalties are." State v. Jackson, 61 Wn. App. 86, 93, 809 P.2d 221 (1991).

c. The General Probation Statute Does Not Provide Requisite Authority For the Prohibition Order.

Sidestepping the above arguments, the Court of Appeals held the prohibition was entirely proper because the general probation provision of RCW 3.66.068 gave the court authority to impose greater prohibitions than what is specifically allowed by RCW 16.52.200(3). Slip op. at 17. It

cited no authority for this proposition. A specific statute supersedes a general one when both apply. Waste Mgmt. of Seattle, 123 Wn.2d at 630. RCW 16.52.200(3) — the special statute detailing what may be prohibited — controls over the general statute of RCW 3.66.068. Walker, 76 Wn.2d at 613-14. The probation statute is not a catch-all source of authority on the matter. The sentencing order is overbroad because it did not comply with RCW 16.52.200(3).

3. THE DISTRICT COURT HAS AUTHORITY TO IMPOSE BOTH A FINE AND RESTITUTION.

The issue is resolved by the Court's recent decision in City of Seattle v. Fuller, which held municipal courts have statutory authority to impose restitution when imposing suspend sentences and may impose both a fine and restitution. City of Seattle v. Fuller, \_\_\_ Wn.2d \_\_\_, 300 P.3d 340, 341, 347 (2013). The reasoning in Fuller applies to courts of limited jurisdiction. Fuller, 300 P.3d at 341-46. The district court had authority to impose restitution for injury to the neighbor's dog.

4. THE COURT VIOLATED DUE PROCESS IN IMPOSING RESTITUTION FOR ANIMAL CARE COSTS WITHOUT SUBSTANTIAL SUPPORTING EVIDENCE OR ADEQUATE NOTICE AND OPPORTUNITY TO BE HEARD

Minutes after the jury returned its verdict, the district court ordered Deskins to pay restitution to the Stevens County Sheriff's Office in the

amount of \$21,582.21.<sup>8</sup> CP 3; 1RP 591. In violation of her constitutional right to due process, Deskins did not receive adequate notice and opportunity to be heard and the State did not meet its burden of proof. U.S. Const. amend. XIV; Wash. Const. art. 1, § 3.

Due process insures that a defendant will not be sentenced for restitution on the basis of misinformation. United States v. Sunrhodes, 831 F.2d 1537, 1542 (10th Cir. 1987). To that end, due process requires notice and a hearing before the court may impose the obligation to pay restitution. In re Pers. Restraint of Sappenfield, 92 Wn. App. 729, 742, 964 P.2d 1204 (1998). The opportunity for such a hearing "must be granted at a meaningful time and in a meaningful manner." Halsted v. Sallee, 31 Wn. App. 193, 197, 639 P.2d 877 (1982).

The district court gave the defense 10 minutes to prepare for sentencing after the jury returned its verdicts. 1RP 591. The court denied defense requests for a continuance to prepare, even though counsel maintained "I don't think that those numbers can just be signed off on." 1RP 592, 613-14, 619. The prosecutor initially gave rough estimates from

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<sup>8</sup> Former RCW 16.52.200(5) (2003) provides in relevant part "the defendant, only if convicted or in agreement, shall be liable for reasonable costs incurred pursuant to this chapter by law enforcement agencies, animal care and control agencies, or authorized private or public entities involved with the care of the animals. Reasonable costs include expenses of the investigation, and the animal's care, euthanization, or adoption."

memory of what he believed was owed. 1RP 612-13. The prosecutor later presented for the first time a "statement" by Captain George, which represented "a more exact figure with regard . . . to what is owed SpokAnimal." 1RP 625. George said "There's a bill that's still outstanding to SpokAnimal for \$5,940.00 . . . the costs of the sheriff's office prior to that for caring for those animals was \$21,582.21." 1RP 625. The statement was given to the judge but was neither filed nor provided to Deskins. 1RP 625.

Deskins was not given notice that the court would entertain and order restitution the same day on which the jury returned its verdict. She received no prior notice of the claimed restitution amount or how that amount was calculated. The court asserted "This Court was scheduled to be done today. We have limited schedules that are on the record, all of us, and I think it is -- reasonable that the parties should be prepared to go forward today." 1RP 625. Nothing in the record shows the sentencing or restitution hearing was scheduled to take place minutes after the verdict was read.<sup>9</sup> Nor would it make sense, because it is unknown whether either hearing is needed until after the jury returns its verdict. The court's failure to grant a separate restitution hearing before sentencing violated Deskins's right to due process. State v. Raleigh, 50 Wn. App. 248, 254, 748 P.2d 267 (1988).

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<sup>9</sup> At a post-sentencing hearing, the court remarked "going immediately to sentencing -- may not have been your expectation, it is certainly -- allowable[.]" 1RP 675.

Furthermore, evidence produced in support of restitution must meet due process requirements, such as providing the defendant an opportunity to refute the evidence and requiring the evidence to be reliable. State v. Pollard, 66 Wn. App. 779, 784-85, 834 P.2d 51, review denied, 120 Wn.2d 1015, 844 P.2d 436 (1992); State v. Kisor, 68 Wn. App. 610, 620, 844 P.2d 103 (order requiring defendant to pay restitution for shooting police dog reversed because an uncorroborated affidavit setting out estimate of costs deprived defendant of sufficient basis for rebuttal), review denied, 121 Wn.2d 1023, 854 P.2d 1084 (1993).

"To determine the amount of restitution, the trial court can either rely on a defendant's acknowledgment or it can determine the amount by a preponderance of evidence." State v. Hughes, 154 Wn.2d 118, 154, 110 P.3d 192 (2005), overruled on other grounds by Washington v. Recuenco, 548 U.S. 212, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006). Deskins did not acknowledge the amount of restitution. Her counsel denied "those numbers can just be signed off on." 1RP 619. "Where a defendant disputes facts relevant to the determination of restitution, the State must prove the amount by a preponderance of the evidence at an 'evidentiary hearing,'" i.e., a hearing at which evidence is presented. Hughes, 154 Wn.2d at 154.

The State did not bear its burden of proof. "While the claimed loss 'need not be established with specific accuracy,' it must be supported by

'substantial credible evidence.'" State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008) (quoting State v. Fleming, 75 Wn. App. 270, 274-75, 877 P.2d 243 (1994)). Evidence supporting restitution is sufficient only if it "affords a reasonable basis for estimating loss and does not subject the trier of fact to mere speculation or conjecture." Griffith, 164 Wn.2d at 965 (quoting Hughes, 154 Wn.2d at 154).

The State fails to prove the required causal relationship between crime and expense merely by presenting a summary or list of expenditures. State v. Hahn, 100 Wn. App. 391, 399-400, 996 P.2d 1125 (2000) (error to order restitution based on summary report of medical expenditures); State v. Bunner, 86 Wn. App. 158, 159-60, 936 P.2d 419 (1997) (reversing restitution order where only evidence was summary report of medical expenditures); State v. Dedonado, 99 Wn. App. 251, 257, 991 P.2d 1216 (2000) (proof of expenditures that did not establish casual connection insufficient to support restitution award).

The Court of Appeals claimed "Captain George testified to the actual amount, and also presented the billing statement from SpokAnimal listing the costs of caring for Ms. Deskins' dogs to corroborate his testimony." Slip op. at 22. What Captain George said can in no way be construed as testimony. He was not sworn in as a witness to give testimony and was never subject to cross-examination. 1RP 625.

The basis for George's knowledge of the costs owed to the Sheriff's Office was never established. The court did not impose restitution related to Spokanimal costs, so the Spokanimal billing statement is irrelevant to the due process inquiry. 1RP 631, 640. All we are left with is Captain George's naked representation that \$21,582.21 was owed to the Sheriff's Office. 1RP 625. Deskins was not given an adequate opportunity to contest the accuracy or reasonability of the costs awarded to the Sheriff's Office at a meaningful time or manner. The evidence is insufficient to support the restitution award. The restitution order must be reversed.

D. CONCLUSION

Deskins respectfully requests that this Court vacate the forfeiture and prohibition orders, as well as the restitution order involving the Stevens County Sheriff's Office.

DATED this 25th day of June 2013.

Respectfully submitted,

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State v. Pamela Deskins

No. 88140-5

Certificate of Service by email/mail

I Patrick Mayovsky, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

That on the 28<sup>th</sup> day of June, 2013, I caused a true and correct copy of the Supplemental Brief of Petitioner Pamela Deskins to be served on the party / parties designated below by email per agreement of the parties pursuant to GR30(b)(4) and/or by depositing said document in the United States mail.

Pamela Deskins  
12128 N. Division Avenue, #136  
Spokane, WA 99218

Signed in Seattle, Washington this 28<sup>th</sup> day of June, 2013.

x Patrick Mayovsky

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Attached for filing today is a supplemental brief of petitioner Pamela Deskins for the case referenced below.

State v. Pamela Deskins

No. 88140-5

Supplemental Brief of Petitioner Pamela Deskins

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