

NO. 65156-1-I

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

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STATE OF WASHINGTON,

Respondent,

v.

RYAN DANFORD,

Appellant.

---

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

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BRIEF OF APPELLANT

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#### A. ASSIGNMENTS OF ERROR

1. The restitution order must be vacated because it was entered over 180 days after the sentencing hearing.

2. The trial court erred by finding the State's lack of preparation constituted good cause for continuing the restitution hearing.

3. The trial court erred by ordering Ryan Danford to pay restitution of \$8,822.46 to Brandon Black and \$37,503.85 to Ingenix Subrogation Services.

4. The trial court erred by relying upon the certification for probable cause and prosecutor's statement over Mr. Danford's objection.

5. The trial court erred by finding a causal connection between the list of medical expenses provided by the State and the robbery to which Mr. Danford pled guilty.

#### B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. RCW 9.94A.753(1) requires the superior court to determine the amount of restitution at the sentencing hearing or within 180 days of the sentencing. The court may continue a restitution hearing only for good cause. Mr. Danford was sentenced on September 18, 2009, but the court did not enter a

restitution order until March 19, 2010, because the court granted a continuance so the prosecutor's office could obtain a witness to explain the medical insurance billing information it relied upon to prove restitution. Where the State has the burden of proving restitution by a preponderance of the evidence, is the State's failure to provide that proof at the restitution hearing good cause to justify a continuance? Must Mr. Danford's restitution order be vacated because it was entered more than 180 days after his sentencing hearing? (Assignments of Error 1, 2).

2. Restitution may only be ordered for actual expenses causally connected to the defendant's crime, and the State must prove the causal connection by a preponderance of the evidence. Mr. Danford pled guilty and agreed the certification in support of probable cause and the prosecutor's summary could be used by the court for purposes of sentencing. The plea agreement was prepared by the State and thus construed in favor of Mr. Danford. Did the trial court err by considering the certification for probable cause and prosecutor's summary at the restitution hearing? In the absence of the certification of probable cause and prosecutor's summary, did the State fail to prove a causal connection between the victim's medical expenses where the prosecutor did not call any

witnesses but instead relied upon copies of insurance claim summaries and medical bills? Should all of the medical expenses incurred after the date of the offense be excluded from the ordered restitution? (Assignments of Error 3-5)

3. Even if the trial court properly considered the certification of probable cause and prosecutor's summary, the only information provided by the State concerning medical expenses on February 26, March 11, and March 17 was that they were for outpatient services at a large hospital with numerous outpatient departments. Should all the medical expenses incurred on those dates be excluded from the ordered restitution? (Assignments of Error 3, 5)

#### C. STATEMENT OF THE CASE

Pursuant to a plea agreement with the King County Prosecutor's Office, Ryan Danford pled guilty to a single count of robbery in the first degree based upon the infliction of bodily injury, RCW 9A.56.200(1)(a)(iii). CP 1, 11-35. In the Statement of Defendant on Plea of Guilty, Mr. Danford stated that on February 13, 2009, he and two other men took personal property from Brandon Black and inflicted bodily injury upon Mr. Black "by striking him with fists and kicking him." CP 20. As part of the plea

agreement, Mr. Danford agreed to “pay restitution in full to the victim(s) on charged counts.” CP 33.

According to the certification for determination of probable cause, Brandon Black and two companions were entering an apartment complex in Federal Way when a group of five men approached them and demanded their cellular telephones and wallets. CP 25. When police officers arrived at the apartment complex, Mr. Black was bleeding from the nose and the back of his head, his left eye was swollen shut, and he was unable to talk. CP 25. Mr. Black was treated by medics and then taken to St. Francis Hospital. CP 25. Mr. Danford and two codefendants later told the police that Mr. Danford hit Mr. Black in the face. CP 28-29. The incident occurred on February 13, 2009. CP 25.

In the prosecutor’s case summary and request for bail, a deputy prosecuting attorney asserted that Mr. Black suffered seven broken bones in his face, crushed sinuses, and double vision. CP 9, 31. The prosecutor added that Mr. Black later underwent surgery in which metal plates were inserted in his face. CP 9, 31. The date of the surgery was not revealed, but the summary was dated March 9, 2010. CP 9-10, 31.

The Honorable Cheryl Carey sentenced Mr. Danford on September 18, 2009, to serve a 57-month prison term followed by 18 months on community custody. CP 36-44; RP 8.<sup>1</sup> Eventually the King County Prosecutor's Office set a restitution hearing for March 4, 2010. CP 67. The court granted the State's motion to continue the restitution hearing to March 15, but did not find good cause for the continuance. CP 68.

On March 15, defense counsel agreed that the restitution order should include payment for Mr. Black's lost wages and cellular telephone. RP 12. However, defense counsel pointed out that the documentation provided by the State did not establish the required causal connection between the medical bills and the crime. RP 11-12.

The court expressed concern that the medical bills were for varying dates, but the State asserted that any medical expenses after the date of the offense were connected to the crime. RP 11. The deputy prosecuting attorney argued that the combination of the

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<sup>1</sup> The verbatim report of proceedings of Mr. Danford's sentencing hearing on September 18 and restitution hearings on March 15 and 19, 2010, are found in one volume. The hearings were in a court room utilizing a recording system rather than a court reporter. The transcriptionist was unable to provide a complete record of the hearings, particularly the March 19 hearing, because of the poor quality of the recording. Appellate counsel listened to a copy of the recording and agrees with the transcriptionist's conclusion that one or more microphones were not turned on.

bills and “what we know on the cert[ification] about the victim’s injuries and the fact that he needed facial reconstruction surgery” established the causal connection to the crime. RP 13; RP 14-15. The prosecutor, however, admitted the information was hard to understand and she was unable to “decipher” the records “exactly” for the court. RP 15-16.

The trial court stated, “I really need to have someone who can tell me what this means in order for me to conclude there is a nexus (INAUDIBLE). I need someone to testify (INAUDIBLE).” RP 13-14. The court therefore continued to March 19, finding good cause for the continuance beyond the statutory time limit. RP 17.

On March 19, the State did not produce any witnesses and instead submitted the same documents with a summary and comments added by Bianca Lewis of the Victim Assistance Unit. CP 71-117; RP 17-18. Defense counsel again argued that “the causal connection is not established simply because a victim or insurer submits proof of expenditures.” RP 19 (quoting State v. Dennis, 101 Wn.App. 223, 227, 6 P.3d 1173 (2000)).

Mr. Danford also objected to the court’s consideration of the certification in support of probable cause and prosecutor’s statement in support of the request for bail, but the objection was

overruled.<sup>2</sup> RP 21. The court found that all of the listed medical bills except for one in July were consistent with the date of injury and probable follow-up visits. RP 21-22, 26. The court explained:

I think that[,] although I think these medical records are terrible, I certainly feel that they're sufficient given the nature of the injuries. We do have all of the bills (INAUDIBLE). I can account for them. We (INAUDIBLE) certain amount charged by a hospital, certain amount reduced by the plan, certain amount paid by the plan, (INAUDIBLE) try to substantiate it with the documents (INAUDIBLE).

RP 30.

The court therefore ordered the restitution amount requested by the State with the exception of July medical bills, for which the court found no nexus with the injury caused by the crime.<sup>3</sup> RP 30-31. Mr. Danford was thus ordered to pay restitution of \$8,822.47 to Mr. Black and \$37,503.85 to Ingenix Subrogation Services.<sup>4</sup> CP 63-64. Mr. Danford appeals. CP 65-66.

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<sup>2</sup> While court's ruling on defense counsel's objection is "inaudible," the court's ruling shows that the court considered the certification and prosecutor's statement. RP 20-24.

<sup>3</sup> The restitution to Mr. Black included \$400 for his cellular telephone and \$2,039.18 for lost wages, which Mr. Danford did not contest. Concerning the medical bills, the court subtracted \$100 from the amount requested by the State for Mr. Black and subtracted \$682.23 from the amount requested for the insurance company. This corresponds to the billing information for St. Francis Hospital on July 4, 2009. CP 63, 70, 77, 81-82.

<sup>4</sup> There was no explanation for why the payment was not ordered to Mr. Black's insurer, United Healthcare.

#### D. ARGUMENT

##### 1. THE RESTITUTION ORDER MUST BE VACATED BECAUSE IT WAS ENTERED BEYOND THE STATUTORY TIME PERIOD

The Sentencing Reform Act (SRA) authorizes a sentencing court to order restitution at or within 180 days of the sentencing hearing. In Mr. Danford's case, the court granted the State's motion to continue Mr. Danford's restitution hearing more than 180 days after sentencing because the State was unprepared to prove the restitution requested. Mr. Danford's restitution order must be reversed because the court erred in finding the prosecutor's lack of preparation constituted good cause to continue the hearing.

a. The SRA mandates that restitution be ordered within 180 days of sentencing. The superior court's power to order restitution is statutory. State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008); State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). Where the defendant is convicted of a felony, the court's authority to impose restitution is derived from the Sentencing Reform Act (SRA). When restitution is ordered for a felony offense, RCW 9.94A.753(1) requires the trial court to determine the amount "at the sentencing hearing or within 180 days" under the hearing is

continued “for good cause.”<sup>5</sup> The time limit is mandatory. State v. Krall, 125 Wn.2d 146, 881 P.2d 1040 (1994); State v. Prado, 144 Wn.App. 227, 249, 181 P.3d 901 (2008). A motion to continue the restitution hearing must be made within the 180-day period. Prado, 144 Wn.App. at 249. Because the timeliness of a restitution order is an issue of statutory construction, this Court’s review is de novo. State v. Johnson, 96 Wn.App. 813, 816, 981 P.2d 25 (1999).

b. The trial court continued Mr. Danford’s restitution beyond the 180 day period over defense counsel’s objection. Mr. Danford was sentenced on September 18, 2009, and the 180-day period therefore expired on March 17, 2010. CP 40. The hearing was initially set for March 4, but was continued to March 15 upon motion of the State.<sup>6</sup> CP 67-68. The order does not mention the reason for the State’s request for a continuance, but the court did not find the State had good cause for requesting the continuance; the order

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<sup>5</sup> RCW 9.94A.753(1) statute reads in pertinent part:

When restitution is ordered, the court shall determine the amount of restitution at the sentencing hearing or within one hundred eighty days except as provided in subsection (7) of this section. The court may continue the hearing beyond the one hundred eighty days for good cause. . .

If the court does not order restitution, subsection (7) permits the Department of Labor and Industries to petition the court within one year for a restitution order on behalf of a victim entitled to receive compensation from the Crime Victim’s Compensation Program. RCW 9.94A.753(7).

<sup>6</sup> There is no record of a hearing on the initial motion.

states the continuance “does not affect the requirement that restitution be set within 180 days of sentence.” CP 68

On March 15, the court indicated a witness was needed to establish a nexus between the crime and the medical bills provided by the prosecutor. RP 13-14. Mr. Danford objected to a continuance, pointing out (1) the State should have been aware of its burden of proof and (2) the defendant had filed a memorandum arguing a causal connection to the crime could not be established with the documents provided. RP 14. The court, however, granted the prosecutor’s request to continue the matter to obtain a witness, finding good cause for the continuance. RP 14-16. The court explained the basis of the finding of good cause:

Well, there are – there certainly is information here from which I have to (INAUDIBLE) and draw some conclusions. But, you know, I get that there is enough information to certainly show that there are medical bills as a result of the incident that occurred on (INAUDIBLE) but it’s difficult for this court – I could either accept the large amount or I need someone to go through and explain to me exactly what amount we’re looking at. But I do think that there are some (INAUDIBLE) certainly information worth working for that could allow this Court (INAUDIBLE) to go through and come up with a number that I thought would (INAUDIBLE).

RP 15-16. The court therefore continued the matter to Friday, March 19, beyond the 180-day limit of March 17. RP 17.

c. The trial court erred by finding good cause for the continuance. RCW 9.94A.753(1) permits continuances of a restitution hearing for good cause. “Good cause” requires “a showing of some external impediment that did not result from a self-created hardship that would prevent a party from complying with the statutory requirements.” Johnson, 96 Wn.App. at 817. A party’s lack of preparation or oversight does not establish “good cause” for a continuance. Id.; accord In re Marriage of Pennamen, 135 Wn.App. 790, 798, 146 P.3d 466 (2006). Thus, in Johnson this Court found the prosecutor’s inability to transport the defendant to the restitution hearing in a timely manner was not good cause to justify holding the restitution hearing outside the statutory time period. Id. at 814-15, 817.

Here, although Mr. Danford agreed to pay restitution, he did not agree to a specific amount. CP 33. It was thus the prosecutor’s burden to establish the amount by a preponderance of the evidence. Griffith, 164 Wn.2d at 965 (“If a defendant disputes the restitution amount, the State must prove the damages by a preponderance of the evidence.”). The defendant is under no obligation to notify the prosecutor of any challenges to the requested restitution order; the State must be prepared to provide

the court with the needed information, whether through documents or witnesses. State v. Dedonado, 99 Wn.App. 251, 257, 991 P.2d 1216 (2000). Here, the defendant put the prosecutor on notice of his argument that the medical bills provided were not sufficient to show the expenses were caused by Mr. Danford's crime. CP 45-46; RP 11-12. Nonetheless, the State was not prepared to prove the amount of restitution at the March 15 hearing.

The State's lack of preparation and failure to arrange for a witness to establish a causal connection or explain the medical billing to the court was a "self-created hardship" rather than an "external impediment." The State should not benefit from the court's instructions on how to prove its case. The restitution court thus erred by finding good cause to continue the restitution hearing.

d. The restitution order must be vacated. The trial court incorrectly found the State had good cause to continue Mr. Danford's restitution hearing a second time in order to provide the court with additional evidence. The restitution order was therefore entered beyond the 180-day statutory deadline. The restitution order must therefore be vacated. Krall, 125 Wn.2d at 149; Johnson, 96 Wn.App. at 818.

2. THE STATE DID NOT PROVE THE CLAIMED  
AMOUNT OF RESTITUTION WAS CAUSED BY MR.  
DANFORD'S CRIMINAL ACT

The State provided the restitution court with medical bills with only minimal explanation of what treatment the bills were for, and the court relied upon the certification of probable cause and prosecutor's statement without Mr. Danford's agreement that they could be considered for purposes of determining restitution. The State thus failed to prove all of the medical expenses included in the restitution ordered by the court were for injuries caused by Mr. Danford's crime. Because the court only has statutory authority to require an offender to pay restitution for injuries caused by his offenses, the restitution must be reduced.

a. Restitution may only be imposed for loss or injury caused by the crime in question. The SRA requires the trial court to order restitution when the defendant is convicted of an offense that resulted in injury, as did the robbery here. RCW 9.94A.753(5). Restitution must be based upon "easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury." RCW 9.94A.753(3). Thus, restitution is limited to loss "causally connected' to the crimes charged." Griffith, 164 Wn.2d at 965-66

(quoting State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167 (2007)). Losses are causally connected if, but for the charged crime, the victim would not have incurred the loss. Id. at 966; Tobin 161 Wn.2d at 524.

b. The State did not prove a casual connection between the list of medical bills and the charged offense. The burden is on the State to prove the victim's losses and the causal connection to the defendant's crime by a preponderance of the evidence. Griffith, 164 Wn.3d at 965; Dedonado, 99 Wn.App. at 257. This burden is not met merely because an insurer or victim submits a list of expenditures. Id. "[A] summary of medical treatment that 'does not indicate why medical services were provided[ ] fails to establish the required causal connection between the victim's medical expenses and the crime committed.'" State v. Dennis, 101 Wn.App. 223, 227, 6 P.3d 1173 (2000) (quoting State v. Bunner, 86 Wn.App. 158, 160, 936 P.2d 419 (1997)).

Thus, in Bunner and Hahn, a summary report of medical expenses was not sufficient to prove the expenses were causally connected to an assault. State v. Hahn, 100 Wn.App. 391, 399-400, 996 P.2d 1125 (2000) (documents showed only name of service provider, service date, date paid, billed amount and amount

paid); Bunner, 86 Wn.App. at 159-60 (list of medical services charged and amount DSHS paid). In contrast, restitution was properly awarded where the victim testified at the restitution hearing that her medical expenses for an emergency room visit and orthopedic follow-ups for injuries were caused by the defendant's assault. State v. Blanchfield, 126 Wn.App. 235, 108 P.3d 173, rev. denied, 155 Wn.2d 1020 (2005).

The State provided the court with medical bills and insurance claim summaries that showed the amounts paid by Mr. Black and his insurance carrier, United Healthcare. CP 70-117. These documents show that Mr. Black incurred expenses for hospitalization, physicians, radiology, and an ambulance. There was no witness to testify the medical treatment was necessitated by the defendant's crime. Instead, the trial court assumed all of the listed expenses -- except those incurred on July 4, 2009 -- were related to the February 13 robbery. See RP 22 ("you'd have to do follow-up").

The court, however, should not have ordered Mr. Danford to pay restitution for Harborview Medical Center expenses incurred on February 26, March 11, and March 17, 2009. The only documentation for these expenses states that there were for

miscellaneous outpatient services. CP 91-92, 95-98. Harborview Medical Center has numerous out-patient departments and provides treatment for a variety of medical problems.<sup>7</sup> The documents provided by the State do not prove the required causal connection to Mr. Danford's crime, and thus they should not have been included. As result, the restitution owed to Mr. Black should be reduced by \$10.00, and the restitution to his insurance company should be reduced by \$65.00.

c. Mr. Danford did not agree that the trial court could consider the certification for probable cause and prosecutor's statement in support of bail for purposes of establishing restitution.

Mr. Danford objected to the restitution court considering the certification for certification for probable cause and prosecutor's statement in support of bail at the restitution hearing. RP 21. The court, however, assumed the certification for determination of probable cause and prosecutor's statement in support of bail could be used to establish the facts of Mr. Danford's crime. RP 20-22. The trial court was incorrect.

Under the "real facts doctrine," a sentencing court may only consider information admitted by the plea agreement or admitted,

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<sup>7</sup> See [www.uwmedicine.washington.edu/Patient-Care/Our-Services/Find-a-Clinic/Pages/default.aspx](http://www.uwmedicine.washington.edu/Patient-Care/Our-Services/Find-a-Clinic/Pages/default.aspx) (last viewed 11/16/10)

acknowledged, or proved at trial or sentencing. RCW 9.94A.530(2). When a defendant disputes material facts, the court must either not consider them or hold an evidentiary hearing. Id. This doctrine applies at a restitution hearing, where, absent agreement, the State must prove the restitution amount by a preponderance of the evidence. Griffith, 164 Wn.2d at 965.

Here, Mr. Danford stipulated that the facts in the certification for determination of probable cause and prosecutor's summary were "real and material facts for purposes of sentencing," not for a later restitution hearing. CP 33. He then objected to the court's consideration of the certification and summary for purposes of determining restitution. RP 21.

This Court drew this distinction between acknowledging facts for purposes of sentencing and purposes of restitution. Bunner, 86 Wn.App. at 161. In Bunner, the defendant acknowledged a presentence investigation report (PSI) at his sentencing hearing, and the State asked the appellate court to consider the PSI in reviewing the ordered restitution. Id. This Court refused to affirm the restitution order based upon information in the PSI, pointing out the defendant cannot be required to formulate all possible future objections to presentence materials at the sentencing hearing:

Requiring the defendant to object to the PSI at sentencing based upon conceivable objections the defendant may have to the report at the restitution hearing would be administratively burdensome. This is because a defendant may have no objection to the PSI for sentencing purposes, but a strenuous objection to the information for restitution purposes.

Id. Thus, Mr. Danford's agreement to the use of the certification of probable cause and prosecutor's summary for purposes of sentencing did not constitute an agreement to the use of these materials at the restitution hearing.

When a defendant enters a plea of guilty, he waives many important constitutional rights. State v. Van Buren, 101 Wn.App. 206, 211, 2 P.3d 991, rev. denied, 142 Wn.2d 1015 (2000). Plea agreements are construed as contracts, but in light of these constitutional protections. State v. Thomas, 79 Wn.App. 32, 39, 899 P.2d 1312 (1995). Ambiguous plea agreements are construed against the drafting party – in this case the State. State v. Bisson, 156 Wn.2d 507, 521-23, 130 P.3d 870 (2006); State v. Lathrop, 125 Wn.App. 353, 362, 104 P.3d 737 (2005).

The scope of a plea agreement is determined by looking at its language. See Personal Restraint of Lord, 152 Wn.2d 182, 191-93, 94 P.3d 952 (2004). Here, the plea agreement drafted by the State provides that Mr. Danford agreed the certification for probable

cause and prosecutor's summary could be used for purposes of sentencing. CP 33. In a separate paragraph, Mr. Danford agreed to pay restitution. CP 33. Nothing in the agreement shows that Mr. Danford agreed that the certification and prosecutor's statement could be used for purposes of determining the amount of restitution. Construing the agreement in the light most favorable to Mr. Danford leads to the conclusion that he did not stipulate the probable cause certification and prosecutor's summary could be utilized for purposes of determining restitution.

Mr. Danford admitted hitting and kicking Mr. Black in his plea statement. CP 20. Thus, there was some factual basis to order Mr. Danford to pay restitution for Mr. Black's medical expenses on that date. Without the prosecutor's summary, however, the State did not show that Mr. Danford's surgery on February 19-20 or the later medical expenses were causally connected to the robbery. The restitution to Mr. Black should be reduced by \$6,283.30, and the restitution to Ingenix Subrogation Services should be reduced by \$35,648.46.

#### E. CONCLUSION

The order requiring Mr. Danford to pay restitution of \$8,822.47 to Brandon Black and \$37,503.85 to Ingenix Subrogation

Services must be vacated because it was entered more than 180 days after sentencing. In the alternative, the restitution amounts should be reduced to exclude payments ordered in the absence of proof of a causal connection to Mr. Danford's crime.

DATED this 17<sup>th</sup> of November 2010.

Respectfully submitted,



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

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 65156-1-I
v.	)	
	)	
RYAN DANFORD,	)	
	)	
Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 17<sup>TH</sup> DAY OF NOVEMBER, 2010, 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 APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X] RYAN DANFORD 306753 WASHINGTON STATE PENITENTIARY 1313 N 13 <sup>TH</sup> AVE WALLA WALLA, WA 99362	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

**SIGNED** IN SEATTLE, WASHINGTON THIS 17<sup>TH</sup> DAY OF NOVEMBER, 2010.

X \_\_\_\_\_  
*[Handwritten signature]*

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