

NO. 73710-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

Ayanna Abaeba Shamari,

Appellant.

APPEALS
SECTION
JAN 11 2016
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE ROGER S. ROGOFF

BRIEF OF Respondent

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A. ISSUES PRESENTED

I. DID THE APPELLANT WAIVE HER OBJECTION TO THE AMOUNT OF RESTITUTION?

II. WAS THE AMOUNT OF RESTITUTION PROPERLY SUPPORTED?

B. STATEMENT OF THE CASE

Ayanna Shamari plead guilty to one count of first degree assault with a firearm enhancement, one count of second degree assault with a firearm enhancement, and one count of Reckless Burning. CP 10. As part of her plea agreement, she agreed to pay restitution in full to the victims of the charged counts. CP 55. As part of her plea agreement, she stipulated to the facts set out in the Certification for Determination of Probable Cause as real and material facts for the purpose of sentencing. CP 55. According to that Certification, Ayanne Shamari shot Lana Bell three times; one bullet grazed her head, injuring her scalp, and another bullet hit Lana Bell in the abdomen, going through her liver and lodging inside of her, where it remained even post-surgery. CP 24-26.

At sentencing, Ayanna Shamari waived her right to be present at any future restitution hearing. CP 63. On the restitution order entered June 2, 2015, setting restitution at the amount of \$33,446.98, Ms. Shamari's attorney signed "Copy received, notice

of presentation waived, defense has no specific objection to this order but has not received a reply from Ms. Shamari. CP 90-91. The trial attorney did not notify the trial court of any subsequent objection by Ms. Shamari. CP 109-111.

C. ARGUMENT

I. THE APPELLANT WAIVED HER OBJECTION TO THE AMOUNT OF RESTITUTION.

Generally, issues may not be raised for the first time on appeal. RAP 2.5(a), State v. Moen, 129 Wn. 2d 535, 543, 919 P. 2d 69 (1996). The court has held that under some circumstances, an allegation that the trial court has exceeded its statutory authority may be considered for the first time on appeal. Moen, 129 Wn. 2d at 546-548. In Moen, the appeals court considered the challenge to a timeliness of a restitution order, in part because the trial court would not have been able to correct the error even had Moen objected. In contrast, the appellant here chose to waive her presence at the restitution hearing, and then her assigned counsel did not object to the State's proposed restitution amount. Her objection is not properly raised for the first time on appeal.

II. THE AMOUNT OF RESTITUTION WAS PROPERLY DETERMINED

An appellate court will not disturb a sentencing court's restitution award absent an abuse of discretion. State v. Enstone, 137 Wn. 2d 675, 679, 974 P. 2d 828 (1999). The exercise of a sentencing court's discretion to determine the amount of restitution is reversible only where it is manifestly unreasonable, or exercised on untenable grounds or for untenable reasons. State v. Dedonado, 99 Wn. App. 251, 256, 991 P. 2d 1216 (2000). In determining any sentence, including restitution, the sentencing court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing. State v. Dedonado, 99 Wn. App. at 256. The language of the restitution statutes indicates the Legislature's intent to grant broad discretion to sentencing courts in awarding restitution. State v. Kinneman, 122 Wn. App 850, 857, 95 P.3d 1277 (2004), quoting State v. Ewing, 102 Wn. App 349, 352, & P.3d 835 (2000).

A trial court need only find that a victim's injuries were causally connected to the defendant's crime before ordering restitution. Enstone, 137 Wn. 2d at 682. The State has the burden

of establishing the causal connection by a preponderance of the evidence. Kinneman, 122 Wn. App at 860. While restitution must be based on "easily ascertainable damages," a victim's loss need not be established with specific accuracy. Id. at 160.

Here, the Appellant argues that the State failed to establish the amount of restitution, and suggests that the amount is based on conjecture or speculation. However, the defendant pled guilty to Assault in the First Degree against Lana Bell, and stipulated to facts including serious injuries to Lana Bell. CP 10, CP 24-26. The restitution amount is clearly based on her resulting medical bills. CP 71-89. That is a far cry from "conjecture and speculation." The restitution order should therefore not be disturbed.

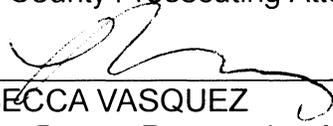
D. CONCLUSION

For the foregoing reasons, the State respectfully asks this court to affirm the trial court's restitution order.

DATED this 1st day of March, 2016.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
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Attorneys for Respondent

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, Lila Silverstein, at Washington Appellate Project, 1511 3rd Ave. Ste. 701, Seattle, WA 98101, containing a copy of the Notice of Appearance and Appeal in State of Washington vs. Ayanna Shamari Cause No. 73710-4- I, in the Court of Appeals, 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.



Name Jill Carter
Done in Seattle, Washington



Date 03/01/2016

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