

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO, )  
 ) No. 46494-2018  
 Plaintiff-Respondent, )  
 ) Jerome County Case No.  
 v. ) CR-2016-4370  
 )  
 CHRISTINA VILLA-GUZMAN, )  
 )  
 Defendant-Appellant. )  
 \_\_\_\_\_ )

\_\_\_\_\_  
**BRIEF OF RESPONDENT**  
\_\_\_\_\_

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF JEROME**

\_\_\_\_\_  
**HONORABLE ERIC J. WILDMAN**  
District Judge  
\_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature Of The Case

Christina Villa-Guzman appeals from the district court's award of \$5,176.32 restitution for the costs of prosecution.

### Statement Of The Facts And Course Of The Proceedings

The state charged Villa-Guzman with trafficking marijuana, possession of paraphernalia, possession of a controlled substance (MDA), and frequenting a place where controlled substances are known to be located. (R., pp. 85-86, 198-99, 242-44, 265-67, 299-301.) The state dismissed the frequenting count over Villa-Guzman's objection and insistence that frequenting be submitted to the jury as an included offense of the trafficking charge. (R., pp. 381-84, 546.)

The evidence at trial was that Villa-Guzman was with Jesus Malagon and his children in a hotel room. (Trial Tr., p. 39, L. 3 – p. 50, L. 2; p. 55, L. 25 – p. 57, L. 14; p. 68, L. 22 – p. 69, L. 25; p. 176, L. 21 – p. 177, L. 25; p. 182, L. 17 – p. 183, L. 3; p. 187, L. 23 – p. 193, L. 19; p. 216, L. 21 – p. 224, L. 4.) In the room, and in Malagon's car in the parking lot, police found over two pounds of marijuana, packaging equipment, hashish oil, and ecstasy (MDA). (Trial Tr., p. 54, L. 3 – p. 59, L. 1; p. 60, L. 2 – p. 68, L. 10; p. 83, L. 4 – p. 94, L. 8; p. 159, L. 20 – p. 171, L. 8; p. 178, L. 1 – p. 182, L. 16; p. 183, L. 4 – p. 187, L. 14; Trial Tr., p. 6, L. 13 – p. 7, L. 14; State's Exhibits 103, 106, 112, 114, 119.) The defense theory was that Malagon was the trafficker, and there was a reasonable doubt as to whether Villa-Guzman was involved in the trafficking, so she was guilty of only the included offense of frequenting. (Trial Tr., p. 23, L. 18 – p. 36, L. 24; p. 269, L. 2 – p. 290, L. 19.)

The jury found Villa-Guzman guilty of frequenting as an included offense of trafficking. (R., p. 456.) The jury acquitted Villa-Guzman of possession of paraphernalia and hung on the possession of MDA count. (R., p. 457.) The district court sentenced Villa-Guzman to serve 90 days with 88 days suspended while on a one-year probation and ordered her to pay court costs, a \$300 fine, and restitution for the costs of prosecution to be determined. (R., pp. 541-43.) The district court later ordered restitution for the costs of prosecution in the amount of \$5,176.32. (R., pp. 545-50.) Villa-Guzman filed a timely notice of appeal. (R., pp. 551-53.)

ISSUE

Villa-Guzman states the issue on appeal as:

Did the district court abuse its discretion when it ordered Ms. Villa-Guzman to pay restitution?

(Appellant's brief, p. 5.)

The state rephrases the issue as:

Has Villa-Guzman failed to show that the district court abused its discretion when it ordered \$5,176.32 in restitution for costs of prosecution?

## ARGUMENT

### Villa-Guzman Has Failed To Show That The District Court Abused Its Discretion When It Ordered \$5,176.32 In Restitution For Costs Of Prosecution

#### A. Introduction

The state submitted a motion for costs of prosecution in the amount of \$5,176.32 with an attached cost sheet showing attorney actions in the case, the date those actions were undertaken, the attorney involved, the number of hours, the amount of reimbursement for each action, and the total amount. (R., pp. 460-62.) Villa-Guzman objected to the motion because she had been convicted only of a lesser-included offense of one of the three charges, and asserted that the state's expenses were "strictly everything on felonies" and "nothing on the misdemeanor." (9/17/18 Tr., p. 4, L. 18 – p. 5, L. 16.)

The district court awarded the requested costs of prosecution. (R., pp. 545-46.) The district court determined that the "offense falls squarely within the purview of the statute notwithstanding the conviction was on a lesser included offense" and that "the items for which the State is requesting reimbursement also fall squarely within the purview of the statute." (R., p. 546.)

On appeal, Villa-Guzman asserts three claims of error. First, she claims the district court erred because the cost sheet was not sworn to. (Appellant's brief, p. 7.) Second, she claims there are errors on the cost sheet. (Id.) Third, she argues that because she was only convicted of a lesser-included offense on one of the three charges, the state failed to prove that the costs were related to her conviction. (Id. at pp. 8-9.) These first two claims of error are not preserved. The third is without merit because, although the jury did have a reasonable doubt about whether Villa-Guzman was directly involved in the trafficking,

Villa-Guzman was found guilty of an included offense of trafficking based on a trial that would have been the same.

B. Standard Of Review

Restitution for the costs of prosecution under I.C. § 37-2732(k) is discretionary. State v. Cunningham, 161 Idaho 698, 700, 390 P.3d 424, 426 (2017). “What amount of restitution to award is a question of fact for the district court, whose findings will not be disturbed if supported by substantial evidence.” Id. (internal quotation marks omitted).

C. Villa-Guzman Has Failed To Show Error In Any Ruling Actually Made By The District Court

It is well settled that Idaho’s appellate courts “will not consider issues not raised in the court below.” State v. Mosqueda, 150 Idaho 830, 833, 252 P.3d 563, 566 (Ct. App. 2011). “This limitation on appellate-court authority serves to induce the timely raising of claims and objections, which gives the trial court the opportunity to consider and resolve them.” State v. Perry, 150 Idaho 209, 224, 245 P.3d 961, 976 (2010) (internal quotation marks and alterations omitted). It is likewise well settled that “in order for an issue to be raised on appeal, the record must reveal an adverse ruling that forms the basis for assignment of error.” State v. Huntsman, 146 Idaho 580, 585, 199 P.3d 155, 160 (Ct. App. 2008). While an exception to these preservation requirements exists in criminal proceedings for claims of fundamental error, “the fundamental error doctrine may not be invoked to raise a restitution issue for the first time on appeal because restitution proceedings are civil in nature.” Mosqueda, 150 Idaho at 834, 252 P.3d at 567.

The prosecution’s motion for restitution for costs of prosecution, with attached cost sheet setting forth dates, actions, attorneys, hours and restitution amounts, was filed on

December 15, 2017. (R., pp. 460-62.) The motion was taken up at sentencing on September 17, 2018. (9/17/18 Tr., p. 4, L. 10 – p. 6, L. 25.) In neither the nine months after the motion was filed nor at that hearing did Villa-Guzman object that the cost sheet was not sworn or contained errors. (9/17/18 Tr., p. 4, L. 18 – p. 5, L. 16.) At the hearing the district court stated that it would “look at” the motion and attachment and “issue an order, and then if you want to object to it, then, certainly, object to it. We’ll set it for hearing.” (9/17/18 Tr., p. 6, Ls. 19-25.) The court filed its order a few days later. (R., pp. 545-46.) Villa-Guzman filed no objection as invited to do. (R., p. 20.)

Had Villa-Guzman objected to lack of an oath or alleged errors in entries on the cost sheet such could easily have been addressed or even fixed at the hearing on the motion or the hearing the district court promised on any post-order objection. Despite being specifically invited to voice her objections and have a hearing on them, Villa-Guzman chose to delay raising these claims until appeal, and now requests that this Court hear her objections and then remand for the hearing she forewent before her appeal. (See Appellant’s brief, p. 9 (requesting that restitution order be vacated and case remanded for further proceedings).) Because Villa-Guzman did not object to the lack of an oath and did not allege any entry errors in the cost sheet before the district court, she did not preserve these claims for appellate review.

Villa-Guzman did object on the basis that she was not convicted of the charged offenses and was convicted of only an included offense. (9/17/18 Tr., p. 4, L. 18 – p. 5, L. 16.) Although preserved, Villa-Guzman has failed to show an abuse of discretion on this basis.

“Upon conviction of a felony or misdemeanor violation” of Chapter 37 of the Idaho Code, “the court may order restitution for costs incurred by law enforcement agencies in investigating the violation.” I.C. § 37-2732(k). “Law enforcement agencies” eligible for restitution under the statute include “county ... prosecuting attorney offices.” *Id.* Costs include “prosecution expenses actually incurred, including regular salaries of employees.” *Id.* “Restitution may be ordered by the district court under I.C. § 37-2732(k) once a defendant is convicted of, or pleads guilty to, a crime under Title 37, Chapter 27 of the Idaho Code.” State v. Gomez, 153 Idaho 253, 257-58, 281 P.3d 90, 94-95 (2012). “[R]estitution under section 37-2732(k) is discretionary.” State v. Nelson, 161 Idaho 692, 695, 390 P.3d 418, 421 (2017).

Villa-Guzman was convicted of frequenting, a violation of I.C. § 37-2732(d). (*R.*, p. 456.) This was a conviction falling within the scope of restitution for costs of prosecution of drug crimes. I.C. § 37-2732(k) (restitution upon conviction of any “felony or misdemeanor violation under this chapter”); Gomez, 153 Idaho at 257-58, 281 P.3d at 94-95 (restitution for costs of prosecution “may be ordered by the district court under I.C. § 37-2732(k) once a defendant is convicted of, or pleads guilty to, a crime under Title 37, Chapter 27 of the Idaho Code”). Because she was convicted of a qualifying crime, the district court did not abuse its discretion by ordering her to pay the costs of prosecution.

Villa-Guzman argues that the state failed to “specify time spent on particular charges” and included some time writing briefs that applied to both her and Malagon’s cases, and therefore failed to show the claimed expenses related to her conviction. (Appellant’s brief, pp. 8-9.) There is, however, no requirement that the prosecutor’s actions be tied to particular charges. Rather, it is generally sufficient to “delineate the time

spent performing specific tasks.” State v. Cunningham, 161 Idaho 698, 702, 390 P.3d 424, 428 (2017). The statute allows an award of “prosecution expenses actually incurred.” I.C. § 37-2732(k). Here the cost sheet delineates the time spent performing specific tasks and thus shows the prosecution expenses actually incurred.

The impracticality of Villa-Guzman’s proposed standard is evident in this case. For example, Villa-Guzman argues that trial preparation related to the frequenting conviction should be separated from trial preparation related to the possession of ecstasy, possession of paraphernalia and trafficking charges, but offers no theory how the trial, much less the trial preparation, would have been any different. To the contrary, the state would still have put on the evidence of the drugs and paraphernalia in the hotel room to prove that Villa-Guzman was “present at or on premises of any place where [she] knows illegal controlled substances are being manufactured or cultivated, or are being held for distribution, transportation, delivery, administration, use, or to be given away.” I.C. § 37-2732(d). Likewise, there is no reason to believe that the time spent researching and writing a response to Villa-Guzman’s motion to suppress would have been any different had Malagon not also moved to suppress the same evidence found during the same searches. In short, the district court could have *in its discretion* awarded less than the expenses actually incurred, but Villa-Guzman’s argument does not show that trial preparation and legal research and writing did not result in prosecution expenses actually incurred.

Villa-Guzman was convicted of a crime that qualified her to pay for prosecution expenses. The district court had before it a cost sheet showing the dates, attorneys, tasks, time and expenses of the prosecution. Villa-Guzman has failed to show clear error in the

finding that the prosecution expenses were actually incurred nor an abuse of discretion in awarding the entire amount of prosecution expenses actually incurred.

CONCLUSION

The state respectfully requests this Court to affirm the district court's award of prosecution expenses actually incurred.

DATED this 18th day of April, 2019.

/s/ Kenneth K. Jorgensen  
KENNETH K. JORGENSEN  
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 18th day of April, 2019, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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KKJ/ah