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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 46494-2018
)	
v.)	JEROME COUNTY NO. CR-2016-4370
)	
CHRISTINA VILLA-GUZMAN,)	REPLY BRIEF
)	
Defendant-Appellant.)	

REPLY BRIEF OF APPELLANT

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

**HONORABLE ERIC WILDMAN
District Judge**

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STATEMENT OF THE CASE

Nature of the Case

In her appellant's brief, Ms. Villa-Guzman asserted the district court abused its discretion when it ordered her to pay restitution pursuant to the State's request. She argued that the State's Cost Sheet submitted in support of its request was not sworn and thus did not constitute sufficient evidence. Additionally, the State's request included time spent on charges for which she was not convicted. In response, the State avoids the merits of the sufficiency argument and argues instead that the issue was not preserved. With respect to the fact that the Cost Sheet included the prosecutor's time spent working on charges for which she was not convicted, the State claims that there is no requirement that a prosecutor's requests for restitution be tied to particular charges. Both of these arguments are specifically foreclosed by established precedent and the plain language of the restitution statute.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Ms. Villa-Guzman's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference.

ISSUE

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

ARGUMENT

The District Court Abused Its Discretion When It Ordered Ms. Villa-Guzman To Pay Restitution

In its respondent's brief, the State does not challenge the merits of Ms. Villa-Guzman's claim that the restitution award in this case was not supported by sufficient evidence because the Cost Sheet the prosecutor submitted to the district court was not sworn. Instead, the State argues that the issue was not preserved. (Resp. Br., pp.4-6.) The State relies on a case that is not on point and ignores a Court of Appeals case that is specifically on point. Indeed, in *State v. Yeoumans*, the Court of Appeals held that, "an appellate challenge to the sufficiency of evidence to meet a party's burden of proof *requires no specific action or argument below.*" 144 Idaho 871, 873 (Ct. App. 2007) (emphasis added); *see also State v. Ashley*, 126 Idaho 694, 695-96 (Ct. App. 1994). The State relies on *State v. Mosqueda*, 150 Idaho 830, 833 (Ct. App. 2011) (Resp. Br., p.5.), but *Mosqueda* did not involve a sufficiency of the evidence claim. Instead, it concerned a claim that the restitution requested, which was based on the officer's hourly pay rates, was not authorized under the statute. *Id.*

That is not the situation here. In fact, on appeal in this case Ms. Villa-Guzman specifically argued that the district court abused its discretion in awarding restitution because the prosecutor's unsworn Cost Sheet did not constitute sufficient evidence and therefore did not "constitute the 'substantial evidence' required by" I.C. § 37-2732(k). (App. Br., pp.6-7.) Further, she argued that, due to the errors in the prosecutor's Cost Sheet, "it was impossible to determine the State's costs actually incurred," and thus the prosecutor's "Cost Sheet did not constitute substantial evidence to support" the requested amount of restitution. (App. Br., p.7.) The State, choosing to rely only on its unsupported preservation claim, fails to address the merits of this argument also. (Resp. Br., p.6.)

In response to Ms. Villa-Guzman's argument that the restitution award was not supported by the plain language of the statute because the request included expenses for prosecuting all three of the charges (App. Br., pp.8-9), the State claims that there is "no requirement that the prosecutor's actions be tied to particular charges." (Resp. Br., p.7.) This is false. There is indeed a requirement that restitution be tied to convictions. I.C. § 37-2732(k) read as follows: "Upon conviction of a felony or misdemeanor violation under this chapter . . . the court may order restitution for costs incurred by law enforcement agencies in investigating the violation." Thus, while the State could potentially demonstrate that it was entitled to its costs incurred in prosecuting the trafficking charge because Ms. Villa-Guzman was found guilty of the lesser-included misdemeanor of that charge, it did not do so. Instead, it simply included the total hours spent for trial preparation, and the trial itself, but included no delineation as to how many hours were spent preparing to prosecute the trafficking charge as opposed to the other charges. Similarly, the prosecutor's Cost Sheet did not include how many hours of the trial were dedicated to proving the trafficking charge. Clearly, some of the hours were spent preparing for and prosecuting the other charges.

Nevertheless, the State claims that such an approach would be impractical and asserts that Ms. Villa-Guzman "offers no theory how the trial, much less the trial preparation, would have been any different." (Resp. Br., p.8.) This is not Ms. Villa-Guzman's burden. It is the State's burden to prove expenses "actually incurred" on the only charge that resulted in a conviction; therefore, it had to delineate the expenses incurred for that charge only and not include expenses for charges "resulting in a mistrial, acquittal, or [a codefendant's] conviction." *State v. Nelson*, 161 Idaho 692, 697 (2017). The prosecutor's Cost Sheet contained no such details. As such, the

district court abused its discretion when it ordered Ms. Villa-Guzman to pay the full restitution award requested, and the State has failed to prove otherwise.

CONCLUSION

Ms. Villa-Guzman respectfully requests that this Court vacate the district court's award of restitution and remand her case to the district court for further proceedings.

DATED this 14th day of June, 2019.

/s/ Reed P. Anderson
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of June, 2019, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, to be served as follows:

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/s/ Kylie M. Fournier
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RPA/kmf