

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2018-CA-000450-MR

COREY WOOTEN

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT  
HONORABLE TIMOTHY KALTENBACH, JUDGE  
ACTION NO. 17-CR-00531

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: JONES, KRAMER AND K. THOMPSON, JUDGES.

THOMPSON, K., JUDGE: Corey Wooten was found guilty of fourth-degree assault for causing physical injury to Garrick Cook by shooting him and striking him on the head with a BB gun. Wooten received a twelve-month sentence.

At the final sentencing hearing, the trial court informed Wooten that the Commonwealth would be seeking \$5,477.16 in restitution on Cook's behalf for

his unpaid medical bills, and he was entitled to a hearing if he disputed that amount. Wooten requested a hearing, and a hearing was held.

Cook testified that as a direct result of Wooten's assault, he sustained injuries that required medical treatment. He was taken by ambulance to Lourdes Hospital for treatment and later received a bill from Lourdes Hospital for \$5,309.16. He received a separate bill for blood work performed at the hospital from Paducah Pathology Associates for \$168. Cook, who did not have medical insurance or Medicaid, did not pay the bill and the hospital transferred the debt to a collection agency. The trial court ordered restitution to be paid in the amount of \$5,477.16 with the circuit clerk to send those payments to Lourdes Hospital and Paducah Pathology Associates. Wooten did not object to restitution being paid to Lourdes Hospital and Paducah Pathology Associates.

On appeal, Wooten argues that the trial court erred when it ordered him to pay \$5,477.16 in restitution to Lourdes Hospital and Paducah Pathology Associates. He requests palpable error review pursuant to Kentucky Rules of Criminal Procedure (RCr) 10.26. Under RCr 10.26, an unpreserved error may be reviewed on appeal if the error is "palpable" and "affects the substantial rights of a party[.]" *Id.* As explained in *Kiper v. Commonwealth*, 399 S.W.3d 736, 747 (Ky. 2012) (quoting *Martin v. Commonwealth*, 207 S.W.3d 1, 4 (Ky. 2006): "An unpreserved error that is both palpable and prejudicial, still does not justify relief

unless the reviewing court further determines that it has resulted in a ‘manifest injustice.’”

Although Wooten claims review is available under the palpable error rule, he does not contend that there was any due process violation. Wooten does not deny that he can be ordered to pay the medical bills incurred by Cook as a result of Wooten’s assault. His only complaint is that restitution was ordered to be paid to Lourdes Hospital and Paducah Pathology Associates, which were not victims of his assault.

Kentucky Revised Statutes (KRS) 532.032(1) states provides:

Restitution to a named victim, if there is a named victim, shall be ordered in a manner consistent, insofar as possible, with the provisions of this section and KRS 439.563, 532.033, 533.020, and 533.030 in addition to any other part of the penalty for any offense under this chapter. The provisions of this section shall not be subject to suspension or nonimposition.

“Restitution” is defined as “any form of compensation paid by a convicted person *to a victim* for counseling, medical expenses, lost wages due to injury, or property damage and other expenses suffered by a victim because of a criminal act.” KRS 532.350(1) (emphasis added).

Who or what is a “named victim” for purposes of restitution was addressed in *Blevins v. Commonwealth*, 435 S.W.3d 637 (Ky.App. 2014), where this Court considered whether the American Society for the Prevention of Cruelty

to Animals (“ASPCA”) was a “named victim.” The defendant was ordered to pay restitution to the ASPCA which housed the animals after they were taken from his possession. The Court held that the ASPCA was not a “named victim” under the restitution statute reasoning as follows:

Though the legislature did not define what constitutes a victim for purposes of ordering restitution, it is clear from KRS Chapter 532 and 533 that “victim” in this context is one who is *directly* harmed by the criminal conduct for which the defendant has pled or been found guilty. Under the statutory scheme, this includes those who have had their property converted, stolen or unlawfully obtained, and those who have suffered “actual” medical expenses, loss of earning power as a “direct” result of the crime, and “direct” out-of-pocket expenses.

*Id.* at 640.

Following the same logic, in *Vaughn v. Commonwealth*, 371 S.W.3d 784, 786 (Ky.App. 2012), this Court determined that the Commonwealth of Kentucky, which incurred extradition costs it sought to recover through restitution, “simply was not a victim who suffered a loss as a result of criminal acts[.]” This Court has also held that an insurer is not entitled to restitution for payment made under an insurance contract for property stolen from its insured. *Bentley v. Commonwealth*, 497 S.W.3d 253 (Ky.App. 2016). The Court pointed out that the victims only paid a deductible and the insurance company was only responsible because of its contract with the insured. *Id.* at 258.

Even if Wooten is correct that the organizations are not victims of Wooten's assault, any error committed by the trial court in ordering the clerk to pay those organizations from Wooten's restitution payments is not palpable. Wooten suffers no prejudice if the clerk sends the payments to Lourdes Hospital and Paducah Pathology Associates to pay Cook's account balance. Either way, Wooten is responsible for Cook's medical bills. The restitution order does not impose an excessive fine and punishment but constitutes compensation to Cook for the medical expenses he incurred as a result of Wooten's assault.

For the reasons stated, the order of the McCracken Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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