

**IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON**

STATE OF WASHINGTON

Respondent,

v.

SHAUN CLINTON WALLEN,

Appellant.

No. 66258-9-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: June 4, 2012

Leach, C.J. — Shaun Wallen appeals an order of restitution, arguing the State did not prove the victims' property losses by a preponderance of the evidence. He also claims that due process required the sentencing court to limit the restitution amount to those losses claimed at the time he entered his guilty plea. The victims' declaration sufficiently supports the amount of restitution ordered. Because Wallen knew that restitution was a consequence of his guilty plea, and he has not demonstrated that the law requires more, he received due process. We affirm.

**BACKGROUND**

The State charged Wallen with residential burglary, first degree theft, and first degree trafficking in stolen property based on an incident at the house of Jack and Karen Moffet. The information alleged that Wallen "did wrongfully

obtain or exert unauthorized control over property . . . to-wit: Pool table, lawnmower, Christmas decorations and duffel bag, of an aggregate value exceeding \$1,500.”<sup>1</sup> Wallen pleaded guilty to first degree theft, and the State dismissed the other charges against him. In his plea statement, Wallen admitted, “Between August 4th and 22nd, 2009, I, along with others, did unlawfully obtain or exert authority over the property of another, valued over \$1500 in Skagit County.” Wallen also agreed to pay restitution “up to double my gain or double the victim’s loss.” Wallen received a 52 month sentence.

The State sought \$34,984.99 in restitution. At the restitution hearing, the State relied on a written victim loss statement, which Karen Moffet signed under penalty of perjury. The State also provided the sentencing court with a list of 24 items of missing or damaged property and an estimated value for each item, totaling \$34,984.99. The Moffetts did not testify at the restitution hearing.

Wallen’s counsel objected to the requested restitution amount, arguing that the values were not supported by adequate documentation and that the list contained items beyond the scope of Wallen’s plea agreement:

In many cases I don’t have enough information and I don’t think the Court has enough information to determine whether that’s a reasonable value or not, but the main issue I have, your Honor, is that this list that the Court has, I received approximately two months or so after Mr. Wallen plead guilty.

Wallen provided the sentencing court with the witness statement of Kim

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<sup>1</sup> The affidavit of probable cause listed the items taken in the burglary as “a pool table valued at \$4,800, a John Deere riding lawnmower valued at \$3,600, a clear Rubbermaid type container with a blue lid containing Christmas decorations, a black backpack, and a light blue colored gym bag.” .

Ammons, the Moffets' daughter.<sup>2</sup> That list contained nine items of missing property, with values totaling \$15,700. Wallen claimed Ammons's list was the only documentation "Mr. Wallen ever received, as far as notice, of what would be claimed as restitution." The sentencing court ordered Wallen to pay the full restitution amount sought by the State. Wallen appeals.

### ANALYSIS

Wallen first claims that sufficient evidence does not support the restitution amount because the values the Moffets assigned each item were based on "rough estimates" that "failed to account for the wear and age of the items." A sentencing court has the discretion to determine the total amount of restitution owed, and we will not disturb that determination on appeal absent an abuse of discretion.<sup>3</sup> An abuse of discretion occurs when a trial court's decision is manifestly unreasonable or based on untenable grounds.<sup>4</sup>

The authority to order restitution derives from statute. RCW 9.94A.753(5) requires a court to order restitution "whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property." If a defendant disputes facts material to determining the restitution amount, the sentencing court must hold an evidentiary hearing, during which the State is required to prove the requested amount by a preponderance of the evidence.<sup>5</sup> A

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<sup>2</sup> The affidavit of probable cause explains that the Moffets owned the house, which was then vacant but periodically "checked on" by family members in the area.

<sup>3</sup> State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991).

<sup>4</sup> State v. Enstone, 137 Wn.2d 675, 679-80, 974 P.2d 828 (1999).

<sup>5</sup> State v. Dedonado, 99 Wn. App. 251, 256, 991 P.2d 1216 (2000).

causal connection between the crime and the victim's damages must exist.<sup>6</sup> While restitution "shall be based on easily ascertainable damages,"<sup>7</sup> the amount need not be established with specific accuracy.<sup>8</sup> Sufficient evidence supports a restitution order if the evidence affords a reasonable basis for estimating loss.<sup>9</sup>

We disagree that the evidence here was insufficient to establish the values of the stolen items. Wallen contends that the State could not establish the actual value of the items at the time of the theft without more documentation. However, in Washington the owner of a chattel is always qualified to testify to its market value.<sup>10</sup> This information may be provided in the form of letters and declarations.<sup>11</sup> Receipts and other documentation are not necessary to prove the value of the property taken.<sup>12</sup> Here, the Moffets listed each item of stolen or damaged property and provided their opinion as to its value. The State provided the defense with the Moffets' list months before the restitution hearing, and Wallen had the opportunity to rebut the State's evidence.<sup>13</sup> As noted by the sentencing court, the values were not clearly excessive. The Moffets' declaration was sufficient by itself to establish the restitution amount.

Wallen relies on State v. Dedonado.<sup>14</sup> In Dedonado, the defendant

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<sup>6</sup> Dedonado, 99 Wn. App. at 256.

<sup>7</sup> RCW 9.94A.753(3).

<sup>8</sup> Dedonado, 99 Wn. App. at 256.

<sup>9</sup> Dedonado, 99 Wn. App. at 256.

<sup>10</sup> State v. Hammond, 6 Wn. App. 459, 461, 493 P.2d 1249 (1972).

<sup>11</sup> See State v. Tobin, 132 Wn. App. 161, 175, 130 P.3d 426 (2006); State v. Lohr, 130 Wn. App. 904, 910-11, 125 P.3d 977 (2005).

<sup>12</sup> See People v. Ford, 77 A.D.3d 1176, 1177-78, 910 N.Y.S.2d 235 (2010), leave to appeal denied, 954 N.E.2d 96 (2011).

<sup>13</sup> See State v. Kisor, 68 Wn. App. 610, 620, 844 P.2d 1038 (1993).

<sup>14</sup> 99 Wn. App. 251 (2000).

challenged the causal connection between his actions and the damages. There, the State failed to provide sufficient documentation showing that a replacement generator of a certain brand was a proper replacement for another brand and also failed to show that numerous repairs made to a van were causally related to the defendant's action in damaging the van's ignition switch. The court held:

A causal connection is not established simply because a victim or insurer submits proof of expenditures for replacing property stolen or damaged by the person convicted. . . . The State did not meet its burden of proving the restitution amounts here by a preponderance of the evidence because the documentation it provided did not establish a causal connection between Dedonado's actions and the damages.<sup>[15]</sup>

Here, Wallen does not challenge the causal connection between the claimed property losses and his admitted criminal conduct. Rather, he contests the sufficiency of the evidence concerning the amount of damages, an issue not addressed in Dedonado. The trial court did not abuse its discretion by relying on the Moffets' victim loss statement when it determined the amount of restitution for the stolen items.

Second, Wallen argues that it violated his due process rights to order restitution in a "materially greater amount" than the losses claimed at the time he entered his guilty plea. Due process requires that a defendant's guilty plea be made knowingly, voluntarily, and intelligently.<sup>16</sup> To be knowing and voluntary, a criminal defendant must be informed of all of the direct consequences of his

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<sup>15</sup> Dedonado, 99 Wn. App. at 257.

<sup>16</sup> In re Pers. Restraint of Isadore, 151 Wn.2d 294, 297, 88 P.3d 390 (2004).

plea.<sup>17</sup> A direct consequence has “a definite, immediate and largely automatic effect on the range of the defendant's punishment.”<sup>18</sup> Restitution is a direct consequence of entering a guilty plea.<sup>19</sup> Therefore, a trial court must advise a defendant of the possibility of restitution before he or she enters a plea.<sup>20</sup>

Here, Wallen admitted in his plea statement that he unlawfully obtained or exerted authority over the property of another valued at over \$1,500. He also acknowledged that the prosecutor would ask the court to order restitution as compensation for the victims of his crime and that “[t]he amount of restitution may be up to double my gain or double the victim’s loss.” Therefore, Wallen knew that restitution, in an amount to be established at a future hearing, was a direct consequence of his guilty plea.<sup>21</sup>

Wallen asserts that due process also required notice of the amount of restitution at the time he entered his guilty plea. He, however, does not support his assertion with citation to authority. Therefore, we conclude that he has found none and decline to consider his argument further.<sup>22</sup> When Wallen pleaded guilty to theft, he knew that restitution was a consequence of his plea. Because

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<sup>17</sup> State v. Ross, 129 Wn.2d 279, 284, 916 P.2d 405 (1996).

<sup>18</sup> Ross, 129 Wn.2d at 284 (quoting State v. Barton, 93 Wn.2d 301, 305, 609 P.2d 1353 (1980)).

<sup>19</sup> State v. Cameron, 30 Wn. App. 229, 234, 633 P.2d 901 (1981).

<sup>20</sup> Cameron, 30 Wn. App. at 234.

<sup>21</sup> See State v. Codiga, 162 Wn.2d 912, 923, 175 P.3d 1082 (2008) (“Knowledge of the direct consequences of the plea can be satisfied by the plea documents.”).

<sup>22</sup> State v. Logan, 102 Wn. App. 907, 911 n.1, 10 P.3d 504 (2000) (“Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.”) (quoting DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)).

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Wallen has not demonstrated that the law requires more, he fails to establish a due process violation.

CONCLUSION

Sufficient evidence supports the trial court's restitution order, and Wallen fails to establish that his guilty plea was involuntary. We affirm.

Leach, C. J.

WE CONCUR:

Appelwick, J.

Becker, J.