IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,	)	No. 29532-0-III
Respondent,	)	
v.	)	UNPUBLISHED OPINION
PAMELA DESKINS,	)	
Appellant.	)	

Korsmo, C.J. — We granted review of two of Pamela Deskins' convictions relating to mistreatment of dogs on her property. We affirm the conviction for willful failure to confine domestic animals, reverse the conviction for second degree animal cruelty, and remand for a new trial.

FACTS

Ms. Deskins was charged by complaint in Stevens County District Court with four counts: (1) confining domestic animals in an unsafe manner, (2) second degree animal cruelty, (3) harassment, and (4) tampering with physical evidence. As relevant to the

issues before this court, count one alleged that Ms. Deskins

> did willfully fail to confine and separate 39 dogs on her fenced property, from on or about May 6, 2008, when some of the dogs attacked and severely injured a neighbor's dog, until on or about September 30, 2008 when several of the dogs attacked another of the dogs inside the fenced area and killed it.

Clerk's Papers (CP) at 19.

Count two alleged that

> [o]n or about Oct 1, 2008, in Stevens County Washington, the defendant did under circumstances not amounting to first degree animal cruelty, did knowingly, recklessly or with criminal negligence fail to take action to confine or separate the 39 or so dogs running loose on her fenced property, after having knowledge that on September 17, 2008, several of her dogs attacked and killed one of her dogs, did inflict unnecessary suffering or pain upon other dogs when it was attacked and killed by other dogs within the fenced area.

CP at 20.

The case ultimately proceeded to jury trial. Neighbors, law enforcement, and animal care officers described the factual circumstances of the case. Ms. Deskins lives on several acres in rural Stevens County and much of the evidence was presented by members of five neighboring families. Ms. Deskins had a large group of dogs within a fenced portion of the property, but the group was not separated in any manner. She also had livestock, including three donkeys, on the property.

On May 6, 2008, Winnie, a dog belonging to the Tennant family, was bitten and injured by a group of dogs running in the

neighborhood. Terry Feiler identified the attacking dogs as belonging to Ms. Deskins. He observed them run over and under Ms. Deskins' fence after the attack. He did not see Ms. Deskins, who later testified that she had no knowledge of the incident. The Stevens County Sheriff's Office sent Ms. Deskins a letter declaring her dogs to be potentially dangerous as a result of the incident.

Laurie Strong testified that the dogs were always chasing and biting Ms. Deskins' three donkeys. She videotaped one such incident in the summer of 2008. On September 17, 2008, Ms. Strong saw dogs running around biting each other inside Ms. Deskins' yard. Ms. Strong and Dawn Madsen testified that they saw a number of dogs kill another dog, and Ms. Strong filmed the event. About 20 minutes later, Ms. Strong and Ms. Madsen saw Ms. Deskins arrive home. Both women testified that they saw Ms. Deskins drive into the pen and put the prone dog in the back of her pickup truck. Ms. Deskins also told Ms. Strong and Ms. Madsen, who were standing on the road next to Ms. Deskins' fence, that she would get her gun and shoot them if they did not leave her property.

Ms. Deskins testified that upon returning home from work on the evening of September 17, she saw several people standing on her property near the fence line, holding cameras or camera phones. Ms. Deskins stated that she drove into the field and

put a dog that was lying on the ground in the back of her truck. She asked the people on the other side of the fence to leave her property and told them they did not have her consent to take photographs. Ms. Deskins testified that she brought the dog to her house, treated an injury in its ear, and determined that it did not need to be treated by a veterinarian.

On September 29, 2008, Ms. Strong and Mr. Feiler witnessed a number of Ms. Deskins' dogs attacking and biting another dog inside the yard; Mr. Feiler filmed the incident and called the sheriff's office. When Deputy Jeremy Wakeman arrived on the scene, he saw a dog lying on Ms. Deskins' property with other dogs around it. The deputy testified that he could not tell whether the dog on the ground was injured or dead, but he did not get any closer because he knew the dogs were aggressive and he did not want to risk injury. Ms. Deskins testified that she was at work that day and that she did not know about this incident.

On October 1, 2008, Mr. Feiler, Linda Ziegman, and Ms. Strong again witnessed dogs attacking another dog inside the fenced area. Mr. Feiler and Ms. Strong filmed the incident. Ms. Deskins testified that she was at work and did not return home until midnight. The next day, Ms. Feiler and the Madsens saw Ms. Deskins drive by in her pickup with a big black plastic bag hanging off of the truck's tailgate. Ms. Feiler then

observed Ms. Deskins stop and walk away from the back of the truck. After Ms. Deskins left, Ms. Feiler drove to the scene and saw a black plastic bag in the road; there no longer was a black bag in the back of Ms. Deskins' truck. Deputy Gregory Gowin, responding to Ms. Feiler's complaint, arrived at the location and found a garbage bag on the side of the road with a dead dog inside. A veterinarian examined the dog's body and observed several severe injuries consistent with fight or bite wounds from other dogs, including a broken femur and several large lacerations on the neck area.

Ms. Deskins denied taking a dead dog off of her property or dumping a carcass on October 2. She stated that there could have been a black garbage bag in the back of her truck because she hauls garbage to the transfer station.

On October 2, Detective Glover executed a warrant that authorized the seizure of Ms. Deskins' dogs and a search of her property for evidence of animal cruelty. Over the course of two days, the sheriff's office and SpokAnimal[1] staff seized 39 dogs from Ms. Deskins' property.

Charges were filed and the case ultimately proceeded to jury trial in the Stevens County District Court. A SpokAnimal employee testified that a large group of dogs is unsafe because the dominant dogs tend to injure the weaker dogs. The jury convicted

[1] SpokAnimal is an animal control organization that had a contract with the Stevens County Sheriff's Office.

Ms. Deskins on all four counts as charged.

At sentencing, the court imposed a total of 850 days of confinement with 300 days suspended, two years of probation, and various sentencing conditions including an order requiring Ms. Deskins to forfeit all pets and livestock she owned and an order prohibiting her from owning, acquiring, or living with domestic pets or livestock for the probationary period. The court also ordered Ms. Deskins to pay $1,400 in restitution to the Tennants for the attack on Winnie, and almost $22,000 in restitution to the sheriff's office for the cost of care provided by SpokAnimal to all the dogs seized. Ms. Deskins appealed to the superior court.

The superior court affirmed the convictions for willful failure to confine domestic animals and second degree animal cruelty, reversed the harassment conviction and remanded it for a new trial due to ineffective assistance of counsel, and reversed and dismissed for insufficient evidence the tampering with physical evidence conviction. The superior court also directed the trial court to clarify various aspects of the probation and the restitution for injuries to Winnie.

The State filed a motion for discretionary review and Ms. Deskins filed a cross-motion for discretionary review. Our commissioner denied the State's motion and granted Ms. Deskins' motion.[2]

ANALYSIS

This action involves challenges to two of the jury instructions, various conditions of probation, and the fine and restitution on the unlawful confinement count. We will

[2] The commissioner denied Ms. Deskins' request for accelerated review.

address the claims presented in that order.[3]

Unanimity Instruction on Unlawful Confinement Count

Ms. Deskins argues that the record revealed several acts that could have provided a basis for the unlawful confinement conviction, thus necessitating that the jury be instructed that it must be unanimous about the particular act that supported the charge. We disagree. The single charge was based on a continuing course of conduct and no unanimity instruction was required.

Initially, the State argues that because counsel did not challenge the jury instructions at trial, this issue cannot be heard on appeal. However, the question of jury unanimity is an issue of constitutional magnitude that can be raised initially on appeal. Const. art. I, § 21; RAP 2.5(a)(3); *State v. Fiallo-Lopez*, 78 Wn. App. 717, 725, 899 P.2d 1294 (1995). We review this assignment of error de novo. *State v. Bradshaw*, 152 Wn.2d 528, 531, 98 P.3d 1190 (2004).

Only a unanimous jury can return a "guilty" verdict in a criminal case. *State v. Camarillo*, 115 Wn.2d 60, 63, 794 P.2d 850 (1990). Where the evidence shows multiple acts occurred that could constitute the charged offense, the State must either choose which act it relies upon or instruct the jury that it must unanimously agree upon which act

[3] Ms. Deskins also filed a lengthy pro se Statements of Additional Grounds. It is without merit and will not be addressed here.

it found. *State v. Petrich*, 101 Wn.2d 566, 572, 683 P.2d 173 (1984). Constitutional error occurs if there is no election and no unanimity instruction is given. *State v. Bobenhouse*, 166 Wn.2d 881, 893, 214 P.3d 907 (2009); *State v. Kitchen*, 110 Wn.2d 403, 411, 756 P.2d 105 (1988). This type of error requires a new trial unless shown to be harmless beyond a reasonable doubt. *Camarillo*, 115 Wn.2d at 64.

However, no election or unanimity instruction is needed if the defendant's acts were part of a continuing course of conduct. *State v. Handran*, 113 Wn.2d 11, 17, 775 P.2d 453 (1989). Appellate courts must "review the facts in a commonsense manner to decide whether criminal conduct constitutes one continuing act." *Fiallo-Lopez*, 78 Wn. App. at 724. A continuing course of conduct exists when actions promote one objective and occur at the same time and place. *Petrich*, 101 Wn.2d at 571; *State v. Love*, 80 Wn. App. 357, 361, 908 P.2d 395 (1996). A continuing course of conduct also exists when the charged criminal behavior is an "ongoing enterprise." *State v. Gooden*, 51 Wn. App. 615, 620, 754 P.2d 1000 (1988) (promoting prostitution was ongoing enterprise).

The prosecutor alleged only a single count of unlawful confinement, with a starting date of May 6 and an ending date of September 30, 2008, a period of 147 days. The complaint also identified one incident for each of those dates—an attack on a neighbor dog on May 6 and the killing of a Deskins dog on September 30. Ms. Deskins

argues that those two incidents and others identified in the testimony such as the donkey attacks and the September 17 dog attack, proved several discrete violations of the statute and that the jury therefore was required to be unanimous as to which incident it relied on. For a couple of reasons, we disagree.

First, the argument suggests a construction of the statute that we do not necessarily accept at this time. The parties do not address the unit of prosecution required by the statute. Was each dog unlawfully confined, or was it the unlawful confinement of the entire pack? Is each day a separate charge? Or is the charging unit each animal per day? Under these varying constructions, it would seem that the prosecutor could have charged 39 counts (one count for each of the dogs), or 147 counts (for each day the pack was unlawfully confined), or perhaps 5,733 counts (for each dog each day). Ms. Deskins seems to suggest that each attack was a separate unit of prosecution, but we find little support for that approach in the statute. RCW 16.52.080 provides: "Any person who wilfully transports or confines or causes to be transported or confined any domestic animal or animals in a manner, posture or confinement that will jeopardize the safety of the animal or the public shall be guilty of a misdemeanor." The focus of this statute is on dangerous confinement or transportation, not on attacks. While attacks by this pack of dogs provided evidence that they were unlawfully confined together, those attacks do not

appear to be the target of the statute, which focuses on confinement. Thus, while we do not decide the unit of prosecution issue, Ms. Deskins' implicit construction of the statute does not appear accurate.

The second, and more important, reason for disagreeing rests on the nature of "confinement." The concept of confinement typically is viewed as a continuing status. Kidnapping, for instance, is recognized as an on-going offense that begins with the initiation of confinement and ends with release from confinement. *E.g.*, *State v. Lessley*, 118 Wn.2d 773, 827 P.2d 996 (1992) (same criminal conduct analysis); *State v. Larry*, 108 Wn. App. 894, 34 P.3d 241 (2001) (same); *State v. Dove*, 52 Wn. App. 81, 88, 757 P.2d 990 (1988) (sufficiency of the evidence to support accomplice liability). Confinement has an inherent duration component.

Thus, we believe that unlawful confinement as charged here is best viewed as a single ongoing offense. This view is consistent with our treatment of other offenses of a more generalized nature.[4] For instance, this court has determined that promoting prostitution is an ongoing offense. *Gooden*, 51 Wn. App. at 620. The rationale was that

[4] Multiple discrete criminal acts can constitute a continuing offense when they occur for the purpose of facilitating an overarching criminal objective. *E.g.*, *Handran*, 113 Wn.2d 11 (multiple assaults of same victim); *Fiallo-Lopez*, 78 Wn. App. 717 (multiple drug deliveries to same customer); *State v. Craven*, 69 Wn. App. 581, 849 P.2d 681 (1993) (multiple assaults of same victim).

the crime involved promoting "an enterprise with a single objective." *Id*. Thus, promoting prostitution over a 10-day period was a single ongoing offense, despite evidence of multiple acts of promotion of prostitution during the charging period. *Id*. at 616-17, 620.

Similarly here, the enterprise was keeping a large number of dogs together. This was not an incident where Ms. Deskins occasionally or irregularly housed the animals improperly. Instead, she collected animals without regard to their needs and simply left them together in a confined area. This was a single offense rather than a series of offenses.

The trial court was not required to give a unanimity instruction. There was no error.

Alternative Means of Committing Animal Cruelty

Ms. Deskins next argues that the trial court erred by instructing the jury on uncharged means of committing second degree animal cruelty. We agree that the jury was instructed on theories of animal cruelty other than those alleged in the charging document, depriving Ms. Deskins of constitutionally required notice. We reverse this conviction and remand for trial with proper instructions.

The state and federal constitutions require that an accused be informed of the

charges he or she must face at trial. Const. art. I, § 22;[5] Sixth Amendment.[6] Because of the centrality of this notice to the ability to defend, it is error to instruct the jury on uncharged offenses or uncharged alternative theories. *E.g.*, *State v. Severns*, 13 Wn.2d 542, 548, 125 P.2d 659 (1942); *State v. Chino*, 117 Wn. App. 531, 540, 72 P.3d 256 (2003). The error can be harmless if other instructions define the crime in a manner that leaves only the charged alternative before the jury. *Severns*, 13 Wn.2d at 549; *Chino*, 117 Wn. App. at 540.

Second degree animal cruelty can be committed by an owner who "[f]ails to provide the animal with necessary shelter, rest, sanitation, space, or medical attention and the animal suffers unnecessary or unjustifiable pain as a result of the failure." RCW 16.52.207(2)(a). This definition identifies five means or methods of committing the offense by withholding proper "shelter, rest, sanitation, space, or medical attention." The amended complaint filed against Ms. Deskins, quoted previously, alleged that she failed to "confine or separate" the dogs in her care. This language implicates the "shelter" and "space" components of the statute, but not the remaining methods.

However, the jury was instructed that it could find Ms. Deskins guilty of this

[5] "In criminal prosecutions the accused shall have the right . . . to demand the nature and cause of the accusation against him, to have a copy thereof."

[6] "In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation."

offense if she failed to provide "necessary shelter, rest, sanitation, space or medical attention." CP at 63 (instruction 14). Thus, the jury was instructed to consider all five methods of committing the crime rather than simply the two charged by the prosecutor. This mistake is unfortunately common in these days of word processing and standardized instruction forms, but has long been recognized as prejudicial error. *Severns*, 13 Wn.2d at 548. The error is presumed prejudicial unless affirmatively shown to be harmless. *Chino*, 117 Wn. App. at 540.

The error is only harmless in the very narrow circumstance where a definitional statute essentially negates the erroneous elements instruction. *Severns*, 13 Wn.2d at 549; *Chino*, 117 Wn. App. at 540. Here, the instruction defined the crime of second degree animal cruelty in three of the five ways specified by statute—failure to provide shelter, rest, or space. CP at 62 (instruction 13). It was narrower than the erroneous elements instruction, but slightly broader than the charging document.[7]

It is a close question whether the definitional instruction sufficiently narrowed the erroneous elements instruction to render the error harmless, but ultimately we conclude

[7] Ms. Deskins also argues that the prosecutor emphasized the five statutory methods by reading the elements instruction to the jurors. His argument, however, did not address any of the uncharged methods, but focused on the dangers to the smaller dogs resulting from the confinement. Report of Proceedings at 543-44. We do not see anything in the closing argument that exacerbated the instructional error.

that it did not. There was still an uncharged alternative mentioned, the failure to provide rest. There also was evidence presented at trial that Ms. Deskins failed to provide medical attention, an uncharged means that was included in the elements instruction but not in the definitional instruction. This type of error has been found prejudicial when there was in fact sufficient evidence to support one of the uncharged alternatives that the court erroneously instructed the jury upon. *E.g.*, *Severns*, 13 Wn.2d at 552.

Because the definitional instruction did not sufficiently narrow the erroneous elements instruction and there was evidence of at least one of the uncharged alternatives, the error was not harmless. We reverse and remand this count for a new trial with proper instructions.

Animal Possession and Forfeiture Conditions

Ms. Deskins argues that the trial court exceeded its authority in ordering the forfeiture of all animals on her property and in prohibiting her from living with any animals during the period of probation. The trial court had the authority to act as it did and did not abuse its discretion.

Sentencing conditions are reviewed for abuse of discretion. *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993). A trial court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons.

State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). A trial court must act within the limits of the sentencing statutes when setting probationary conditions and it commits reversible error when it exceeds its sentencing authority. *State v. Farmer*, 39 Wn.2d 675, 679, 237 P.2d 734 (1951).

The Sentencing Reform Act of 1981 applies only to felonies. RCW 9.94A.010; RCW 9.94A.905; *State v. Williams*, 97 Wn. App. 257, 263, 983 P.2d 687 (1999). RCW 3.66.068 governs the district court's imposition of probation conditions for gross misdemeanors and misdemeanors. *Williams*, 97 Wn. App. at 262. As it existed at the time of these offenses, the statute provided in relevant part:

> For a period [of] two years after imposition of sentence . . . , the court has continuing jurisdiction and authority to suspend . . . the execution of all or any part of its sentence upon stated terms, including installment payment of fines.

Former RCW 3.66.068 (2007). A trial court may impose "probationary conditions that bear a reasonable relation to the defendant's duty to make restitution or that tend to prevent the future commission of crimes." *Williams*, 97 Wn. App. at 263 (citing *State v. Summers*, 60 Wn.2d 702, 707, 375 P.2d 143 (1962)).

The district court ordered: "All pets or livestock, domestic or commercial at 5522 Wallbridge Rd shall be forfeit to Stevens County Sheriff on 3/5/2010 except for proof of ownership by others." CP at 4. The court also prohibited Ms. Deskins from owning, acquiring, or living with pets or

livestock during the probationary period. Ms. Deskins attacks both of these sentencing conditions, claiming that each one is overbroad and void due to lack of statutory authority. Specifically, she argues that under RCW 16.52.200(3), the court could only order forfeiture of those dogs that were held by animal care authorities and not any of the livestock or those dogs not in the care of SpokAnimal. Ms. Deskins also argues that the statute did not prohibit her from living with livestock or different pets. Her arguments confuse what a trial court must do with what it may do.

Under former RCW 16.52.200(3) (2003):

> In addition to the penalties imposed by the court, the court *shall order the forfeiture of all animals held by law enforcement or animal care and control authorities* under the provisions of this chapter *if any one of the animals involved dies as a result of a violation of this chapter*. . . . In other cases the court *may enter an order requiring the owner to forfeit the animal if the court deems the animal's treatment to have been severe and likely to reoccur*. If forfeiture is ordered, the owner shall be prohibited from owning or caring for any similar animals for a period of two years.

(Emphasis added.)

This statute and RCW 3.66.068 authorized the trial court to order forfeiture of all of Ms. Deskins' pets and livestock. Under RCW 16.52.200, the court had to forfeit the animals held by authorities if it found that an animal had died due to a violation of chapter 16.52 RCW. It so found. It also had discretionary authority under that statute to forfeit other animals if the court considered the abuse likely to reoccur. Under the discretionary powers of

RCW 3.66.068, the trial court also had authority to condition probation on other terms, including the forfeiture of other animals. The court was not required to forfeit the other animals, but we believe it had the discretionary authority to forfeit them in those circumstances not subject to mandatory forfeiture.

For similar reasons, the prohibition on animal ownership during probation was permissible. The last sentence of former RCW 16.52.200(3) quoted above mandated that the trial court prohibits Ms. Deskins from owning similar animals once it had entered a forfeiture order.[8] We likewise think that the broad discretionary powers of RCW 3.66.068 empowered the court to prohibit the ownership of any type of animal during the period of probation.

Based on its findings, the trial court was required to forfeit the animals held by authorities and to prohibit Ms. Deskins from owning similar animals during the period of probation. The trial court properly used its broad authority to condition probation on forfeiture of Ms. Deskins' other animals and to prohibit her from owning any other animals during probation.

The court did not err in imposing these sentencing conditions.

[8] This statute was subsequently amended to require a prohibition on "residing" with similar animals. RCW 16.52.200(4)(a) (Laws of 2011, ch. 172, § 4, effective July 22, 2011).

Fine and Restitution

Ms. Deskins also argues that the trial court erred by imposing (and suspending) a $1,000 fine on the unlawful confinement conviction and by ordering restitution to the Tennants and the sheriff's office. We agree that the court lacked authority to impose the fine, but conclude that the two restitution orders were proper.

An illegal or erroneous sentence may be addressed for the first time on appeal even if the error is not jurisdictional or constitutional. *State v. Ford*, 137 Wn.2d 472, 477, 973 P.2d 452 (1999). A district court has authority to impose a fine of up to $5,000, "unless otherwise expressly provided by statute." RCW 3.66.060. However, in the case of a conviction for unlawful confinement, RCW 16.52.165 provides that a defendant "shall be punished by a fine of not exceeding one hundred and fifty dollars." The $1,000 fine imposed here, even though suspended, exceeds that limit, and must be revised upon remand.

Ms. Deskins also challenges the restitution orders to the Tennants to cover Winnie's medical expenses and to the sheriff's office to recover the costs of SpokAnimal's care of the dogs. She disputes the district court's authority to order restitution to the Tennants. She acknowledges that there is statutory authority for the restitution to the sheriff's office, but contends that the court denied her due process by

immediately ordering the restitution.

Trial courts have authority to impose restitution on defendants convicted of a crime. RCW 9A.20.030(1) provides in part:

> If a person has gained money or property or caused a victim to lose money or property through the commission of a crime, upon conviction thereof . . . the court . . . may order the defendant to pay an amount, fixed by the court, not to exceed double the amount of the defendant's gain or the victim's loss from the commission of a crime. Such amount may be used to provide restitution to the victim at the order of the court.

This statute of general application applies to both district and superior courts. The district courts likewise are authorized to enforce their restitution orders in the same manner as civil judgments and victims similarly can seek to enforce the district court restitution orders. RCW 3.66.120, .130.

The district court had the same clear authority to order restitution that the superior court has. Ms. Deskins' argument to the contrary is without merit.

Ms. Deskins correctly recognizes that restitution to the sheriff's office for the animal care costs is directly stated in the punishment statute for the cruelty to animals chapter. Former RCW 16.52.200(4).[9] Her complaint is that it was unfair to proceed to sentencing immediately upon conviction. She provides no relevant authority in support of her claim that she was somehow entitled to a delay of her sentencing proceeding.

[9] Now codified at RCW 16.52.200(6).

Restitution must be established by a preponderance of the evidence. *State v. Kinneman*, 155 Wn.2d 272, 285, 119 P.3d 350 (2005). Evidence is sufficient to support a restitution order if it provides a reasonable basis, other than conjecture or speculation, to estimate the loss. *Id.*; *State v. Fleming*, 75 Wn. App. 270, 274-75, 877 P.2d 243 (1994). Restitution is not limited to cases where the damage computation is simple. *Kinneman*, 155 Wn.2d at 285. The rules of evidence do not apply to restitution hearings. ER 1101(c); *State v. Kisor*, 68 Wn. App. 610, 620, 844 P.2d 1038 (1993). Instead basic due process concerns govern this situation—whether the defendant had the opportunity to contest the evidence and whether the evidence was reasonably reliable. *Kisor*, 68 Wn. App. at 620.

After the jury verdict was read, the trial court gave both sides 10 minutes to prepare for the sentencing hearing. Defense counsel requested a continuance, but the trial judge denied the request, stating that "[t]his Court was scheduled to be done today . . . [w]e have limited schedules." Report of Proceedings (RP) at 592. The prosecutor presented a statement and bill from Captain George, who declared that "[t]here's a bill that's still outstanding to SpokAnimal for $5,940.00. . . . [T]he costs of the sheriff's office prior to that for caring for these animals was $21,582.21." RP at 625. The statement and bill were passed up to the judge, but they were not filed.

Ms. Deskins relies on the cases of *State v. Raleigh*, 50 Wn. App. 248, 254, 748 P.2d 267 (1988) and *Kisor*, 68 Wn. App. at 620, for her contention that she was not given an adequate opportunity to challenge the accuracy or reasonability of the costs awarded to the sheriff's office. However, both of these cases are easily distinguishable from the present case. In *Raleigh*, the defendant pleaded guilty to second degree burglary of beer valued at $89.00 and the trial court ordered him, along with a codefendant, to make restitution in the amount of $9,179.01, which represented the total amount of damages sustained to the building that the defendant broke into, which had been burglarized several times during the time period in question. 50 Wn. App. at 249-50. Division One of this court held that in that instance, where the State presented no evidence at the sentencing hearing to establish the amount of loss and relied only on the previous order imposing restitution on the defendant's codefendant, the trial court erred in failing to grant a separate restitution hearing to take evidence on the matter. *Id.* at 250. In *Kisor*, the defendant was convicted of burglary, theft, and harming a police dog, and the sentencing judge ordered the defendant to pay restitution for the cost of replacing the police dog. 68 Wn. App. at 612-14. Division Two reversed the restitution order and remanded for a new restitution hearing, holding that the order, which was based only on the State's affidavit containing the hearsay declarations of a risk manager who "checked"

on training costs with the Tacoma police and the Spokane Canine Training Unit but did not provide any indication of where she obtained the figures submitted, was not substantial credible evidence and the trial court's reliance on the affidavit offended due process.

In contrast, here the State, unlike in *Raleigh*, did present evidence. Unlike *Kisor*, the evidence was not simply an uncorroborated affidavit from a risk manager about anticipated replacement costs. Instead, Captain George testified to the actual amount, and also presented the billing statement from SpokAnimal listing the costs of caring for Ms. Deskins' dogs to corroborate his testimony. The evidence was reasonably reliable and Ms. Deskins had the opportunity to contest it. The restitution order was based on testimony and documentary evidence, and mandated by former RCW 16.52.200(4), which stated that upon conviction a defendant "shall be liable for reasonable costs incurred pursuant to this chapter by law enforcement agencies. . . . Reasonable costs include expenses of the investigation, and the animal's care, euthanization, or adoption."

The statute notified Ms. Deskins that she would be responsible for the costs of the animal care if she was convicted. Stevens County had been charged a total of $21,582.21 to care for Ms. Deskins' animals. The trial court did not err in imposing that amount of restitution.

CONCLUSION

The conviction for unlawful confinement and the accompanying restitution orders are affirmed. The conviction for second degree animal cruelty is reversed and the count remanded for a new trial. Resentencing consistent with this opinion is also required in light of the superior court's ruling on appeal.

Affirmed in part, reversed in part, and remanded.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Korsmo, C.J.

WE CONCUR:

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Kulik, J.

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Siddoway, J.