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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0979**

State of Minnesota,
Respondent,

vs.

Jason Michael Larson,
Appellant.

**Filed June 16, 2014
Reversed and remanded
Kirk, Judge**

Swift County District Court
File No. 76-CR-12-198

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Robin W. Finke, Swift County Attorney, Benson, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Michael W. Kunkel, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Stauber, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant was convicted of felony theft of property in excess of \$1,000, in violation of Minn. Stat. § 609.52, subd. 3(3)(a) (2010). Appellant argues that his

conviction should be reversed because there was insufficient evidence to prove that the value of the property exceeded \$1,000. Appellant also challenges the district court's order for restitution. There is insufficient evidence to prove that the value of the stolen property exceeded \$1,000, and appellant's sentence must be reduced to gross misdemeanor theft. Because appellant failed to raise the issue of restitution to the district court, he has waived this issue on appeal. Appellant's pro se supplemental brief raises no issues of merit. We reverse and remand.

D E C I S I O N

I. The evidence is insufficient to support appellant's conviction of theft in excess of \$1,000.

In considering a claim of insufficient evidence, this court's review is limited to a thorough analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of the matter depends mainly on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980).

Appellant Jason Michael Larson lived with K.M., his mother, and C.M, his step-father, in Holloway. When K.M. and C.M. returned home after a month long absence in March 2012, they discovered that a storage trailer on their property had been broken into and three items were missing: a 1972 Arctic Cat Hill Climber mini bike, an older blue

style mini bike, and a go-cart frame. J.L., appellant's brother, was the owner of the missing property.

Appellant was charged with stealing the property, and a one-day jury trial was held on September 27. The jury convicted appellant of felony theft of property valued over \$1,000 but no more than \$5,000, in violation of Minn. Stat. § 609.52, subd. 3(3)(a). The district court sentenced appellant to 25 months in prison and ordered him to pay \$90.84 in restitution to the Swift County Sheriff's Office for towing costs.

Appellant argues that the state failed to present sufficient evidence of his guilt because it did not prove that the total value of the stolen items exceeded \$1,000. Appellant argues J.L.'s valuation of the Arctic Cat mini bike is speculative and could not be used by the jury to determine its value under Minn. Stat. § 609.52, subd. 1(3) (2010).

Giving due deference to the jury's findings, we conclude that the trial record does not support appellant's conviction of felony theft. A conviction of felony theft requires evidence that a defendant stole more than \$1,000 in property. Minn. Stat. § 609.52, subd. 3(3)(a). When determining the value of stolen property, "value" is defined as "the retail market value at the time of the theft, or if the retail market value cannot be ascertained, the cost of replacement of the property within a reasonable time after the theft." *Id.*, subd. 1(3).

Both parties agree that the combined value of the blue mini bike and the go-cart frame is no more than \$600. The dispute centers on the valuation of the Arctic Cat mini bike. At trial, appellant testified that the bike's retail value ranged between \$380 and \$400, and provided advertisements of two 1971 Arctic Cat mini bikes that were valued

from \$305 to \$350. J.L. testified that the bike was worth at least \$800 based on what a collector would pay for it. *See State v. Clipper*, 429 N.W.2d 698, 700 (Minn. App. 1988) (holding that a jury can properly accept an owner’s testimony as to the value of his own property). But J.L. admitted that when the bike was stolen, he had replaced its headlight, motor, and tail light, and it was worthless to a collector in this condition. Under Minn. Stat. § 609.52, subd. 1(3), this court must consider the retail value of the bike when it was stolen, not its future potential value as a collector’s item had J.L. fitted it with all of its original parts. We conclude that the testimony and evidence at trial establishes that the value of the Arctic Cat mini bike was at most \$400, and the combined value of the stolen property no more than \$1,000. The trial record does not support appellant’s conviction under Minn. Stat. § 609.52, subd. 3(3)(a).

We reverse appellant’s conviction and remand this matter to the district court for sentencing as a gross misdemeanor under Minn. Stat. § 609.52, subd. 3(4). *See State v. Stout*, 273 N.W.2d 621, 623 (Minn. 1978) (reversing and remanding defendant’s felony sentence for theft of property in excess of \$2,500 as evidence was sufficient to prove defendant committed theft, but evidence was insufficient at trial to establish the value of the stolen property exceeded \$2,500, and consequently defendant’s maximum sentence would be reduced).

II. Appellant waived his right to challenge restitution.

“[District] courts are given broad discretion in awarding restitution.” *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1999).

Appellant challenges the district court's award of \$90.84 in restitution to the Swift County's Sheriff's Office for reimbursement of towing costs, arguing that the Sheriff's Office was not a victim as contemplated under the restitution statute. Minn. Stat. § 611A.04 (2010). After a defendant is convicted of a crime, a victim can request restitution for a specific loss. Minn. Stat. § 611A.04, subd. 1(a) (2010). A defendant may request a hearing to challenge the victim's request for restitution but he carries the burden of producing evidence, including a sworn affidavit, challenging the victim's requested items of restitution and/or the amount of requested restitution. Minn. Stat. § 611A.045, subd. 3 (2010). When appellant fails to object to restitution during a plea hearing or sentencing, the issue is deemed waived on appeal. *See State v. Anderson*, 507 N.W.2d 245, 247 (Minn. App. 1993), *review denied* (Minn. Dec. 22, 1993).

Our review of the trial transcript confirms that appellant did not raise the issue of restitution at any time before the district court. We conclude that appellant waived his challenge to restitution on appeal. *See id.*

III. Appellant's supplementary brief does not raise any issues of merit.

Appellant raises eight separate claims in his pro se supplemental brief, including denial of private counsel, newly discovered evidence, denial of pro se representation, prosecutorial misconduct, ineffective assistance of counsel, Sixth Amendment violation, cumulative errors, and judicial bias. These claims lack merit, and we deem them waived because they are either outside of the record or lack any supporting legal authority. *See* Minn. R. Crim. P. 28.02, subd. 8 (stating that "[t]he record on appeal consists of the papers filed in the district court, the offered exhibits, and the transcript of the

proceeding, if any”); *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (holding if the brief does not contain an argument or citation to legal authority in support of the allegations raised, the allegation is deemed waived).

Reversed and remanded.