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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-2131**

In the Matter of the Welfare of:  
D. J. M., Child.

**Filed September 1, 2009  
Affirmed  
Klaphake, Judge**

Lyon County District Court  
File No. 42-JV-08-146

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Nicole A. Springstead, Assistant Lyon County Attorney, Lyon County Courthouse, 607 West Main Street, Marshall, MN 56258 (for respondent State of Minnesota)

Marie L. Wolf, Interim Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant D.J.M.)

Considered and decided by Klaphake, Presiding Judge; Stauber, Judge; and Harten, Judge.\*

**UNPUBLISHED OPINION**

**KLAPHAKE**, Judge

Appellant D.J.M. was adjudicated delinquent of aiding and abetting theft of two all-terrain vehicles (ATVs), Minn. Stat. §§ 609.52, subd. 2(17), .05, subd. 1 (2006).

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

Appellant argues that the evidence was insufficient to support the adjudication and that the district court erred in its determination of the amount of restitution it ordered appellant to pay. Because the evidence, though circumstantial, was consistent with a finding of guilt and inconsistent with any other rational hypothesis, we affirm the adjudication of delinquency. Because the restitution ordered was limited to out-of-pocket losses resulting from the crime and was supported by the record, we affirm the restitution order.

## **DECISION**

### *Sufficiency of the Evidence*

We review an adjudication of delinquency to determine whether the factfinder could reasonably find the juvenile delinquent beyond a reasonable doubt, based on the facts in the record and the inferences drawn from those facts. *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 768 (Minn. App. 2001). We assume that the factfinder believed the state's witnesses and rejected contrary testimony. *Id.*

Appellant argues that the evidence presented is not sufficient to sustain the adjudication because it is circumstantial. “[C]ircumstantial evidence is sufficient to sustain a conviction when all the circumstances proved are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of his guilt.” *State v. Tscheu*, 758 N.W.2d 849, 857 (Minn. 2009) (quotation omitted). The circumstantial evidence need not exclude all inferences other than guilt, just all reasonable inferences. *Id.* Although the appellate court more strictly scrutinizes convictions based solely on circumstantial evidence, such evidence is entitled to as much

weight as direct evidence. *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). On review, this court views the evidence in the light most favorable to the verdict. *Tscheu*, 758 N.W.2d at 858.

Appellant was charged with aiding and abetting theft of a motor vehicle, and the sole issue is whether he was involved in the theft of two ATVs. The trial record includes the following circumstantial evidence: (1) the victim, Timmy Swanson, testified that his two ATVs were taken without his permission; (2) Swanson testified that the thief knew where he stored the ATVs because the vehicles were not readily visible from the road, and the thief knew how to leave the farm through a cornfield; (3) appellant dated Swanson's daughter, worked on the farm, and used the ATVs while working; (4) one of the ATVs had struck a culvert with enough force to bend the culvert; (5) appellant had an injury consistent with hitting his chin on the handlebars of the ATV when it struck the culvert; (6) appellant's claim that he lay unconscious with minor injuries for six hours in a small town parking lot or alley is not credible because appellant's injuries were inconsistent with a personal attack and a six-hour period of unconsciousness; (7) three juveniles staying at the same youth program as appellant testified that he admitted taking and driving the ATVs; and (8) appellant's friend, A.L., told police that appellant had taken the ATVs, although A.L. later recanted this testimony. Based on this evidence, the district court could reasonably adjudicate appellant delinquent beyond a reasonable doubt. We therefore affirm the adjudication.

### *Restitution*

The district court ordered appellant to pay restitution in the amount of \$1,958.84. Of this amount, appellant does not dispute \$989.59. Appellant challenges the district court's order for restitution of expenses for an airplane rental, for the time Swanson and his wife spent looking for the ATVs, and for Swanson's time spent preparing for and testifying at trial.

A crime victim has the right to receive restitution as part of the disposition of a juvenile delinquency proceeding if the offender is found delinquent. Minn. Stat. § 611A.04, subd. 1 (2008). "A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime, including . . . replacement of wages and services." *Id.* The district court has broad discretion to order restitution, but we review as a question of law whether a particular item fits within the statutory definition of expenses eligible for restitution. *In re Welfare of M.R.H.*, 716 N.W.2d 349, 351 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006). The record must contain a reasonably specific factual basis for the nature and amount of the loss claimed. *State v. Thole*, 614 N.W.2d 231, 234 (Minn. App. 2000). The statute is broadly construed to accomplish its purpose of making the victim whole. *M.R.H.*, 716 N.W.2d at 353 ("The primary purpose of restitution is to compensate a crime victim by restoring the victim to his or her original financial condition"); *see also State v. Tenerelli*, 598 N.W.2d 668, 672 (Minn. 1999) (affirming award of expenses for Hmong religious cleansing ceremony); *State v. Maidi*, 537 N.W.2d 280, 284 (Minn. 1995) (affirming award of expenses incurred by victim for unlawful re-abduction of children from Algeria).

Swanson paid \$209.25 for rental of an airplane to survey the cornfields for a sign of the ATVs. Although this search was unsuccessful, the court concluded it was a reasonable expense within the meaning of the statute.

Swanson and his wife spent 20 hours each looking for the ATVs. Swanson is self-employed as a farmer; he valued his time at about \$10 per hour because during August, the time of the search, he is not very busy. Again, the district court also found this amount reasonable within the meaning of the statute.

Swanson also testified that he spent 12 hours preparing for and attending the various court hearings in the late summer and fall of 2008. He asked the court to award him \$1,000 for these activities, asserting that the court proceedings took him away from the farm during the busy harvest season and that he lost some crops because he was unable to complete the harvest due to the court hearings. Although Swanson provided no documentation of the value of the crop loss, he testified that it would have cost far greater than \$1,000 to hire someone to assist with crop harvest. The court construed Swanson's claim as one for lost labor; credited his testimony that an experienced combine operator "might well charge \$30.00 per hour" during harvest; and concluded that \$360, or 12 hours at \$30 per hour, was reasonable restitution for this claim. This provides a factual basis for the amount of the loss claim, which is essentially a wage loss claim for a self-employed person. *See M.R.H.*, 716 N.W.2d at 353 (approving restitution for use of flex time and comp time, despite the fact that victim had no actual economic loss).

In its restitution order, the district court provided a reasonably specific factual basis for each item and each claimed loss occurred as the result of the crime. This restitution order is within the broad discretion of the court and we therefore affirm.

**Affirmed.**