

RESTITUTION

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[State v. LaFlam](#), 2008 VT 108 (mem).

Defendant was convicted of driving with a suspended license (DLS) and the State sought restitution for damage done when he smashed his vehicle into the front of a convenient store. (Argument: Lack of license is irrelevant to the determination of the cause of damages.) The Vermont Supreme Court has consistently required some sort of proximate causation in addition to causation in fact in order to justify an award of restitution. Because there was no direct link between the damage to the storefront and the conduct for which the defendant had been convicted (DLS), the court had no authority to order restitution. Reversed.

RESTITUTION/VALUATION/DERIVATIVE CONTRABAND

[State v. Driscoll](#), 2008 VT 101.

Defendant was ordered to pay restitution on the loss of two prized bull deer, totaling over \$5,000, after he was convicted of unlawful mischief for damaging a gate enclosing captive deer. The value of the alleged escaped deer was based on the owner's testimony that such prized deer would have been taken to a game preserve for hunting and would have fetched top dollar. The lower court ruled that the deer may not have been brought to the preserve and reduced valuation of the deer accordingly. The Court held that valuation based on owner testimony is normally valid; however, such testimony is not if it is based on events that have not, in fact, occurred. Nonetheless, the Court upheld the valuation as the lower court had made the appropriate downward adjustment. Although the deer were being held in violation of state regulations and arguably were derivative contraband for which the complainant could not receive a benefit (i.e. restitution), the Court dismissed this argument, holding there is no general authorization by the Legislature for the forfeiture of derivative contraband and the rules governing captive deer are silent as to remedies for violation of the rules. Affirmed.

SENTENCING/RESTITUTION

[State v. Barrett](#), Vermont Supreme Court Docket No. 2008-034 (*unpublished decision*)

District court erred in failing to take evidence on appropriate amount of restitution or to make findings on defendant's ability to pay, and restitution order is accordingly vacated and remanded for hearing.

INSUFFICIENT PROOF TO SUPPORT RESTITUTION ORDER

[State v. Rollins](#), 2007 VT 127 (mem.)

Defendant was convicted of attempted assault and robbery. Although restitution statute permits restitution in attempt crimes, defendant argued that there was no factual support in the trial or sentence hearing that supports the \$460 restitution order against him. The Supreme Court agreed stating that: "... [T]he restitution order cannot stand because it is based on conduct that was not covered by defendant's conviction. Defendant was convicted of attempted assault and robbery because, as the State's Attorney admitted, the State could prove only that defendant was involved in a scheme to rob the victim and that defendant took a significant step in that direction, namely the assault. Despite the victim's testimony that he lost \$420 as a result of the robbery, the conviction was based solely on evidence of the plan to rob and the identification of defendant as one of the assailants. The jury was not asked to decide if money was taken and if so, who took it. The conviction for attempted robbery cannot support a connection between defendant and the claimed loss due to robbery, because in order to convict, the jury here had to find that defendant failed in his attempt to rob the victim."