

NO. 78628-3

**SUPREME COURT
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

DOUGLAS JOHN MARTIN TOBIN, APPELLANT

Petition for Review from the Court of Appeals, Division II

Nos. 31636-6 and 31646-3

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

1. The trial court did not abuse its discretion in awarding restitution for the investigative and administrative costs in this case, where such costs were incurred as the direct result of the duration, sophistication and clandestine nature of the defendant's million-dollar shellfish poaching operation.

B. STATEMENT OF THE CASE.

From January 1, 2000, until his arrest on March 18, 2002, Defendant Doug Tobin pillaged the waters of the South Puget Sound, illegally harvesting over one-million dollars worth of geoduck clams and nearly two-hundred thousand dollars worth of crab. CP 91-92 (Omaitis at 1-2). His illegal enterprise operated at night and was hard to detect. Washington State Department of Fish and Wildlife (WDFW) detectives spent months investigating Defendant's operation. Over the course of the investigation, detectives interviewed multiple business owners dealing in geoduck and crab, subpoenaed their business and bank records, as well as airway and freight bills, and worked with informants employed with Defendant. CP 119-126. The investigation was so time consuming that two WDFW detectives spent 75% of their caseload time on Defendant's case for an 18 month period and four other detectives spent a considerable

time on the case, totaling approximately \$317,600 in WDFW labor costs. CP 126. These costs were not sought or awarded.¹ RP 6, 4/9/04, CP 77-78. Approximately 55 Fish and Wildlife Officers were used to execute warrants and arrests and costs for this totaled \$19,250; again, these costs were also not sought or awarded. CP 126.

At the end of the investigation, WDFW retained Williams Omaitis, a forensic accountant, to determine the poundage and monetary loss in this case. CP 126. Omaitis relied on an examination of all of the documentary evidence detectives had gathered in the course of their 18 month investigation, and for his services the department was charged \$30,000. CP 127.²

WDFW also incurred additional costs with the investigation and recovery effort. This included the hiring of a half time secretary to manage all of the documentary evidence in the case, for a total of \$15,000. CP 126. WDFW utilized officers and three patrol vessels to recover 106 crab pots that Tobin used to commercial fish for crab, at a cost of approximately \$42,000. CP 126. Finally, WDFW sought survey costs for the geoduck population. CP 77-78. The costs requested by the State did

¹ Detective Volz from WDFW detailed the detectives' staff time costs in his declaration submitted for the restitution hearing, and the State's written memorandum for restitution included the detectives' staff time costs in its written claim, but the prosecutor ultimately chose to not seek those costs at the restitution hearing.

² The Court of Appeals erred in referring to the amount for the forensic accountant as \$47,000, see State v. Tobin, 132 Wn. App. 161, 162, 130 P.3d 426 (2006). The amount awarded by the trial court for the accountant was \$30,000. See Verbatim Report of Proceedings (4/9/2004) at 35.

not come close to capturing the full extent of damage caused by Defendant's poaching operation. Much of the loss is neither economically nor environmentally recoverable—many of the crab pots went unrecovered and continue to decimate the crab resources, and it will take an average of 39 years for the 200,000 pounds of poached geoduck to recover in the natural process. CP 84 (Sizemore at 2); CP 127 (Volz at 9).

C. ARGUMENT.

1. THE TRIAL COURT PROPERLY AWARDED RESTITUTION FOR THE INVESTIGATIVE/ADMINISTRATIVE EFFORTS IN THIS CASE WHERE DEFENDANT'S LARGE CRIMINAL ENTERPRISE REQUIRED THE HIRING OF A FORENSIC ACCOUNTANT, A SECRETARY TO MANAGE THE HIGH VOLUME OF DOCUMENTARY EVIDENCE, AND A RESURVEY OF THE GEODUCK BIOMASS HE AFFECTED.

- a. Framing the issue for which review was granted.

RAP 13.4 (c)(5) requires a concise statement of the issues presented for review and RAP 13.7 (b) limits review only to those issues properly raised in the petition as directed in RAP 13.4 (c)(5), and the Court will not consider an issue raised only in the argument section. State v. Korum, 157 Wn.2d 614, 624-25, 141 P.3d 13 (2006), *citations omitted*. Similarly, assignments of error not argued in a brief or not supported by authority are deemed abandoned. State v. Motherwell, 114 Wn.2d 353, 358 n.3, 788 P.2d 1066 (1990).

Here, defendant's concise statement of the issue accepted for review is very narrow: "The Court of Appeals erred in awarding the State its investigative and administrative costs because such costs were not sufficiently *related* to the crime to which Mr. Tobin Plead guilty." (Petitioner for Review (PRV) at 1, emphasis added). This issue for which review was granted, the "nexus" issue, was just the second of three issues raised in Defendant's Petition. When analyzed more closely, however, it turns out that most of Defendant's argument in that section of the Petition actually addresses separate arguments outside the scope of the nexus issue.

The first paragraph of Defendant's argument under the second issue (PRV at 14) focuses on alleged technical deficiencies of Detective Volz's declaration. That argument, however, belongs to the separate, third issue and third assignment of error for which review was not granted by the court, so the State will not respond to that argument.

The second paragraph of Defendant's argument under the second issue starts with an on-point but conclusory statement: "Moreover, the claimed costs are not proper because they are not substantiated with reasonable accuracy and because they are not sufficiently tied to the crimes to which Tobin plead guilty." PRV at 14. The Petition then devotes a page to discussion of case law on the nexus issue and concludes with another conclusory statement that "It was error for the court to include investigative, staff support costs, and survey costs as special damages for the restitution for the geoduck offense because the State did

not prove the costs and because the costs were not sufficiently related to Mr. Tobin's actions." PRV at 15.

Defendant's Petition then shifts into an attack on the sufficiency of evidence at the hearing via an allegation that the "State did not prove the costs." PRV at 15. On page 16 of the Petition, Defendant asks this court to find that Detective Volz's declaration at 8, where he "guesstimated" the time Fish and Wildlife detectives spent in the case, is unsupported in the record and lacks a "causal connection" between the victim's expenses and the crime committed. PRV at 16. The only citation Defendant makes to the record in the entire section of his Petition on the nexus issue involves Detective Volz's summary of detectives' staff time. The State specifically chose not to seek recovery of the detectives' staff time, and it is unclear why this is the focus of the Defendant's argument under the second issue of his petition. RP 6, 4/9/04; (See also Amicus Curiae Washington State Department of Natural Resources' Memorandum Opposing Review).

In conclusion, Defendant's briefing and argument under the issue regarding the nexus between the costs and the crime contain a smattering of conclusory statements regarding the nexus, and Defendant did not provide one single citation to the record in support of the nexus argument. Defendant never mentions the Declaration of WDFW Biologist Bob Sizemore on which the survey costs were based. In none of his briefs has Defendant challenged the awarded costs for recovering the hundreds of illegal crab pots hidden in the waters of Puget Sound. In the order

accepting review, the court did not broaden the issues presented, nor did it accept review to determine whether the State “proved the costs” but instead limited it to “whether the investigative, administrative, and environmental costs included in the restitution award were sufficiently related to petitioner’s crimes,” and the State’s briefing will be limited to this issue.

b. Issue as presented to the court: causal connection.

This court is presented with the narrow issue of whether the restitution award of investigative and administrative costs is sufficiently related to Defendant’s crimes. More specifically, whether the trial court abused its discretion in awarding money to the State for its costs to (1) hire a forensic accountant, (2) hire a secretary to manage the documentary evidence, and (3) resurvey the waters where geoduck were illegally harvested. The award of restitution in this case for investigative and administrative costs is consistent with the purpose of the restitution statute, and this court’s approach to restitution as outlined in State v. Davison 116 Wn.2d 917, 809 P.2d 1374 (1991); State v. Kinneman, 155 Wn.2d 272, 119 P.3d 350 (2005), and Defendant presents no argument to this court to deviate from this precedent.

“Restitution” is defined as a “specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time as payment of damages. The sum may include both *public*

and private costs.” RCW 9.94A.030 (emphasis added). Restitution shall be based on:

easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime.

RCW 9.94A.753(3).

The order of restitution is mandatory “whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property,” and an appellate court will not reverse a trial court’s determination absent a showing of an abuse of discretion. RCW 9.94A.753(5); State v. Kinneman, *supra* at 282.

In State v. Davison, this court first considered the scope and purpose of the restitution statute and emphasized that while restitution is statutorily based, its reach is broad and it is meant to hold offenders accountable: “[t]he very language of the restitution statutes indicates legislative intent to grant broad powers of restitution. For example, restitution may include both public and private costs . . . and restitution may be up to double the offender’s gain of the victim’s loss.” Davison,

116 Wn.2d at 920 (citing former RCW 9.94A.030(22), RCW 9.94A.142(1)). The statute is to be interpreted to meet the declared purposes of the Sentencing Reform Act, which include the purpose to “[p]romote respect for the law by providing punishment which is just.” Davison, 116 Wn.2d at 922 (quoting RCW 9.94A.010(2)). To this end, it would not serve the purpose or policy underlying the statute to permit an offender to escape responsibility for the consequences of his criminal act. Id. In rejecting Davison’s argument that he was not obligated to reimburse the city for the payment of sick leave wages as a result of the assault its public employee sustained this court answered, “Our interpretation of the statutes requires the defendant to face the consequences of his criminal conduct.” Id.

A week after final briefs were submitted in the Court of Appeals in this matter, this Court announced the decision in Kinneman, which reiterated all of the principles announced in Davison, and held that “expenditure of funds for *investigative* costs” are properly awarded as part of restitution. 155 Wn.2d at 287 (emphasis added). Kinneman, an attorney, was convicted of 67 counts of theft in connection with real estate transactions he handled with a client. At issue was the award of the victim’s loss in equity³ and attorney fees as the result of civil litigation.

³ Ultimately, the issue of loss in equity was remanded to the trial court for an evidentiary hearing to determine whether the loss was due to the thefts, or whether a civil judgment already covered this loss. 155 Wn.2d at 286.

The defendant argued that the loss in equity was not an easily identifiable, discrete sum, and it simply went beyond the authority of a trial court in a criminal matter; and that with respect to the attorney's fees, the defendant argued that based on earlier court of appeals' decisions, the attorney's fees were not causally related to the criminal act.

In rejecting both arguments, this court criticized the analysis in State v. Martinez, 78 Wn. App. 870, 899 P.2d 1202 (1995), and clarified that investigative costs which are incurred as the result of criminal activity are within the ambit of expenditures recoverable in a criminal case. In Martinez, the defendant was convicted of arson after a fire destroyed his business. His insurance company incurred investigative expenses and attorney fees in defending a civil suit brought by the defendant. The appellate court concluded that the investigation costs did not fall within any of the categories of losses covered in the restitution statute, but Kinneman disagreed with this reasoning and cited other Supreme Court cases awarding such costs. 155 Wn.2d at 287 (citing State v. Smith, 119 Wn.2d 385, 831 P.2d 1082 (1992) (funds expended by a burglarized bank to develop film and unload and reset surveillance camera constituted "property"); and State v. Davison, *supra* at 921-22 (funds paid by a city to its employee who was the immediate victim of an assault while he was unable to work as a result of the assault constituted property)).

Kinneman explained that just as the principle funds expended by a victim as a direct result of the crime can be a loss of "property" so too

can “expenditure of funds for investigative costs.” Id. This court went on to cite with approval the ruling in State v. Wilson, 100 Wn. App. 44, 50, 995 P.2d 1260 (2000), where the court upheld restitution ordered for an employer’s investigative costs to prove monetary loss due to embezzlement of funds by her employee. This ruling was based on the fact that the investigative costs were “reasonable and rationally related to the crime and consequential in the sense that but for the [crime], the victim would not have incurred them.” 100 Wn. App. at 50.

Turning to the facts of this case, the investigative/administrative costs at issue easily fall under the umbrella of Davison and Kinneman. At issue is the award of the costs of (i) hiring a secretary to manage the evidence in this matter, (ii) a biological survey to reestablish the geoduck biomass, and (iii) a forensic accountant. The State will address each in turn.

(i) Secretary.

The trial court awarded costs to the State for the hiring of one-half-time secretary to manage the documentary evidence in this case, in the amount of \$15,000. CP 126 (Volz Declaration at 8). The uncontested declarations exhaustingly document the paper trail investigation Tobin led them all on and the secretary was necessary to manage this. In Detective Kevin Harrington’s declarations, he documents the number of invoices, checks, and airfreight shipment bills collected during the investigation. CP 54. The documentary evidence cited in the declarations show evidence

log numbers ranging from 01837 to 08089. CP 62-69. Taking the number of invoice/records that Omaitis relied on in making the forensic calculations for crab and geoduck sales summaries alone, there were 612 pieces of evidence and the evidence numbers ranged up to 08104. CP 95-114. Due to the volume of documentary evidence in this case it is no surprise that the investigating agency had to hire an additional secretary to manage this case. Thus, the expenditure of these funds, documented by a supporting declaration, was reasonable and causally related to the crime.

Given that the restitution definition expressly provides that both public and private costs are to be reimbursed under RCW 9.94A.030(38), the Defendant is in no position to distinguish the awards from those awarded in Wilson, *supra*. In Wilson the court awarded investigation costs related to embezzlement, including: “overtime, bookkeeping, accounting, and private detective and attorney services.” The victim in Wilson launched an in-house investigation into the embezzlement that is almost identical to the Herculean detective/secretary efforts in this case. The employer explained that she had to hire others to assist in the “collecting and reconstructing [of] her records,” and used “various means to manipulate computers and records to gain control over cash, checks, airline tickets, vouchers, coupons and credit receipts.” 100 Wn. App. at 46-47. In concluding that these services were causally connected to the crime of first degree theft the court announced that the expenses were “reasonably and rationally related to the crime and consequential in the

sense that but for the embezzlement, the victim would not have incurred them.” 100 Wn. App. at 50. Similarly, a law enforcement agency who expends additional funds in the investigation of a criminal matter is in no different position than a private agency who investigates fraud. In fact, the State in this case was conservative in its request for restitution, withdrawing a request for salaries of detectives, and requested very limited “investigative/administrative costs.” The State was entitled to secretary costs, but also could have gone after law enforcement costs as well.

The award of secretary costs is also consistent with the investigative award in State v. Johnson, 69 Wn. App. 189, 847 P.2d 960 (1993). In Johnson, the defendant pled guilty to first degree theft for embezzling money from her employer. In order to account for the losses, the employer had to have his accountant and family spend over a week reviewing business records and invoices, and requested a restitution award for the investigation. The defendant in Johnson first challenged the use of friends and family for investigating, arguing that they were not qualified to review the records; and alternatively, he challenged that the investigation costs were unsubstantiated and too speculative. In rejecting these arguments the court noted that the purpose of the statute is to hold offenders accountable, and that the amount of restitution need not be proved with “specific accuracy.” 69 Wn. App. at 194 (citing State v.

Mark, 36 Wn. App. 428, 434, 675 P.2d 1250 (1984)); see also, Kinneman, 155 Wn.2d at 285.

ii. Survey Costs.

The causal connection between the survey costs awarded here in the amount of \$70,000, and defendant's crime of theft, is easily understood once one understands the geoduck species, environment, and regulations. The geoduck population is a highly regulated industry and is often compared to old growth forests, due to their longevity of up to 164 years old. CP 83 (Sizemore at 1); see also RCW 79.135.210 (Geoduck harvesting); WAC 220-52-019 (Gear and Unlawful Acts); WAC 220-52-01901 (Geoduck Licenses); WAC 220-69-240 (Duties of Commercial Purchases and Receivers); WAC 220-69-241 (Duties of Commercial Fishers); WAC 220-88D-050 (Reporting requirements).⁴ In order to sustain and manage this population, scientists with the Washington Department of Fish and Wildlife (WDFW) must conduct surveys to accurately estimate biomass, calculate Total Allowable Catch (TAC) or quotas, assure sustainable harvest, and to assure equal opportunity to harvest for tribal and state harvesters.⁵ CP 86 (Sizemore at 4). The

⁴ See also Washington State Geoduck Harvest Association v. Dep't of Natural Resources, 124 Wn. App. 441, 101 P.3d 891 (2004) for further description of the process by which the State sells geoduck clams.

⁵ The State shares the geoduck clam resources with Tribes holding a treaty right to take fish and shellfish. See United States v. Washington, 157 F.3d 630 (9th Cir.1998).

allowable harvest levels are established by applying calculations to the known geoduck population. The success of the commercial fishery therefore depends on accurate catch reporting. When geoduck clams are harvested illegally, the population ends up being overharvested. CP 85. The unreported harvests also result in future harvest calculations being based on erroneous data, further threatening the viability of the entire commercial fishery. CP 85. Once poaching is known to have occurred in particular areas, the fishery managers are required to re-survey those areas to re-establish the geoduck population levels in order for the commercial fishery to continue. CP 88. A total of 1192 surveyed acres were affected by Tobin's theft, and biologist Bob Sizemore estimates that it will take approximately 89 field days of work, with operational costs of \$792 per day, in order to resurvey these areas, for a total cost of \$70,000. CP 88 (Sizemore at 6). Because it is difficult to ever detect the location of the illegal catch (CP 85), the State arguably could have requested restitution for a resurvey of all geoduck tracts in the Puget Sound Region; something that was not requested, and again underscores the conservative approach of the State at the restitution hearing.

Given the thorough record from biologist Bob Sizemore, the "but for" nexus test applied in State v. Wilson, supra, is easily met to support the award of resurvey costs. After facing dozens of charges, including leading organized crime, Tobin ultimately plead guilty to numerous

fisheries charges and to one count of theft in the first degree.⁶ Given that the victims are government agencies, the items stolen were geoduck clams which are the subject of a highly regulated and valuable commercial fishery, there is no question the survey money was appropriately awarded. Without the population data the State cannot regulate the fishery or establish reliable future quotas. Why would the public have to pay for resurvey costs when it is a criminal who created the need for the new survey?

This court has previously approved of restitution costs ordered above and beyond the market value of an ecological product where the State presents evidence of the loss to the product. In State v. Hughes, 154 Wn.2d 118, 129, 110 P.3d 192 (2005), overruled on other grounds, Washington v. Recuenco, - U.S. -, 126 S. Ct. 2546, 165 L. Ed. 2d 466 (2006), the defendant was found guilty of first degree theft for cutting down old growth cedar trees. Although the market value of the trees was only \$4,465, the trial court awarded a total of \$145,599, based on both the monetary and ecological components of the loss from the old growth trees. This court approved such an award finding that the value was still easily

⁶ Contrary to RCW 9A.56.030(1)(a), and in entering a guilty plea, he admitted that he “did unlawfully, feloniously, and wrongfully obtain or exert unauthorized control over property and/or services other than a firearm, to-wit: Geoducks, belonging to The State of Washington Department of Natural Resources or Squaxin, Nisqually and Puyallup Indian Tribes, of a value exceeding \$1,500, with intent to deprive said owner of such property and/or services.” CP 24, 26-30.

ascertainable and not based on mere speculation or conjecture, and that the statute “considers both private and *public* costs, which supports considering the real value of the trees and harm to the environment.” Id. at 155 (emphasis in original).

iii. Forensic Accountant.

In order to establish the loss in this case, the State had to retain a forensic accountant, William Omaitis. Mr. Omaitis is an experienced forensic accountant who is used to working with incomplete or inaccurate financial records based on the areas of investigation (e.g. tax fraud, timber theft, money laundering schemes). CP 91. Mr. Omaitis was presented with the daunting task of reviewing thousands of records in order to arrive at the actual loss the state suffered as a result of the illegal harvesting of both the geoduck and crabs, and he charged the State \$30,000 for his services. CP 126-127.

The need to retain Mr. Omaitis, and the causal connection in this case, can be likened to the needs in Wilson, supra, where the employer had to hire others to assist in the reconstruction of her records, including reviewing countless records. 100 Wn. App. at 46-47. To argue that this money should not be awarded to the State is to ask this court to treat the State differently than a private victim, something the statute expressly disallows under RCW 9.94A.030(38).

The causal connection between the crime and costs awarded in this case are not called into question by the decision in State v. Dedonado, 99

Wn. App. 251, 991 P.2d 1216 (2000), or State v. Hahn, 100 Wn. App. 391, 996 P.2d 1125 (2000), as defendant argues to this court. In Dedonado, the State presented no evidence of a connection between the restitution it requested and the property damage. In Dedonado, the defendant pled guilty to the crime of taking a motor vehicle without permission. The facts as presented to the court established that the defendant damaged the ignition of car he stole and also burglarized an electronics shop. The State sought restitution based on a property restitution estimate from the manager of the business where the estimate included repair for a glass window, a generator, and money not only for damage to the ignition, but various other parts of the vehicle. 99 Wn. App. at 254-55. There was no supporting affidavit that explained whether the other parts/glass were damaged during the crime, nor was there proof that the replacement generator was similar to the damaged generator. Id. at 253. In granting defendant's appeal, the court noted that "[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. Such expenditures may be for items of substantially greater or lesser value than the actual loss." Id. at 257. The court took issue with the fact that there was no documentation that the replacement generator was similar to the original generator. Also, there was no proof whether the repairs that were related to items other than the ignition, were necessary as the result to the damage the defendant did to the car.

The record in Hahn was even more sparse. In Hahn, the victim, DSHS, offered nothing more than a “list of expenses” for medical costs and did not provide any statement “linking the charged amounts to any particular symptoms or treatment,” and the court concluded that such a record which allows for speculation or conjecture was insufficient to support a restitution award. 100 Wn. App. at 400.

Unlike Dedonado and Hahn, the State was able to present more than a “list of expenses,” and the State’s declarations established a causal connection for each of the awards. For example, with the secretary, the declaration explains that her hiring was necessary to manage the documentary evidence in this case, as argued supra. With respect to Omaitis, his declaration lays out what he had to do in terms of research and accounting in order to arrive at the loss in this case. Finally, with respect to the surveys, Sizemore’s declaration details how Tobin’s illegal harvest affected the monitoring of the geoduck population. The Dedonado/Hahn cases do not support Defendant’s argument that the State must produce documentary evidence such as time card receipts in order to establish damages. This argument attacks the truth of the declaration, e.g. Volz is lying when he says that they had to pay \$15,000 for a secretary to manage the immense record for this case. Instead, these cases would support the Defendant’s position if the State only attached a calculation for \$15,000 for “a secretary” without any explanation of how she was causally related to the case and crime (e.g. to manage the evidence). Such was not the case

here, and the State proved⁷ by a preponderance of the evidence, all of the costs as well as the causal connection.

What defendant's argument really amounts to is not a causal connection claim, but a foreseeability argument, e.g. "I did not foresee that taking geoduck would require such labor intensive investigation or the resurveying of the population." This court has previously rejected such an argument, holding that the "[restitution] statute is, in short, clear and cannot be read to allow an individual to avoid paying restitution on the basis that he or she did not foresee the harmful consequences of his or her conduct," State v. Enstone, 137 Wn.2d 675, 680, 974 P.2d 828 (1999). The restitution statute permits awards up to double the offender's gain or victim's loss, thus contemplating the coverage of costs associated with the crime, but not necessarily a direct result of the crime.

Defendant does not set out or challenge in his petition for review, either in the issues presented, or in the argument section, any of the costs associated with the crab case. Therefore this court should not consider this argument if presented in supplemental briefing. (See Argument at §1, a). Even if this court were to consider the award of this money, the declaration sufficiently outlines the causal connection; in his declaration Volz explains that WDFW used 5-10 Officers and three patrol vessels to

⁷ The State maintains that sufficiency of proof is not before this court as argued in section (a), but the State provides this argument in an abundance of caution should this court reject a procedural bar.

recover 106 crab pots that Tobin used to commercial fish for crab and that such costs totaled \$42,000 (CP 126 (Volz at 8)). WDFW research scientist Wayne Palsson also documents in his declaration that they were able to obtain information from Tobin's global positioning unit and identify fishing areas that correspond to areas informants identified as Tobin's grounds. CP 80. Based on this information, and with the assistance of sonar surveys, the department uncovered the presence of crab pots in this area which were seized. CP 80 (Paulson at 2).

D. CONCLUSION.

The restitution award in this case conservatively held Defendant accountable for the large criminal enterprise he conducted for over a year in which he devastated the crab and geoduck population. The order to pay costs for documenting, accounting, and ultimately resurveying the loss is causally connected to defendant's theft and this court should affirm the trial court's restitution award.

DATED: April 6, 2007.

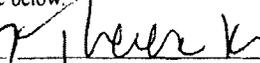
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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

4/10/07 
Date Signature