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**IN THE
COURT OF APPEALS OF INDIANA**

JERRY WILLIAMS,)
)
Appellant-Defendant,)
)
vs.) No. 49A02-1008-CR-916
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Amy Barbar, Magistrate
Cause No. 49G02-1001-FC-6697

April 25, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Jerry Williams (“Williams”) was convicted of burglary¹ as a Class C felony. He appeals the trial court’s restitution order contending that the trial court erred in imposing a restitution order following his conviction because no loss occurred from the burglary of which he was convicted.

On January 19, 2010, Ulysses Pendleton (“Pendleton”) saw Williams taking things from his neighbor William Baker’s (“Baker”) garage, but did not call the police. Pendleton again saw Williams walk into Baker’s garage on January 27, 2010 and this time called the police. The police arrived and apprehended Williams at the scene. Williams was charged and convicted of the January 27, 2010 burglary, and the trial court ordered him to pay restitution. The restitution order was based on the items allegedly taken on January 19, 2010, a burglary for which he was not charged.

The State concedes that restitution may not be ordered for uncharged acts. *Batarseh v. State*, 622 N.E.2d 192, 196 (Ind. Ct. App. 1993) (citing *Hipskind v. State*, 519 N.E.2d 572, 574 (Ind. Ct. App. 1988)) (“[A] trial court cannot base its order of restitution on illicit uncharged acts.”). Therefore, we vacate the trial court’s order of restitution and remand for determination of the appropriate restitution for damages, if any, resulting from the charged burglary.

Vacated and remanded with instructions.

MATHIAS, J., and VAIDIK, J., concur.

¹ See Ind. Code § 35-43-2-1.