IN THE SUPREME COURT OF IOWA

No. 17-0931

STATE OF IOWA,

Plaintiff-Appellee

v.

TERRAN E. ROACHE,

Defendant-Appellant

APPEAL FROM THE IOWA DISTRICT COURT
FOR STORY COUNTY

THE HONORABLE JAMES B. MALLOY,
JUDGE

APPELLANT'S FINAL BRIEF

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CERTIFICATE SERVICE AND FILING

This document will be filed electronically through EDMS. Service upon all parties shall occur pursuant to Iowa Court Rules 16.317(1) and 16.1220. On the 9th day of March, 2018, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant Terran E. Roache by placing one copy thereof in the U.S. Mail, proper postage attached, addressed to Terran E. Roach, IDOC ID no. 6643890, Clarinda Correctional Facility, 2000 North 16th Street, Clarinda, IA, 51632.

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Routing Statement

This case should be transferred to the court of appeals because the issues raised involve applying existing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(3)(a).

Statement of the Case

Nature of the Case: This is an appeal by Defendant-Appellant Terran Roache from the district court's order that he pay restitution in the amount of $3,557.08, due to Mr. Roache's convictions for second degree criminal mischief (I.C.A. §§ 716.1, 716.2, and 716.4) and third degree burglary (I.C.A. §§713.1 and 713.6A(2)). The restitution order included $1,900.00 assessed for a private "fine" imposed upon the victim by Northland CDL training, for his failure to return a training booklet determined to have been taken by Mr. Roache.

This particular restitution assessment is the sole issue on appeal.

Course of Proceedings:

The restitution order in this appeal was made pursuant to two separate Story County cases – FECR054456 and FECR054457. (App. 10-12; Plea Hr. Tr. p. 7, Ll. 10-12). All of the charges against Mr. Roach arose from automobile burglaries reported to Ames police on October 8 and October

14, 2016. (App. 4-9; Rest. Hr. Tr. p. 4, Ll. 21-25).

On October 26, 2016, the state filed a trial information in FECR0555456, charging Mr. Roache with one count of second degree criminal mischief in violation of Iowa Code sections 716.1, 716.2, and 716.4 (Count I), five counts of burglary (3rd degree) in violation of Iowa Code sections 713.1 and 713.6A(2) (Counts II – VI), one count of possession of burglary tools in violation of Iowa Code section 713.7 (count VII), and one count of unlawful use of a credit card in violation of Iowa Code sections 715A.1, 715A.6(1) and 715A.6(2)(c) (count VIII). (App. 4-6).

On October 27, 2016, the state filed a trial information in FECR054457, charging Mr. Roache with second degree criminal mischief in violation of Iowa Code sections 716.1, 716.4(1), and 716.4(2) (count I), second degree theft in violation of Iowa Code section 714.1 and 714.2(2) (count II), and third degree burglary in violation of Iowa Code sections 713.1 and 713.6A(2) (count III). (App. 7-9).

On January 5, 2017, Mr. Roache pleaded guilty to counts I and II (second degree criminal mischief and third degree burglary) in FECR054456, with the agreement that the remaining charges would be dismissed, as would FECR054457. (Plea Hr. Tr. p., 6, L. 25 – p. 7, L. 12). Pursuant to the agreement, Mr. Roache agreed to be assessed restitution for

all of the dismissed charges in both cases. (Plea Hr. Tr. p. 7, Ll. 10-12).

On February 16, 2017, the court imposed sentences of five years in prison for count I and two years in prison for count II, with the sentences to be run concurrently. (Order of Disposition). The court dismissed the remaining charges in FECR054456, as well as all of the charges in FECR054457. (App. 13-15).

On March 15, 2017, the State submitted a pecuniary damages statement, seeking restitution in the amount of $4,515.80, citing costs to repair damage to five vehicles and to replace various items that were not recovered. (App. 16-17).

On April 10, 2017, Mr. Roache submitted a written objection to the restitution amount sought by the state, objecting to one particular item at issue here – $1,900.00 to replace a CDL training booklet. (App. 18).

The court held a restitution hearing on April 27, 2017. (App. 23-25). It issued an order on May 20, 2017 affirming the order to pay the $1,900.00 fine to replace a CDL training booklet. (App. 23-25).

On June 14, 2017, Mr. Roache filed a timely Notice of Appeal. (App. 26-27).

STATEMENT OF FACTS

On September 22, 2016, Jordan Hagedon entered into a contract with Northland CDL Training and Licensing ("Northland") pertaining to a study course designed to enable him to obtain a commercial driver's license. (App. 19-20). As part of that contract, Mr. Hagedon agreed to pay a "fine," in an amount left unspecified, if he failed to return a study guide to Northland. (App. 19-20).

On or about October 8, 2016, the defendant Terran Roache stole a bag containing that study guide from Mr. Hagedon's car. (Hr. Tr. p. 4, Ll. 17-25; App. 10-15). Although Mr. Roach subsequently was apprehended, prosecuted, and pleaded guilty to a companion theft offense, the study guide apparently was never recovered. (Hr. Tr. p. 4, Ll. 17-25; App. 10-15).

On October 10, 2016 (two days after reporting the theft to police), Mr. Hagedon signed an additional agreement with Northland, in which he agreed to pay the amount of $1,900.00 as the "fine" for the stolen study guide. (App. 21-22; Plea Hr. Tr. p. 7, Ll. 15-23).

The booklet at issue was soft-covered, approximately six inches wide by eight-to-ten inches long, and between one-quarter and one-half inch thick. (Rest. Hrg. Tr. p. 9, L. 22 – p. 10, L. 1). It had no actual value at all, according to Mr. Hagedon. (Rest. Hr. Tr. p. 11, Ll. 16-23).

Although the charge against Mr. Roache pertaining to the theft from Mr. Hagedon's car was dismissed pursuant to a plea agreement, Mr. Roache agreed to pay restitution for this and other dismissed charges. (App. 10-12; Plea Hr. Tr. p. 6, L. 21 – p. 7, L. 12).

After Mr. Roache's guilty plea, the state submitted a Pecuniary Damages Statement seeking $1,900.00 for the study guide. (App. 16-17). Mr. Roache filed a timely objection, and the court conducted a restitution hearing on April 27, 2017. (App. 18, 23-25).

At the restitution hearing, Mr. Hagedon was asked whether he had actually had to pay the "fine," and he replied that he had not yet been required to do so. (Rest. Hrg. Tr. p. 8, Ll. 8-12). He stated that Northland has been "waiting for what we hear from restitution." (Rest. Hrg. Tr. p. 8, Ll. 8-12).

When the court asked Mr. Hagedon if he had sought to have Northland waive the fine, he replied, "they said that if I did get money out of restitution, they'd like to see that." (Rest. Hrg. Tr. p. 12, L. 20 – p. 13, L. 9).

Mr. Hagedon testified that he was allowed to obtain a commercial driver's license, the contrary language in the original agreement notwithstanding. (Rest. Hrg. Tr. p. 13, Ll. 10-18).

The court ordered Mr. Roache to pay $1,900.00 restitution for the lost study guide. (App. 23-25). In its ruling the district court acknowledged that the $1,900 "fine" far exceeded the cost to reprint the booklet. (App. 23-25). The court nonetheless found that but for Mr. Roache's actions Mr. Hagedon would not have been assessed the $1,900.00 "fine" by Northland. (App. 23-25).

Thus, the court held, an award of restitution for the "fine" is appropriate.

ARGUMENT

I. The court erred in ordering $1,900.00 in restitution for a small study guide having only nominal replacement value.

A. Error Preservation

The Defendant objected within thirty days of the filing of the pecuniary damages statement to restitution in the amount of $1,900.00 for the booklet. (App. 18). The Defendant further objected to the assessment of restitution for the "fine" at the restitution hearing held on April 27, 2017.

(Rest. Hr. Tr. p. 15, L. 13 – p. 16, L. 13). Error has been preserved regarding this issue. *Meier v. Senecaut*, 641 N.W.2d 532 (Iowa 2002).

B. Standard of Review

Restitution orders are reviewed for correction of errors at law. *State v. Hagen*, 840 N.W.2d 140, 144 (Iowa 2013). In reviewing restitution orders, the appellate courts determine whether the court's findings lack substantial evidentiary support, or whether the court has not properly applied the law. *Id*.

C. Discussion

Although the victim, Jordan Hagedon, agreed to pay a "fine" if he failed to return the CDL study guide to Northland CDL, the amount of that "fine" was not agreed upon until after the loss had occurred. (App. 19-22). At that point, Mr. Hagedon agreed to pay $1,900.00 for the booklet. (Rest. Hr. Tr. p. 9, L. 22 – p. 10, L. 1).

At the restitution hearing, Mr. Hagedon never stated that he actually was required to pay the "fine." He testified that he had paid nothing yet, that Northland was "waiting for what we hear from restitution," and that Northland had told him "that if I did get money out of restitution, they'd like to see that." (Rest. Hrg. Tr. p. 8, Ll. 8-12.; p. 12, L. 20 – p. 13, L. 9).

Substantial evidence does not support a finding that Mr. Hagedon actually suffered a loss in the amount of $1,900.00, nor that Mr. Roache's conduct caused such a loss.

Restitution is a creature of statute. *State v. Hagen*, 840 N.W.2d 140, 149 (Iowa 2013). When ordering restitution, the court applies Iowa Code chapter 910. *Id*. The district court is confined to the statute when determining which damages to include in the restitution order. *Id*.

Restitution means payment of pecuniary damages. *Id*. Pecuniary damages are damages which the victim could recover against the offender in a civil action arising from the same facts or event. Iowa Code section 910.1(3); *State v. Watts*, 587 N.W.2d 750, 751 (Iowa 1998).

Although pecuniary damages include "fines, penalties, and surcharges," this has been interpreted by the supreme court to mean those *criminal* fines, penalties, and surcharges assessed by the clerk of court for the commission of the crime itself. *State v. Hagen*, *supra*, at 149.

Only those pecuniary damages that are causally related to the criminal activities may be included in the restitution order. *State v. Bonstetter*, 637 N.W.2d 161, 165 (Iowa 2001). Damages that are not causally related to the crime are improper. *Id*.

The burden is on the state to demonstrate by a preponderance of the evidence a causal relationship between the crime and the restitution sought. *Id*., at 166.

A restitution order must bear a reasonable relationship to the damage caused by the defendant's criminal conduct. *Id*., at 168. Damages for which there is no such reasonable relationship are excessive and not allowed. *Id.*

Restitution orders thus rely upon a finding of causation – the defendant's conduct must have caused the damages for which restitution is to be ordered. *Id*., at 165.

Normally, criminal causation analysis stops at the determination of factual causation. *State v. Adams*, 810 N.W.2d 365, 317-72 (Iowa 2012), *State v. Tribble*, 790 N.W.2d 121, 126-27 (Iowa 2010).

Restitution, however, contains the statutory requirement that pecuniary damages shall be those recoverable in a civil action. Iowa Code section 910.1(3). In a civil action, the defendant's conduct must be found to be both the factual and legal (or proximate) cause of the plaintiff's damages in order for a plaintiff to recover from a defendant. *Thompson v. Kaczinski,* 774 N.W.2d 829, 836 (Iowa 2009); *State v. Starkey*, 437 N.W.2d 573, 574 (Iowa 1989).

Thus, while only factual causation is at issue when causation is an

element of the offense, both factual and legal causation must be shown in order to support an order for restitution. *State v. Starkey*, 437 N.W.2d 573, 574 (Iowa 1989); *State v. Bradley*, 637 N.W.2d 206, 215 (Iowa Ct. App. 2001); *In re J.S.*, No. 3-773, 13-0174, at p. 4 (Iowa Ct. App. 09/18/2013); *State v. Ihde*, 532 N.W.2d 827, 829 (Iowa Ct. App. 1995).

1. Substantial evidence does not support a finding of factual causation.

"*Except where multiple acts contribute to cause a consequence*, the determination of factual causation turns simply on whether the 'the harm would not have occurred absent the defendant's conduct.'" *State v. Adams*, 810 N.W.2d 365, 372 (Iowa 2012) (emphasis added).

The district court found that "but for" Mr. Roache's actions, Mr. Hagedon would not have incurred the $1,900.00 fine. (Restitution Order). This finding is not supported by substantial evidence, because multiple acts contributed to the damages sustained by Mr. Hagedon – first, Mr. Roache stole a bag containing the study guide, and then Mr. Hagedon signed an agreement to pay Northland $1,900.00.

Although "but for" Mr. Roache's conduct, the booklet never would have been lost, the damages from that loss would have been negligible. The act that caused Mr. Hagedon to owe Northland $1,900.00 (to the extent he

does) is Mr. Hagedon's own subsequent act of signing an agreement to pay Northland $1,900.00 to reimburse for the lost study guide.

Another legal principle would come into play were Mr. Hagedon to sue Mr. Roache – the rule of avoidable consequences. This doctrine acts as a bar to recovery whenever the plaintiff unreasonably fails to mitigate his damages after occurrence the event leading to the cause of action. *Greenwood v. Mitchell*, 621 N.W.2d 200, 205 (Iowa 2001).

Pecuniary damages are those recoverable in a civil action. Iowa Code section 910.1(3). In a civil action, the rule of avoidable consequences would require "substantial evidence" by the defendant that there was something the plaintiff could have done to mitigate his damages, that such a course of action was reasonable, and that he failed to do so. *Id*.

Mr. Hagedon had a course of action that was both reasonable and simple – he could have declined to sign the second contract on October 10. This was reasonable both because it was simple, and because any reasonable person protecting their own interests would have done so. His failure to do so would have acted as a bar to recovery in a civil suit against Mr. Roache.

Thus, while the loss of the book is attributable to Mr. Roache, the debt to Northland, arising from that loss, are entirely attributable to Mr. Hagedon.

2. Substantial evidence does not support a finding of legal causation.

As noted earlier, in a civil suit Mr. Hagedon's damages are limited to those proximately caused by Mr. Roache's conduct. *Thompson v. Kaczinski*, 774 N.W.2d 829 (Iowa 2009).

The concept of proximate cause, now referred to as "scope of liability," is based in the notion that tort law does not impose liability for all harm factually caused by the defendant's conduct. *Id*., at 837. This limitation is intended to prevent the imposition of liability in circumstances that do not justify it, and has been held to appeal to the notions of fairness and proportionality. *Id*., at 838.

Thus, an actor's liability is limited to only those harms that result from the risks that made the actor's conduct tortious. *Id*., at 835. Harms that are not sufficiently foreseeable at the time of the actor's tortious conduct are excluded from the defendant's scope of liability. *Id*.

In *In re J.S.*, J.S. had run from police when they attempted to detain him. *In re J.S.*, No. 3-773, 13-0174, p. 2 (Iowa Ct. App. 09/18/2013). One officer's foot landed on uneven ground during the subsequent foot pursuit,

causing him to fall and tear a hamstring. *Id*., at p. 3. The state sought restitution for the officer's medical expenses, which the juvenile court denied. *Id*., at pp. 3, 10-11.

In affirming the denial of restitution, the court of appeals focused on the foreseeability of the type of damage resulting from the defendant's conduct. *Id*., at pp. 7-11. While the court held that it was foreseeable that an officer would give chase when J.S. fled, it was not sufficiently foreseeable that an officer would be injured in such a chase. *Id*., at p. 9. Because the harm was not sufficiently foreseeable at the time the defendant engaged in the conduct, his conduct was not held to be within his "scope of liability." *Id*., at pp. 7-11.

The same is true here. Mr. Roache certainly could foresee that items he took from Mr. Hagedon's vehicle would have value. But he could not have foreseen that Mr. Hagedon subsequently would agree to pay $1,900.00 for a small study guide.

Mr. Roache's actions were not the proximate cause of Mr. Hagedon's $1,900 debt, and he cannot be held liable for it.

3. An award of $1,900.00 for a lost study guide is excessive.

A restitution order is excessive if it bears no reasonable relationship to the damage caused by the defendant's criminal act. *State v. Bonstetter*, 637 N.W.2d 161, 165 (Iowa 2001). The study guide taken in this case was described by Mr. Hagedon as being "a small booklet, soft covered." (Rest. Hr. Tr. p. 9, Ll. 22-24). It was six inches wide and eight to ten inches long. (Rest. Hr. Tr. p. 9, Ll. 22-24). It was a quarter- to half-inch thick. (Rest. Hr. Tr. p. 9, L. 25 – p. 10, L. 1). It had no actual value at all, according to Mr. Hagedon. (Rest. Hr. Tr. p. 11, Ll. 16-23).

An order for restitution in the amount of $1,900.00 bears no relationship to the value of the item lost – a small study guide the value of which was determined to be nothing. The court found as much in its holding, acknowledging that that amount "far exceeds" the actual value of the booklet. (App. 23-25).

Because the amount ordered "far exceeds" the actual value of the book, the award is excessive and should have been disallowed.

4. Substantial evidence does not establish that Mr. Hagedon actually sustained a loss, as he is not legally obligated to pay Northland $1,900.

Mr. Hagedon would not be entitled to restitution in a civil case against Mr. Roache, because the "fine" imposed by Northland CDL after the loss is not legally enforceable.

The basis for Mr. Hagedon's debt to Northland is the agreement he signed on September 22. Absent that agreement, Mr. Hagedon had no legal duty to pay Northland any amount beyond the actual value of the booklet.

Had Northland initiated a civil suit against Mr. Hagedon, it would have been obliged to prove damages under a theory of recovery recognized by the courts.

Regarding damages for breaches of contract, the fundamental purpose of awarding damages in civil cases is to place the injured party in as favorable a position as though no wrong had been committed. *Ag. Partners v. Chicago Cent. & Pac. R. Co.*, 726 N.W.2d 711, 716 (Iowa 2007). Damages thus typically are compensatory in nature, and designed not to provide a windfall, but rather to make the plaintiff whole again. *R.E.T. Corp. v. Frank Paxton Co. Ins.*, 329 N.W.2d 416, 421 (Iowa 1938).

A general principle guides contract actions: Damages not reasonably anticipated by the parties when they contracted are not recoverable. *Macal*

v. Stinson, 468 N.W.2d 34, 36 (Iowa 1991), citing *R.E.T. Corp. v. Frank Paxton Co. Ins.*, 329 N.W.2d 416, 420 (Iowa 1938).

Regardless, when the amount of damages is difficult to anticipate or estimate, parties to a contract may establish in advance the amount to be paid in the event one party breaches. *Golden Sun Feeds, Inc. v. Clark*, 140 N.W.2d 158, 161 (Iowa 1966). Such damages are referred to as liquidated damages, and they are enforceable so long as the amount to be paid is reasonably related to actual or anticipated damages. *Rohlin Const. Co. v. City of Hinton*, 476 N.W.2d 78, 79 (Iowa 1991).

Although liquidated damages no longer are disfavored by Iowa courts, if the sum stipulated is out of proportion to the injury actually sustained, then it will be treated as a penalty and disallowed. *Engel v. Vernon*, 215 N.W.2d 506, 516 (Iowa 1974); *In the Matter of the Estate of Anderson*, No. 9-991, 10-1066, at pp. 6-7 (Iowa Ct. App. 2010).

Northland referred to the amount sought from Mr. Hagedon as a "fine." The word "fine" is one synonym for "penalty," which is what the supreme court has held will not be enforced in contract law.

The state offered no testimony regarding the actual value of the booklet beyond the fact that Mr. Hagedon's insurance company had determined that it had no value. (Rest. Hr. Tr. p. 11, Ll. 16-23).

The damages anticipated by Mr. Hagedon and Northland CDL for a failure to return the training brochure were not specified at the time the contract was entered into. (App. 19-20). When they were specified (after the offense had occurred), they bore no resemblance to the actual value of the booklet.

Thus, the caselaw for damages would allow Northland to collect from Mr. Hagedon only the amount required to compensate them for the loss of the book – an amount which is negligible. Northland would be able to collect liquidated damages, but only to the extent such damages are reasonably proportional to actual or anticipated damages.

The court "presumed" that $1,900 fine "far exceeds" the actual value of the booklet. (App. 23-25). No evidence presented at the restitution hearing established any actual value for the booklet, certainly not one that that comes close to $1,900.00. Accordingly, Mr. Hagedon is would not be obligated to pay this amount to Northland CDL as liquidated damages, and Mr. Roache thus cannot be compelled to pay this amount to Mr. Hagedon.

State v. Breen, No. 14-0526 (Iowa Ct. App. 2015), is instructive. There, a third party sought restitution from the defendant after paying the medical bills of the victim of a shooting. *Id*., at pp. 2-4. She apparently did so out of kindness, and was under no legal obligation to do so. *Id*., at 7.

Because the third party had no legal duty to pay the medical expenses of the victim, the court of appeals held that the defendant similarly had no legal duty to make restitution to that third party. *Id*., at p. 7.

In its opinion, the court contrasted that fact pattern with those in *State v. Schares*, 548 N.W.2d 894, 896 (Iowa 1996) (in which an archdiocese was held to be entitled to restitution after reimbursing the victim church after the defendant misappropriated funds), *State v. Hennenfent*, 490 N.W.2d 299, 300 (Iowa 1992) (in which a third-party bank was held to be entitled to restitution after reimbursing the victim depositor for losses attributable forged checks), and *State v. Stessman*, 460 N.W.2d 461, 464 (Iowa 1990) (in which General Motors was held to be entitle to restitution after it reimbursed a local dealership for auto repairs fraudulently obtained).

The difference between the three cases cited above and *Breen* was that the third parties in *Schares*, *Hennenfent*, and *Stessman* all had legal

obligations to cover the losses incurred by the direct victims, and thus were entitled to restitution from the defendant. *Id*.

The logic of *Breen* applies here. Mr. Roache should be obliged to pay restitution for a debt incurred by Mr. Hagedon *only if* Mr. Hagedon is himself obliged to pay that debt due to Mr. Roache's criminal conduct.

Finally, the evidence at the hearing did not establish that Northland actually sought to obtain $1,900.00 from Mr. Hagedon. Northland imposed the $1,900.00 "fine" only after learning of the loss of the book. (App. 21-22). Despite contract language stating that Mr. Hagedon would not be allowed to obtain a CDL if he failed to return the booklet, Northland did in fact allow him to test for and receive his CDL. (Rest. Hrg. Tr. p. 13, Ll. 10-18).

When asked whether Northland had sought payment, Mr. Hagedon replied that Northland had told him that they have charged the "fine" in the past. (Rest. Hr. Tr. p. 12, L. 20 – p. 13, L. 9). He testified that "any restitution that came out of this, they would like to get." (Rest. Hr. Tr. p. 12, L. 20 – p. 13, L. 9).

When asked what would happen if he failed to pay Northland, Mr. Hagedon replied that he did not know. (Rest. Hr. Tr. p. 13, Ll. 14-18). But

the language he used indicated that his obligation to pay Northland was contingent upon the court's decision to award restitution. Specifically, Mr. Hagedon testified, "they've been waiting for what we hear from restitution," and "if I did get money from restitution, they'd like to see that." (Rest. Hrg. Tr. p. 8, Ll. 8-12.; p. 12, L. 20 – p. 13, L. 9).

Thus, even if the "fine" were legally enforceable, the evidence at the hearing established that Mr. Hagedon's debt to Northland was dependent upon the court awarding restitution, rather than the other way around.

Because Mr. Hagedon has no legal duty to pay Northland CDL for the loss of the study guide, Mr. Roache has no legal duty to reimburse Mr. Hagedon for that debt. Because the issue of whether Northland actually is seeking to be paid that amount is a matter of speculation, the amount should not have been awarded.

5. The award of the $1,900 "fine" amounts to a de facto award of punitive damages.

As noted earlier, restitution is a creature of statute. *State v. Hagen*, 840 N.W.2d 140, 149 (Iowa 2013). If the statute does not provide for a certain class of damages, then the court may not order such damages. *Id.*

Punitive damages are specifically excepted from the language of the statute. Iowa Code section 910.1(3). Although restitution does include

"fines, penalties, and surcharges," this includes only such fines, penalties and surcharges as are payable to the clerk of court for the crime itself. *State v. Hagen*, 840 N.W2d 140, 149 (Iowa 2013).

A "fine" levied pursuant to a contract, agreed to after the fact by a private third party, amounts to punitive damages.

Punitive damages are those damages awarded to punish defendants and to deter the defendant and others from repeating such conduct. *In re Estate of Vajgrt*, 801 N.W.2d 570, 575 (Iowa 2011). Northland seeks to seeks to do just that upon Mr. Roache in this matter, via Mr. Hagedon.

The district court erred in allowing the imposition of the $1,900 "fine," and this court should reverse that decision.

CONCLUSION

For the reasons herein stated, Terran Roache, the Applicant-Appellant, respectfully requests that the court **REVERSE** the district court's order awarding restitution for the $1,900 "fine."

REQUEST FOR NONORAL SUBMISSION

Counsel requests that this matter be submitted without oral argument.

Respectfully Submitted,

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03/09/2018
Date