

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 17-0931

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STATE OF IOWA,  
Plaintiff-Appellee,

vs.

TERRAN ROACHE,  
Defendant-Appellant.

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APPEAL FROM THE IOWA DISTRICT COURT  
FOR STORY COUNTY  
THE HONORABLE JAMES B. MALLOY, JUDGE

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**APPELLEE'S BRIEF**

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## STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

### **I. The District Court Acted Within Its Discretion in Ordering the Defendant to Pay \$1900 in Restitution.**

*Zuchowicz v. United States*, 140 F.3d 381 (2d Cir.1998)  
*State v. Adams*, 810 N.W.2d 365 (Iowa 2012)  
*Hamilton v. Mercantile Bank of Cedar Rapids*, 621 N.W.2d 401  
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*Spreitzer v. Hawkeye State Bank*, 779 N.W.2d 726 (Iowa 2009)  
*State v. Akers*, 435 N.W.2d 332 (Iowa 1989)  
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*Teggatz v. Ringleb*, 610 N.W.2d 527 (Iowa 2000)  
*In Re J.S.*, No. 13-0174, 2013 WL 5291959  
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*Thompson v. Kaczinski*, 774 N.W.2d 829 (Iowa 2009)  
*Weatherwax v. Koontz*, 545 N.W.2d 522 (Iowa 1996)  
Iowa Code § 910.1(4)

Iowa Code § 910.1(3)  
Iowa Code § 910.2  
Iowa Code § 910.3B  
Iowa Code § 910.4  
Iowa R. App. P. 6.904(2) (c)

## **ROUTING STATEMENT**

This case can be decided based on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

## **STATEMENT OF THE CASE**

### **Nature of the Case**

Terran Roache appeals the district court's order regarding restitution. The Honorable James B. Malloy presided at the restitution hearing in Story County, Iowa. The issue in the appeal is whether the court erred in ordering Roache to pay \$1900 in restitution for a commercial driver's license study guide that was stolen from a car and never recovered.

### **Course of Proceedings**

The State accepts the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

### **Facts**

Roache admitted he burglarized a vehicle with the intent to commit a theft. Written Plea (1/5/17); App. 10-12.

## ARGUMENT

### I. **The District Court Acted Within Its Discretion in Ordering the Defendant to Pay \$1900 in Restitution.**

#### **Preservation of Error**

The State does not contest error preservation. Objection to Rest. (4/10/17); App. 18.

#### **Standard of Review**

An appellate court reviews restitution orders for correction of errors at law. *State v. Hagen*, 840 N.W.2d 140, 144 (Iowa 2013) (citing *State v. Jenkins*, 788 N.W.2d 640, 642 (Iowa 2010)). In reviewing a restitution order “we determine whether the court's findings lack substantial evidentiary support, or whether the court has not properly applied the law.” *State v. Bonstetter*, 637 N.W.2d 161, 165 (Iowa 2001). Questions of statutory interpretation also are reviewed for correction of errors at law. *State v. Romer*, 832 N.W.2d 169, 174 (Iowa 2013).

#### **Merits**

The district court's restitution order must be affirmed. The district court followed the law when it determined the value of the commercial driver's license (CDL) study guide was \$1900. As such, there is no basis to reverse the district court's ruling.

Restitution is “a creature of statute” and is codified in Iowa Code chapter 910. *State v. Akers*, 435 N.W.2d 332, 335 (Iowa 1989), Iowa Code ch. 910. A district court is mandated by statute to impose restitution in “all criminal cases in which there is a plea of guilty, verdict of guilty, or a special verdict upon which a judgment of conviction is entered.” Iowa Code § 910.2; *see also State v. Jackson*, 601 N.W.2d 354, 356 (Iowa 1999) (finding that restitution must be ordered by sentencing judge for correctional fees certified by county sheriff); *State v. Watts*, 587 N.W.2d 750, 751 (Iowa 1998) (noting that restitution is mandatory when a defendant pleads guilty); *Kluesner*, 389 N.W.2d at 373 (requiring that sentencing court order restitution where defendant pled guilty and was granted a deferred judgment).

Iowa Code section 910.1(4) defines restitution as the “payment of pecuniary damages to a victim in an amount and in the manner provided by the offender’s plan of restitution.” Iowa Code § 910.4. Pecuniary damages are “all damages. . . a victim could recover . . . in a civil action arising out of the same facts or event” except punitive damages and damages for pain and suffering, mental anguish, and loss of consortium. Iowa Code § 910.1(3). This definition indicates



the legislature intended that restitution to a victim depends on what the victim could obtain in a civil cause of action against the defendant. *State v. Paxton*, 674 N.W.2d 106, 108-09 (Iowa 2004).

A restitution order must rest on a causal connection between the amount of restitution sought and the offender's criminal activities. *State v. Bonstetter*, 637 N.W.2d 161, 165-66 (Iowa 2001). Any damages that are "causally related to the criminal activities may be included in the restitution order." *Id.* at 166. A restitution order is not excessive if it bears a reasonable relationship to the damage caused by the offender's criminal act. *State v. Ihde*, 532 N.W.2d 827, 829 (Iowa 1995). This relationship must be shown by a preponderance of the evidence. Iowa Code § 910.2.

Roache complains that the court erred when it ordered him to pay \$1900 to Jordan Hagedorn for a CDL study guide that was taken from Hagedorn's vehicle during a crime spree in which Roache engaged in October 2016. At the restitution hearing, Jordan Hagedorn stated that he enrolled in a class through Northland CDL Training and Licensing to obtain his CDL. Rest. Tr. p. 5, lines 15-20, p. 7, lines 2-20, Exhs. 4, 5; App. 19-22. Northland issued Hagedorn an inspection study guide that was a published, marked, and copyrighted

booklet that was the sole property of Northland CDL Training. Exh. 4; App. 19-20. Under the terms of Hagedon's contract with Northland that he signed on September 22, 2016 – before the crime occurred -- Hagedon understood he would be subject to a fine if he did not return the study guide to Northland. Exh. 4; App. 19-20. After Hagedon reported the car burglary and theft of the back pack to police, Hagedon also reported the theft of the study guide to Northland CDL Training and Licensing. Exh. 5; App. 21-22. He later learned that the fine for not returning the study guide was \$1900. Exh. 5; App. 21-22. That is the amount that the State sought and the district court ordered as restitution. Order (5/20/17); App. 23-24. The district court acted properly when it found that but for Roache's criminal actions, Hagedon would not have been assessed the \$1900 "fine." Order (5/20/17); App. 23-24. The district court committed no error.

Roache disputes the court's findings and challenges the court's order in several respects. Roache initially claims that he is not liable for the totality of the harm caused. He contends that although he stole the backpack containing the study guide, Hagedon signed the document requiring him to pay the \$1900. Def. Brief at 16.

According to Roache, had Hagedon not signed the document imposing the \$1900 after the burglary occurred, the “damages from the loss would have been negligible.” Def. Brief at 16. This is not the case because Roache caused the damage. He is responsible for the loss of the study guide and because of this, he is responsible for the amount to which Hagedon and Northland contracted.

In *State v. Adams*, the Iowa Supreme Court found that when causation is an issue in a criminal case, “our law normally requires us to consider if the criminal act was a factual cause of the harm.” *Adams*, 810 N.W.2d at 372 (citing *State v. Tribble*, 790 N.W.2d 121, 126-27 (Iowa 2010)). The *Adams* court continued that “where multiple acts contribute to cause a consequence, the determination of factual causation turns simply on whether ‘the harm would not have occurred absent [the defendant’s] conduct.’” *Id.* Without question, the theft of the study guide would not have occurred without Roache’s conduct. Roache’s attempts to shift the blame for the \$1900 loss to Hagedon because he signed the document after the crime does not impact the analysis. At the time the crime occurred, if the study guide was lost, Hagedon knew and acknowledged there would be a penalty for not returning it. Exh. 4; App. 19-21. Because Roache is

responsible for the loss of that study guide, he must also pay restitution. Exh. 4; App. 19-21.

Roache also contends that “substantial evidence does not support a finding of legal causation.” Def. Brief at 18. Roache argues that Hagedon’s damages are “limited to those proximately caused” by his conduct. Def. Brief at 18. The State acknowledges that it has long been the law in Iowa that the definition of “proximate cause” in criminal cases was held to be identical to the definition in civil cases. *State v. Caldwell*, 385 N.W.2d 553, 556 (Iowa 1986); *State v. McFadden*, 320 N.W.2d 608, 613 (Iowa 1982); *State v. Marti*, 290 N.W.2d 570, 584-86 (Iowa 1980); *State v. Wullner*, 401 N.W.2d 214, 219 (Iowa App.1986). Prior to *Thompson v. Kaczinski*, 774 N.W.2d 829 (Iowa 2009), the general rule was that a defendant's conduct is the proximate cause of injury or death to another if (1) his conduct is a “substantial factor” in bringing about the harm and (2) there is no other rule of law relieving the defendant of liability because of the manner in which his conduct resulted in the harm. *State v. Hubka*,

480 N.W.2d 867, 869 (Iowa 1992) (citing *Kelly v. Sinclair Oil Corp.*, 476 N.W.2d 341, 349 (Iowa 1991))<sup>1</sup>.

Under the facts of this case, it is undisputed that Roache broke into Hagedon's vehicle and stole a back pack containing the CDL study guide. As such, Roache's conduct was a substantial factor in the loss of the study guide.

In *Thompson v. Kaczinski*, 774 N.W.2d 829, 836-38 (Iowa 2009), the Iowa Supreme Court articulated a new causation standard and adopted a risk-based standard. Stated in terms of risk, this principle limits the scope of liability for tortious conduct by requiring the conduct to have "enhanced (at the time the defendant acted) the chances of the harm occurring or that it would increase the chances [(risk)] of a similar accident [ (harm) ] in the future if the defendant should repeat the same wrong." *Spreitzer v. Hawkeye State Bank*,

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<sup>1</sup> The State notes that *Kelly v. Sinclair Oil Corp.*, 476 N.W.2d 341, 349 (Iowa 1991) was abrogated by the *Kaczinski* decision. *Kaczinski*, 774 N.W.2d at 838-39. The State also notes that in *In Re J.S.*, No. 13-0174, 2013 WL 5291959 (Iowa Ct. App. Sep. 18, 2013), the Court of Appeals found that "the scope of liability approach" to legal cause now applicable to civil cases governs our analysis of restitution in this juvenile delinquency case." The *J.S.* decision is an unreported decision and does "not constitute controlling legal authority." Iowa R. App. P. 6.904(2) (c).

779 N.W.2d 726, 741 (Iowa 2009) (citing *Zuchowicz v. United States*, 140 F.3d 381, 388 n. 7 (2d Cir.1998)).

Under this analysis, a defendant's liability is limited to those harms that result from the risks that made the defendant's conduct tortious. *Kaczinski*, 774 N.W.2d at 838. The analysis is fact intensive and requires consideration of the risk and a determination of whether the harm at issue is a result of any of those risks. *Id.* Under the facts of this case, Roache's acts in breaking into Hagedon's car and taking the back pack with the study guide in it fall within the scope of liability. That is, when he stole an item (back pack) and that item contained other valuables (study guide), Roache is liable for the damage to those valuables.

In *State v. Adams*, 810 N.W.2d 365, 372 n.7 (Iowa 2012), the Iowa Supreme Court did not address whether the "legal cause" aspect of the former proximate cause doctrine has any continuing viability in criminal cases" after *Kaczinski*. *Id.* at 372 n.7. The *Adams* court noted that proximate cause is established in a criminal case if the defendant's conduct is a "substantial factor" in bringing about the harm. *Id.* at 371. Under either standard the answer to the question of whether the victim's damages would have occurred in the absence of

the defendant's actions is the same. That is, the Hagedon would not have incurred the loss of the study guide in the absence of Roache's actions.

Roache also argues that the \$1900 restitution award is "excessive." Def. Brief at 20. Under the circumstances of this case, the award is not excessive. As set forth above, any damage that is causally related to an offender's criminal activities may be included in a restitution order. *State v. Bonstetter*, 637 N.W.2d 161, 165 (Iowa 2001); *State v. Mayberry*, 415 N.W.2d 644, 647 (Iowa 1995). A restitution order is not excessive if it bears a "reasonable relationship to the damage caused" by the offender's criminal act. *State v. Ihde*, 532 N.W.2d 827, 829 (Iowa Ct. App. 1995). The loss of the study guide, which is a copyrighted text and the property of Northland CDL Training has a \$1900 value. Exhs. 4, 5; App. 19-22. Contrary to Roache's claims that it is merely a small, soft covered booklet, and has no value, it has a tremendous value in that it is required to complete the CDL course and must be returned because of the value it has. Exhs. 4, 5; App. 19-22.

Roache also claims that the evidence does not establish that Hagedon actually sustained a loss and that Hagedon is not legally

obligated to pay Northland \$1900. Roache argues that 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.” Def. Brief at 21. Roache does not understand the purpose of restitution.

Restitution serves multiple purposes. It compensates the victim. *Teggatz*, 610 N.W.2d at 529 (“the purpose of restitution is to protect the public by compensating victims of criminal activity”). It is also rehabilitative in nature. “Restitution goes beyond revenue recovery and is designed to instill responsibility in criminal offenders.” *State v. Izzolena*, 609 N.W.2d 541, 548 (Iowa 2000). When the court orders restitution, it must consider the appropriate goal of restitution desired in the particular circumstances of the case before it. *State v. Bonstetter*, 637 N.W.2d 161, 166 (Iowa 2001)

While restitution is *similar* to the rationale of tort under civil law, it does not follow the civil rules exactly. *State v. Mayberry*, 415 N.W.2d 644, 645-46 (Iowa 1987). For example, certain damages that would be allowed in a civil case are statutorily prohibited to be recovered as restitution. Iowa Code § 910.1(3). Additionally, the



restitution chapter allows for a minimum award of \$150,000 for conviction of a felony that results in death, which is essentially a liquidated damages provision. Iowa Code § 910.3B. Thus, the focus is not on what the civil rules would allow a plaintiff to recover but whether there is a causal connection between the amount of restitution sought and the offender's activities. *Bonstetter*, 637 N.W.2d at 165. Because Hagedon owes \$1900 to Northland CDL for the missing study guide, the restitution award is causally connected to Roache's criminal acts.

Roache also argues that the State failed to establish any evidence that the study guide had an actual value of \$1900. He asserts "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." Def. Brief at 24. He cites to no cases to support this proposition, however.

In *State v. Watts*, 587 N.W.2d 750, 752 (Iowa 1998), the court held that "a fact finder's method of calculating damages usually inheres in the award itself and is not subject to challenge." *See also LCI, Inc. v. Chipman*, 572 N.W.2d 158, 162 (Iowa 1997) (method of determining arbitrators' award inhered in award and could not be

challenged); *Weatherwax v. Koontz*, 545 N.W.2d 522, 524 (Iowa 1996) (method of assessing damages inheres in jury verdict). This court should follow existing precedent and affirm the district court's award of \$1900.

Roache also tries to analogize the facts of this case with that of *State v. Breen*, No. 14-0526, 2015 WL4481662 (Iowa Ct. App. July 22, 2015). In *Breen*, the victim, Cory Forbes, suffered severe injuries after he tried to stop Breen from shooting another man, Sean Hiepler, outside a bar. *Breen*, 2015 WL4481662, at 1. When Forbes was released from the hospital, his mother paid \$1019.64 to the hospital for medical supplies to care for her twenty-nine year old son. *Id.*

Following his conviction for attempted murder, willful injury, and carrying weapons, the district court ordered Breen to pay \$1019.84 to Forbes's mother, Tonja, and \$98.157.86 to St. Luke's Hospital for Forbes's care. *Id.* Breen appealed the court's restitution order and argued that Tonja Forbes and St. Luke's do not qualify as victims under section 901.1(5). *Id.* at \*2. The Court of Appeals agreed and reversed the order. *Id.*

The Court of Appeals found that neither Tonja Forbes nor St. Luke's had a duty to pay for Forbes's medical expenses. *Id.* at \*4. The

court continued that “neither Tonja nor St. Luke’s suffered economic losses as a *direct result* of Breen’s criminal activity.” *Id.* (Original emphasis). The Court of Appeals remanded the case to the district court to “enter a corrected restitution order reflecting that the full sum of \$99,176.77 *be paid to Forbes.*” *Id.* (emphasis added).

The district court in this case did exactly what the Court of Appeals directed the *Breen* court to do. The district court ordered Roache to pay Hagedon \$1900 in restitution for the study guide. Order (5/20/17); App. 23-24. Under the terms of the agreements Hagedon signed, he must pay the \$1900 to Northland CDL. Exhs 4, 5; App. 19-22. Because Hagedon is responsible for the book, the district court acted properly when it ordered Roache to pay \$1900 in restitution to Hagedon for the loss of the study guide.

Finally, Roache asserts that the restitution order amounts to a fine and is a “de facto award of punitive damages.” Def. Brief at 26. He further argues that because punitive damages cannot be awarded as restitution, this court should reverse the order. See Iowa Code § 910.1(3). This claim also lacks merit.

Punitive damages exist to punish a defendant who has “intentionally violated another’s rights.” *Papillon v. Jones*, 892

N.W.2d 763, 771 (Iowa 2017). They serve to “deter the defendant, and others, from repeating the such conduct in the future.” *Hamilton v. Mercantile Bank of Cedar Rapids*, 621 N.W.2d 401 407 (Iowa 2001).

The restitution award does not amount to a punitive damage. Rather, the restitution award is the actual damage for the lost study guide that Hagedon agreed to pay. Further, restitution is unlike any other “penal sanction.” *Bonstetter*, 637 N.W.2d at 165. Restitution is designed to compensate the victim and instill responsibility in the offender. *Bonstetter*, 637 N.W.2d at 165. Because is remedial and rehabilitative, the district court acted within its discretion. Roache’s claims must all be rejected.

## **CONCLUSION**

The district court’s restitution order must be affirmed.

## REQUEST FOR NONORAL SUBMISSION

This case involves several routine restitution challenges. Oral argument is not necessary to resolve this claim. In the event that argument is scheduled, the State requests to be heard.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **3,015** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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