**IN THE SUPREME COURT OF IOWA**

No. 17-0931

**STATE OF IOWA**,

Appellee

v.

**TERRAN E. ROACHE**,

Appellant

APPEAL FROM THE IOWA DISTRICT COURT
FOR STORY COUNTY

THE HONORABLE JAMES MALLOY,
DISTRICT ASSOCIATE JUDGE

# APPELLANT'S APPLICATION FOR FURTHER REVIEW

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## CERTIFICATE OF SERVICE AND FILING

I certify that this document will be filed electronically through the EDMS. Service upon all parties shall occur pursuant to Iowa Court Rules 16.317(1) and 16.1220.

I further certify that a copy of this Application for Further Review will be served on the 22nd day of May, 2018, 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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## QUESTION PRESENTED FOR REVIEW

Whether the Court of Appeals erred in affirming a $1,900.00 restitution award for the loss of a "study guide" of negligible replacement value, based upon a contract signed by the victim after the offense in which the victim promised to pay a third party that amount as a "fine."

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## STATEMENT SUPPORTING FURTHER REVIEW

COMES NOW Appellant Terran Roache and pursuant to Iowa R. App. P. 6.1103 makes Application for Further Review of the May 2, 2108, decision of the Iowa Court of Appeals in *State of Iowa v. Terran E. Roache*, No. 17-0931.

1. The Court of Appeals decision is in conflict with the Iowa Code and with prior decisions Iowa Supreme and the Iowa Court of appeals.

WHEREFORE, Appellant Terran E. Roaches respectfully requests this Court grant further review of the Court of Appeals' May 2, 2018, decision in this case.

## STATEMENT OF THE CASE

**Nature of the Case:** This is an appeal by Appellant Terran E. Roache of one item of restitution in the dispositional order entered following his 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)).

**Course of Proceedings:** Mr. Roache was charged with eleven offenses in two separate trial informations, all relating to burglaries of automobiles occurring on two separate occasions. Mr. Roache entered guilty pleas to one count of third-degree burglary and one count of second-degree criminal mischief, with the understanding that the remaining counts would be dismissed and that he would pay restitution on all of the charges against him, regardless of whether they were dismissed.

Specifically, 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).

**Facts:** This appeal concerns a $1900 restitution award to compensate for one item of negligible value – a study guide for a commercial driver's license (CDL) – lost as a result of an automobile burglary attributed to Mr. Roache. (App. 4-9).

Victim Jordan Hagedon testified that the study guide had no actual value. (Rest. Hr. Tr. p. 11, Ll. 16-23). It was soft-covered, approximately six inches wide by eight-to-ten inches long, and between one-quarter and one-half inch thick. (App. 20; Rest. Hrg. Tr. p. 9, L. 22 – p. 10, L. 1).

At the time of the offense, Mr. Hagedon had been enrolled in a course designed to help him obtain a commercial driver's license (CDL). (Hr. Tr. p. 5, Ll. 12-20). Prior to the offense, Mr. Hagedon had signed a contract with Northland CDL Training and Licensing, in which he acknowledged that a failure to return the study guide to would result in a "fine," and that he would not receive credit for completion of the course and thus may not be eligible to obtain a CDL. (App. 19-20). The amount of the "fine" was not specified in the contract. (Rest. Hr. Tr. p. 7 Ll. 12-14; App. 19-20).

The CDL study guide was in a bag taken by Mr. Roache during the October 8 burglaries, and it was never recovered. (Rest. Hr. Tr. p. 4 L. 17 – p. 5 L. 20; p. 9 Ll. 15-17).

When Mr. Hagedon reported the study guide missing to Northland, *after* the offense, he signed a second contract in which he agreed to pay a "fine" of $1,900.00 for the loss of the book. (Rest. Hr. Tr. p. 11 Ll. 13-15).

Whether Mr. Hagedon is actually required to pay the $1,900.00 "fine" was not clearly established. When asked if Northland would waive the "fine," Mr. Hagedon said that Northland had told him that "if I did get money out of the restitution, they'd like to see that." (Rest Hr. Tr. p. 12 L. 20 – p. 13 L. 9).

Mr. Hagedon apparently was given credit for completing the course, because he received his CDL. (Rest. Hr. Tr. p. 13 Ll. 10-13).

The court ordered Mr. Roache to reimburse Mr. Hagedon $1,900.00 for the loss of the study guide. (App. 23-25).

## ARGUMENT

### THE COURT OF APPEALS ERRED IN SUSTAINING A RESTITUTION ORDER FOR $1900 IN ORDER TO COMPENSATE FOR A BOOKLET OF NEGLIGIBLE VALUE, BASED UPON AN AGREEMENT ENTERED INTO BY THE VICTIM AFTER THE OFFENSE OCCURRED.

**Preservation of Error:** 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).

**Scope and Standard of Review:** Restitution orders are reviewed for correction of errors at law, and the appellate courts are bound by the district court's factual findings to the extent that they are supported by substantial evidence. *State v. Bonstetter*, 637 N.W.2d 161, 165 (Iowa 2001).

**Merits:** The issue in this case can be stated as whether the primary purpose of criminal restitution is to compensate the victim, or whether restitution also may be used to impose punishment for the defendant's conduct beyond that provided for in the applicable criminal statutes.

If compensation of the victim is the primary goal in awarding criminal restitution, then order of restitution in this matter must be reversed.

## I. Restitution awards are limited to the parameters imposed in civil actions.

The stated purpose of criminal restitution is to compensate the victim for his loss, and thus to force the offender to answer directly for the consequences of his actions. *State v. Bonstetter*, 637 N.W.2d 161, 165 (Iowa 2001).

A legislative intent to limit restitution to compensation is evident in the definitions used by the legislature for the terms relevant to restitution. For example, the legislature defined "restitution" as the payment of "pecuniary damages" to "victims." Iowa Code § 910.1(4).

"Victims" in turn are defined as persons who have suffered pecuniary damages *as a result of* the defendant's criminal acts. Iowa Code § 910.1(5)

(emphasis added). The use of the term "as a result of" clearly connotes a requirement of causation. *See State v. Starkey*, 437 N.W.2d 573, 574 (Iowa 1989).

The legislature's definition of "pecuniary damages" as *those damages recoverable in a civil action* reflects the purpose of compensation to those victims, limited by those limits imposed in civil actions. Iowa Code § 910.1(3) (emphasis added).

The legislature goes further to exclude certain damages recoverable in civil cases from criminal restitution – punitive damages, pain and suffering, mental anguish, and loss of consortium. Iowa Code § 910.1(3). This indicates an intent to limit criminal restitution awards to damages that can be readily valued in tangible terms.

More importantly, by linking restitution to damages recoverable in civil actions, section 910.1(3) brings the civil law of damages into the criminal realm. *See State v. Starkey*, 437 N.W.2d 573, 574 (Iowa 1989) (interpreting section 910.3 to require that the victim prove a prima facie case of liability based upon some civil theory).

In civil actions, courts have imposed limits on recoveries for damages. The doctrine of avoidable consequences (also called "mitigation of damages) places a duty on a plaintiff to act with reasonable diligence to

minimize his losses. *See R.E.T. Corp. v. Frank Paxton Co., Inc.*, 329 N.W.2d 416, 422 (Iowa 1983); *Whewell v. Dobson*, 227 N.W.2d 115, 120 (Iowa 1975).

More important is the concept of proximate causation (now referred to as "scope of liability"). 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).

Scope of liability is based in the notion that the law does not impose liability for all harm factually caused by the defendant's conduct. *Thompson v. Kaczinski*, 774 N.W.2d 829, 837 (Iowa 2009). This limitation is intended to prevent the imposition of liability in circumstances that do not justify it. *Id*., at 838.

The doctrine confines a defendant's liability to the reasons for holding the actor liable in the first place. *Id*. The *Thompson* court explained this by way of the following example from the Restatement (Third) of Torts.

> A hunter returns from the field with a loaded shotgun and hands the gun to a child. The child drops the gun, which lands on her foot and breaks her toe. The scope of liability doctrine would negate the hunter's liability because the risk in handing a gun to a child lies in the likelihood that any harm would be caused by the gun going off, not by it being dropped. *Id*., at 838.

The court referred to this as the "risk standard" and differentiated it from the previously used "foreseeability test." *Id*., at 838-39.

The same limitation applies to Mr. Roache. When Mr. Roache stole the backpack, the risk he created for the victim was that he would cause a loss, by the victim, of something valuable. He did not create the risk that the victim would then agree to pay $1,900.00 to a third party for something of almost no monetary value. That was done by a promise made by the victim after the loss was incurred and without any action by Mr. Roache.

In holding that "but for" Mr. Roache's conduct the victim would not have been assessed the fine for failing to return the study guide, the district court focused only on factual causation and ignored the scope of liability. (App. 23-25).

The fact that Mr. Hagedon lost the CDL study guide is directly attributable to Mr. Roache's actions. That fact that Mr. Hagedon subsequently agreed to pay $1900 for that guide is not.

The notion that a booklet of little actual cost to replace can be assigned a value in the hundreds of dollars begs the question of where the outer limit of such an award lies.

If Mr. Hagedon had agreed to a "fine" of $1,000,000.00 after the offense, would the result be the same?

One of the advantages of the "risk standard" cited by the court in *Thompson* was that it "appeals to intuitive notions of fairness and proportionality by limiting liability to harms that result from risks created by the actor's wrongful conduct, but for no others." *Id*., at 838.

Another advantage cited by the court is that it is "flexible enough to accommodate fairness concerns raised by the specific facts of a case." *Id*.

Both of these advantages are negated if the a crime victim is able to declare any value to an item, post-offense, by entering into a contract to pay a third party that amount.

## II. The evidence did not establish that Mr. Hagedon suffered an actual loss.

The burden is on the State to prove by a preponderance of the evidence that the victim suffered damages as a result of the defendants conduct. Iowa Code §§ 910.1(3), 910.1(5); *State v. Holmberg*, 449 N.W.2d 376, 377 (Iowa 1989).

In its opinion, the Court of Appeals noted that because of Mr. Roache's conduct, Mr. Hagedon has an "outstanding balance" of $1900 to Northland.

Although Northland may maintain an obligation by Mr. Hagedon in their own records, Mr. Hagedon is under no legal obligation to pay it. An

"outstanding balance" cannot be considered an actual loss if there is no requirement that it be paid.

Any obligation for Mr. Hagedon to pay Northland must lie in the two contracts he signed with them – one signed before the offense that provided for a "fine" in an unspecified amount; and the other signed after the offense that placed the amount of the "fine" at $1900. (App. 19-22). When Mr. Hagedon failed to return the study guide, he arguably breached the contracts he had with Northland.

The fundamental purpose of awarding damages in civil contract 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).

If the sum stipulated in a liquidated damages clause is out of proportion to the injury actually sustained, however, 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).

The value of the booklet lost in this case would be easily determined prior to entering into the contract. Northland obviously paid to have the book printed and thus knows exactly what the replacement cost is. A liquidated damages clause pertaining to the failure to return it thus likely would be unnecessary and unenforceable.

Even if such a clause were necessary, a "fine" in the amount of $1900 is completely disproportional to the actual value the small, soft-covered study guide lost in this case.

Northland specifically referred to the amount sought from Mr. Hagedon as a "fine." The word "fine" is one synonym for "penalty." As noted, contract law will enforce reasonable liquidated damages clauses, but not "fines" disproportionate to the actual amount lost due to the breach of contract.

Moreover, Mr. Hagedon's description of his conversations with Northland indicate that he is not under any obligation to pay them $1900. When asked whether he had actually paid Northland, Mr. Hagedon replied, "Not yet I have not. They've been waiting for what we would hear from restitution. . ." (Rest. Hr. Tr. p. 8 Ll. 8-12).

Later, when asked if he had sought to have Northland waive the $1900 "fine," Mr. Hagedon replied, ". . . they said that if I did get money out of the restitution, they'd like to see that . . . . And any restitution that came out of this they would still like to get . . ." (Rest. Hr. Tr. p. 12 L. 20 – p. 13 L. 9).

No evidence or testimony presented at the restitution hearing indicated that Mr. Hagedon had actually suffered a loss beyond having an "outstanding balance" with Northland. (Rest. Hr. Tr. p. 8 Ll. 8-16).

The evidence seems fairly clear that Northland considers Mr. Hagedon's obligation to pay them to be contingent upon Mr. Hagedon receiving restitution in the first place.

An award of several hundred times the actual loss incurred does not simply compensate the victim. This is especially true when that amount was determined arbitrarily, by a contract executed *after the offense*. Instead, such an award punishes the defendant beyond that provided for in the statutes applicable to his offense.

This is not in keeping with the purpose of criminal restitution, and the restitution order must be reversed.

## CONCLUSION

For the reasons stated above, Appellant Terran E. Roache respectfully requests this Court vacate the May 2, 2018, opinion of the Court of Appeals in *State v. Roache,* 17-0931, and remand the case to the trial court with an order to vacate the award of $1900 restitution to Jordan Hagedon.

## Certificate of Compliance with Type-Volume, Typeface Requirements, and Type-Style Requirements

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(*g*)(1) or (2) because it contains 2,996 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*g*)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(*e*) and the type-style requirements of Iowa R. App. P. 6.903(1)(*f*) because it has been prepared in a proportionally spaced typeface using Microsoft Word, 2013 edition, in 14-point Georgia typeface.

**John L. Dirks**
Attorney for Terran E. Roache

May 22, 2018
**Date**

**IN THE COURT OF APPEALS OF IOWA**

No. 17-0931
Filed May 2, 2018

**STATE OF IOWA,**
Plaintiff-Appellee,

**vs.**

**TERRAN E. ROACHE,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Story County, James B. Malloy, District Associate Judge.

The defendant appeals from the district court order requiring him to pay restitution. **AFFIRMED.**

John L. Dirks of Dirks Law Firm, Ames, for appellant.

Thomas J. Miller, Attorney General, and Martha E. Trout, Assistant Attorney General, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Tabor, JJ.

**POTTERFIELD, Judge.**

Terran Roache appeals from the district court order requiring him to pay $3557.08 in restitution.

In October 2016, Roache was charged with eleven crimes in two separate trial informations, stemming from a rash of automobile burglaries reported to the Ames police on two days earlier that month. Roache reached a plea agreement with the State, whereby he agreed to enter guilty pleas to one count of second-degree criminal mischief and one count of third-degree burglary and to pay restitution on all eleven of the counts. In return, the State agreed to dismiss the other nine charges.

Later, the State filed a statement of pecuniary damages in the amount of $4515.80. As part of the damages, the State included $1900 to Jordan Hagedon for a "Northland CDL Training book" and $958.72 to another victim for the repair of a vehicle window. The court approved the statement of pecuniary damages and filed an order requiring Roache to pay the full $4515.80.

Roache objected to the restitution order—specifically the amounts listed above—as unreasonable. He also claimed the State had not established a causal connection between his offense and the CDL training book.

At a hearing on the matter, the victim who submitted the $958.72 estimate did not appear, and the estimate was not received into evidence. Hagedon appeared and was called to testify. He testified he had paid to take a class through Northland CDL Training & Licensing; as part of the course work, he had received a book entitled, "Pre-Trip Inspection Study Guide," which was a "published, marked, and copyright booklet" and "the sole property of Northland CDL Training."

At the time he received the booklet, he signed an agreement stating he was "fully aware" he was responsible for returning the study guide and "fully understand[s]" he would be fined for failing to do so. The State admitted into evidence the signed agreement, which Hagedon had signed on September 22, 2016. Hagedon further testified the study guide was in his backpack, which Roache had stolen when he broke into Hagedon's vehicle. The study guide was apparently never recovered. Although the signed agreement did not include the amount of the fine for failing to return the study guide, the State also admitted into evidence a second form Hagedon had signed with Northland CDL Training & Licensing—this one on October 10, a day or two after the guide was taken. The second form stated, in part, "By losing and not returning the said study guide on my final testing date, I also fully understand I will be charged a fine 4x the course tuition. The calculated charge for this course is $1900." Hagedon had not yet paid Northland, stating, "They've been waiting for what we would hear from restitution," but testified he had an outstanding balance with them for the full amount of the fine. On cross-examination, Hagedon testified the study guide "was a small booklet, soft covered" and approximately "six-by-eight or ten inches in diameter." He agreed the value or cost of the book itself was not $1900. Hagedon was asked by the court if he had talked to the company about waiving the fine since the book was stolen rather than lost; Hagedon responded:

> I did. All they said was that they reiterated the fact that people have not returned them in the past, and they do charge the four times the cost of the class. And I did ask that, and they said that if I did get money out of the restitution, they'd like to see that, because it's still a risk to them, I guess, with their copyrighting or their—they wrote that book, they publish that book themselves, and they didn't want that getting out.

The court also asked Hagedon if he knew what would happen if he failed to pay the fine or if it was not ordered as restitution, and he indicated he did not know.

In its written ruling, the district court denied the claim for the windshield repair but affirmed the rest of the restitution order, requiring Roache to pay $3557.08 in restitution. In doing so, the court stated:

> The "damage" to [Hagedon] for failing to return the study guide came to $1900. But for [Roache's] criminal actions, [Hagedon] would not have been assessed that "fine." The court would presume that $1900 far exceeds the actual cost to print the study guide, but the actual cost of the study guide does not reimburse [Hagedon] for the loss he sustained as a result of [Roache's] actions. The amount claimed for damages is approved in the amount of $1900 for the study guide.

Roache appeals the district court's ruling.

"We review restitution orders for correction of errors at law." *State v. Hagen*, 840 N.W.2d 140, 144 (Iowa 2013). "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.'" *Id.* (quoting *State v. Bonstetter*, 637 N.W.2d 161, 165 (Iowa 2001)).

While Roache disagrees with the amount of the fine associated with the lost study guide, nothing in the record suggests the amount of the fine was exaggerated by Hagedon. Roache presented no contradictory evidence. In fact, Hagedon testified Northland refused to waive the fine and "reiterated the fact that people have not returned them in the past, and they do charge the four times the cost of the class." Substantial evidence supports the conclusion the fine was $1900. Next, Roache implies that he should only be responsible for the cost of reprinting the book or the actual value of the book, but doing so loses sight of the

purpose of restitution. *See Bonstetter*, 637 N.W.2d at 165 ("The word 'restitution' connotes restoring or compensating the victim for loss. Unlike other forms of penal sanctions, restitution forces the offender to answer directly for the consequences of his or her actions."). Here, Hagedon had an outstanding balance of $1900 with Northland; the outstanding balance would not be satisfied by proffering the value of the book. *See 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."). And "[o]nce the causal connection is established by a preponderance of the evidence, 'the statute allows recovery of 'all damages'. . . which the state can show by a preponderance of the evidence." *Id.* at 168 (citations omitted).

Much of Roache's causation arguments—the idea that it was not his action of stealing the study guide that resulted in the $1900 outstanding balance—hinge on his ideas of actions Hagedon could take so as not to pay the outstanding balance. He claims Northland decided on an unreasonable value for the fine and that the contract Hagedon signed after the study guide was taken is a contract of adhesion. But Roache has provided no authority for the proposition that the victim must do whatever is necessary to reduce the defendant's restitution obligation. It is undisputed that at the time of the restitution hearing, Hagedon had an outstanding balance of $1900 to Northland.

The record reflects that Hagedon was not aware what amount he would be fined by Northland if the study guide was not returned, but he had signed an agreement recognizing that he would be fined in such an instance. We agree with the district court's reasoning: "But for [Roache's] criminal actions, [Hagedon] would not have been assessed" a fine, which—although the amount was unknown at the

time of the signed agreement—was previously provided for, and even though $1900 is presumably more than the actual cost of the study guide, "the actual cost of the study guide does not reimburse [Hagedon] for the loss he sustained." Hagedon's loss was also within the scope of liability of Roache's action,[1] as it was likely—and presumably Roache's hope—that the backpack he stole from Hagedon's car would contain valuable items. In fact, the bag also contained prescription eyeglasses, a MacBook Pro computer and charger, and clothing.

Because the $1900 outstanding balance is a damage that is causally related to Roache's criminal activities and was properly included in the restitution order, we affirm. *See Bonstetter*, 637 N.W.2d at 165 ("Any damages that are causally related to the criminal activities may be included in the restitution order.").

**AFFIRMED.**

[1] Historically, in criminal cases, issues of causation have been analyzed in much the same manner as causation in civil cases. *See State v. Murray*, 512 N.W.2d 547, 550 (Iowa 1994). In the case of *Thompson v. Kaczinski*, 774 N.W.2d 829, 836–39 (Iowa 2009), our supreme court adopted the Restatement (Third) of Torts concept of "scope of liability" in place of legal or proximate cause in civil cases. Under the Restatement (Third) of Torts, "An actor's liability is limited to those . . . harms that result from the risks that make the actor's conduct tortious." *Thompson*, 774 N.W.2d at 838 (citation omitted); *see also In re J.S.*, No. 13-0174, 2013 WL 5291959, at *5 (Iowa Ct. App. Sept. 18, 2013) (applying the "scope of liability" in considering causation within a restitution claim).


IOWA APPELLATE COURTS

State of Iowa Courts

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