

IN THE SUPREME COURT OF IOWA
Supreme Court No. 16-1665

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DARRYL B. SHEARS,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR SCOTT COUNTY
THE HONORABLE MARY E. HOWES, JUDGE

APPELLEE'S BRIEF

THOMAS J. MILLER
Attorney General of Iowa

KELLI HUSER
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
(515) 281-4902 (fax)
kelli.huser2@iowa.gov

MICHAEL J. WALTON
Scott County Attorney

JOSHUA SIMS
Assistant County Attorney

ATTORNEYS FOR PLAINTIFF-APPELLEE

FINAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES	3
STATEMENT OF THE ISSUE PRESENTED FOR REVIEW.....	4
ROUTING STATEMENT.....	5
STATEMENT OF THE CASE	5
ARGUMENT	8
I. It Was Foreseeable and Within the Range of Potential Risks That Police Officers Would Stop a High-Speed Chase By Hitting the Defendant’s Van With Their Police Vehicles.	8
CONCLUSION	15
REQUEST FOR NONORAL SUBMISSION	15
CERTIFICATE OF COMPLIANCE.....	16

TABLE OF AUTHORITIES

Federal Case

<i>United States v. Reichow</i> , 416 F.3d 802 (8th Cir. 2005)	11
<i>United States v. Washington</i> , 434 F.3d 1265 (11th Cir. 2006).....	10, 11

State Cases

<i>Meier v. Senecaut</i> , 641 N.W.2d 532 (Iowa 2002).....	8
<i>State v. Holmberg</i> , 449 N.W.2d 376 (Iowa 1989)	9, 13
<i>State v. Jenkins</i> , 788 N.W.2d 640 (Iowa 2010).....	8
<i>State v. Klawonn</i> , 688 N.W.2d 271 (Iowa 2004).....	8
<i>State v. McCoy</i> , 618 N.W. 2d 324 (Iowa 2000)	9, 13
<i>State v. Storlie</i> , 647 N.W.2d 926 (Wis. Ct. App. 2002)	12, 13
<i>State v. Tyler</i> , 873 N.W.2d 741 (Iowa 2016)	9, 10
<i>Thompson v. Kaczinski</i> , 774 N.W.2d 829 (Iowa 2009).....	10

State Code

Iowa Code § 321.285	11
---------------------------	----

**STATEMENT OF THE ISSUE PRESENTED FOR
REVIEW**

**I. It Was Foreseeable and Within the Range of Potential
Risks That Police Officers Would Stop a High-Speed
Chase By Hitting the Defendant's Van With Their
Police Vehicles.**

Authorities

United States v. Reichow, 416 F.3d 802 (8th Cir. 2005)
United States v. Washington, 434 F.3d 1265 (11th Cir. 2006)
Meier v. Senecaut, 641 N.W.2d 532 (Iowa 2002)
State v. Holmberg, 449 N.W.2d 376 (Iowa 1989)
State v. Jenkins, 788 N.W.2d 640 (Iowa 2010)
State v. Klawonn, 688 N.W.2d 271 (Iowa 2004)
State v. McCoy, 618 N.W. 2d 324 (Iowa 2000)
State v. Storlie, 647 N.W.2d 926 (Wis. Ct. App. 2002)
State v. Tyler, 873 N.W.2d 741 (Iowa 2016)
Thompson v. Kaczinski, 774 N.W.2d 829 (Iowa 2009)
Iowa Code § 321.285

ROUTING STATEMENT

Retention is inappropriate because the defendant raises a routine issue of proper restitution damages. It is common to claim that the district court erred when it ordered the defendant to pay restitution for the loss or damage to property and it is not uncommon for a victim to have unique damages. *See, e.g., State v. Davis*, No. 15-1223, 2016 WL 6902325, at *1 (Iowa Ct. App. 2016) (determining whether a victim could recover damages to his trailer and the antique washing machines contained therein when the defendant's reckless driving caused the victim's vehicle and trailer to flip over). Retention is not needed for every unique fact pattern. Instead, this case may be decided on existing legal principles of causation. Transfer to the Court of Appeals is appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

The defendant appeals the restitution imposed related to his convictions for criminal mischief in the second degree and eluding. He argues that the restitution sought for damage to two law enforcement vehicles is not causally related to his crimes.

Course of Proceedings

The defendant was charged with one count of criminal mischief in the second degree, one count of possession of cocaine as a second offense, and one count of eluding a law enforcement vehicle while participating in a public offense. Trial Information; App. 4-6. He pled guilty to criminal mischief in the second degree and the lesser-included offense of eluding. Plea Agreement; App. 15-16. In exchange, the prosecution dismissed the possession crime. Plea Agreement; App. 15-16.

At sentencing, the defendant received a five-year sentence for the criminal mischief conviction and two years for the eluding conviction and the district court set a restitution hearing. Sentencing Order; App. 22-23. At the restitution hearing, the defendant argued that the prosecution failed to prove a causal connection between the damages and the defendant's criminal act. Order on Restitution; App. 25. The district court determined that the damages to the police cars were the result of the defendant's criminal activity and ordered the defendant to pay \$7,093.83 to the City of Davenport. Order on Restitution; App. 25.

Facts

The defendant led multiple squad cars through the streets of Davenport in a mid-afternoon chase that escalated to 85 mph.

3/24/16 Additional Minutes of Testimony; Confidential App. 14.

During the chase, the defendant drove through ten stop signs, ignored five stop lights, passed into incoming traffic, and almost hit at least one other car. 1/20/16 Minutes of Testimony p. 3-6; App. ---.

Police officers attempted to stop the defendant with spike strips, but the defendant swerved to avoid the law enforcement measures. 1/20/16 Minutes of Testimony p. 4-5; App. ---.

Subsequently, two squad cars were damaged while attempting a PIT maneuver¹ to block the defendant's van. 1/20/16 Minutes of Testimony p. 4-5; App. ---. The maneuver was unsuccessful. 1/20/16 Minutes of Testimony p. 4-5; App. ---.

The defendant drove toward a residential area and damaged two chain link fences. 1/20/16 Minutes of Testimony p. 5; App. ---.

He then left the van and was eventually apprehended. 3/24/16

Additional Minutes of Testimony; App. 14.

¹ The PIT maneuver, or Pursuit Intervention Technique, is a tactic to force a fleeing car to lose control and stop. PIT maneuver, http://en.wikipedia.org/wiki/PIT_manuever (last visited August 28, 2017).

ARGUMENT

I. **It Was Foreseeable and Within the Range of Potential Risks That Police Officers Would Stop a High-Speed Chase By Hitting the Defendant's Van With Their Police Vehicles.**

Preservation of Error

Error is preserved on the causation issue. Generally, a defendant must preserve error by raising an issue to the district court and receiving an adverse ruling. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). At the restitution hearing, the defendant argued that he should not have to pay damages for the police vehicles. Restitution Hearing Tr. 8, lines 6-25; 9, lines 1-5; 10, lines 8-13. The district court rejected his argument and imposed restitution. Order on Restitution; App. 25.

Standard of Review

Review of restitution orders is for correction of errors at law. *State v. Klawonn*, 688 N.W.2d 271, 274 (Iowa 2004). When reviewing a restitution order, an appellate court determines “whether the court's findings lack substantial evidentiary support, or whether the court has not properly applied the law.” *State v. Jenkins*, 788 N.W.2d 640, 642 (Iowa 2010). An appellate court reviews issues of

statutory interpretation and application for correction of errors at law. *State v. McCoy*, 618 N.W. 2d 324, 325 (Iowa 2000).

Merits

It was foreseeable and within the range of possible risks that police officers would try to hit the defendant's van to stop the van during a high speed chase through Davenport streets. The district court properly imposed restitution.

A restitution order must rest on “a causal connection between the established criminal act and the injury to the victim.” *State v. Holmberg*, 449 N.W.2d 376, 377 (Iowa 1989). The Iowa Supreme Court has previously recognized that the causal connection is essentially the tort element of proximate cause. *Id.* However, with evolving case law it is not certain what standard would apply to the criminal/civil hybrid that is restitution. If the criminal element applies, it is not clear that proximate cause remains part of the State's burden in a criminal case. *See State v. Tyler*, 873 N.W.2d 741, 750 (Iowa 2016) (“Even if criminal causation—unlike tort causation—still embraces notions of proximate or legal cause, we would find that substantial evidence supports a finding of proximate causation in this case.”). If the civil element applies, the scope of liability standard

likely applies. *See Thompson v. Kaczinski*, 774 N.W.2d 829, 838 (Iowa 2009).

Under the proximate cause standard, the prosecution meets its burden when substantial evidence shows the defendant's action “was a reasonably foreseeable consequence or within the range of harms” of the defendant's action. *Tyler*, 873 N.W.2d at 749. Under the scope of liability inquiry, the issue is fact intensive and requires consideration of the risks that made the actor’s conduct tortious and a determination of whether the harm at issue is a result of any of those risks. *Kaczinski*, 774 N.W.2d at 838.

Police officers may recover damage to their patrol vehicles when the damage is incurred in pursuit of a criminal defendant. Restitution was appropriate when a defendant robbed a bank, evaded police officers by slipping his vehicle under a security gate as it was closing, and the police cars were damaged from hitting the gate. *United States v. Washington*, 434 F.3d 1265, 1268-70 (11th Cir. 2006). The defendant had argued that the police department was harmed by the defendant’s flight, but was not harmed by the bank robbery itself. *Id.* at 1269. The Eleventh Circuit determined that harm from flight could causally relate to the robbery and it upheld

restitution damages. *Id.* In another robbery case, the Eighth Circuit concluded that damage to a patrol car was causally related to the defendant's robbery conviction when a defendant fired his gun into the first responding police car and the back-up police car. *United States v. Reichow*, 416 F.3d 802, 804-05 (8th Cir. 2005).

The defendant's dangerous actions had a foreseeable law enforcement response. It was reasonably foreseeable that police officers would try to hit the defendant to stop his mid-afternoon high-speed chase. The minutes show that the defendant increased his speed during this chase and at one point exceeded 80 mph. 1/20/16 Minutes of Testimony p. 4; App. ---. It is not clear in this record what the speed limit was, but the multiple stop lights and stop signs that the defendant ignored suggest that the speed limit was much lower, and lower speed limits correlate with the presence of pedestrians. *See* Iowa Code § 321.285 (stating the lawful speeds are lower in school districts, business districts, and suburban areas). Even if no pedestrians were present, a defendant's decision to ignore numerous stop signals is a hazard to other drivers in the area. It was foreseeable that law enforcement would try to stop a defendant's dangerous driving by hitting the defendant's vehicle.

Further, under these specific facts it was reasonable to expect that police officers would try to stop the defendant's van by hitting the van with their own police cars. The police officers had activated their lights to stop the defendant and multiple police cars were involved in the chase, but the defendant still refused to stop. 3/24/16 Additional Minutes of Testimony; Confidential App. 14. The police officers had already deployed spike strips to stop the defendant, which the defendant swerved to avoid. 1/20/16 Minutes of Testimony p. 4-5; App. ---.

The defendant argues that this damage was unrecoverable because it was part of normal law enforcement duties. But this Court does not need to adopt the Wisconsin rationale in this case because the Wisconsin cases are distinguishable. The Wisconsin Court of Appeals has recognized that a government entity cannot recover restitution for "collateral expenses incurred in the normal course of law enforcement." *State v. Storlie*, 647 N.W.2d 926, 502 (Wis. Ct. App. 2002). In that case, the defendant's erratic driving led to the Chippewa Falls Police Department deploying stop sticks to stop the vehicle. *Id.* The police department then sought restitution to replace the stop sticks used to halt the defendant's vehicle. *Id.* The court

determined that a government could recover restitution for direct losses from criminal conduct, but not for any collateral expenses from the normal course of law enforcement, and that the stop sticks were a collateral expense that was not recoverable. *Id.* at 505.

But the *Storlie* court expressly distinguished stop sticks from a patrol car. The court stated that “[w]hile a patrol car is a tool of law enforcement, it is not deployed for the purpose that it be run over and destroyed, like stop sticks.” *Id.* Under *Storlie*, the damages to the patrol car would be recoverable for restitution.

The *Haase* case is equally unhelpful to the defendant because it draws a complicated distinction between the government entity and the police officer that is unnecessary under Iowa case law. In *Haase*, a defendant led officers on a high speed chase. 716 N.W.2d 526, 527-28 (Wis. Ct. App. 2006). One officer pursued the defendant into a field, and when he abandoned the squad car to continue his pursuit on foot “the squad car burst into flames.” *Id.* The county sheriff’s department sought restitution for the squad car. *Id.* The Wisconsin Court of Appeals determined that the county sheriff’s department was not the victim of criminal conduct based on prior case law that separated the government entity from a person working for that

entity. *Id.* at 326. In the prior case law, the Wisconsin courts determined that governmental entities were victims when the defendant's conduct directly damaged the entity, such as when a defendant vandalized the federal government's extra low frequency wave generator. *Id.* But the governmental entity was not the victim for indirect harm, such as when it sought overtime costs incurred during a police standoff. *Id.* Thus in *Haase*, the court decided that the true victims were the officers who were being eluded, as opposed to the city itself. *Id.*

This distinction is unnecessarily complex because under Iowa case law a foreseeability analysis would lead to the same result. There are any number of damages to a police car that were reasonably foreseeable under the *Haase* facts, such as rocks and rough terrain scratching and tearing the body of the car. But the car suddenly bursting into flames was not reasonably foreseeable. This court should decline to adopt the Wisconsin cases and instead rely on current principles of Iowa law to find damage to the police cars is recoverable in restitution proceedings.

CONCLUSION

It was foreseeable and within the possible risks under these facts that police officers would damage their vehicles while attempting to stop a defendant during a high speed chase. This Court should affirm.

REQUEST FOR NONORAL SUBMISSION

The State believes oral argument is unnecessary to decide this case and will not "be of assistance to the Court." *See* Iowa R. App. P. 6.908.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa



KELLI HUSER
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
kelli.huser2@iowa.gov

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 **2,018** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: September 15, 2017



KELLI HUSER

Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
kelli.huser2@iowa.gov