

IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-0805

STATE OF IOWA,
Plaintiff-Appellee,

vs.

T. J. W.,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR SCOTT COUNTY
THE HONORABLE CHRISTINE DALTON, JUDGE

APPELLEE'S BRIEF

BRENNA BIRD
Attorney General of Iowa

MARTHA E. TROUT
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5976
(515) 281-8894 (fax)
martha.trout@ag.iowa.gov

KELLY CUNNINGHAM
Scott County Attorney

JOE GRUBISICH
Assistant County Attorney

ATTORNEYS FOR PLAINTIFF-APPELLEE

AMENDED FINAL

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. THIS CASE SHOULD BE CONSIDERED AS A PETITION FOR WRIT OF CERTIORARI AS THIS IS THE PROPER MEANS TO CHALLENGE RESTITUION UNDER IOWA CODE SECTIONS 901.3(1) AND 910.7(5).

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III. THE DISTRICT COURT HAD AUTHORITY TO ENTER A RESTITUTION ORDER ON THE “DISMISSED AND EXPUNGED” CASE.

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In re Marriage of Seyler, 559 N.W.2d 7 (Iowa 1997)
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IV. THERE IS SUBSTANTIAL EVIDENTIARY SUPPORT FOR THE RESTITUTION AMOUNT THE COURT ORDERED.

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V. CERTIORARI SHOULD BE GRANTED TO CORRECT THE ILLEGAL SENTENCE THAT RESULTED FROM THE COURT'S FAILURE TO ORDER RESTITUTION IN A TIMELY MANNER.

Authorities

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ROUTING STATEMENT

This case presents an issue of first impression and a question of changing legal principles and should be retained by the Iowa Supreme Court. Iowa R. App. P. 6.1101(2)(c) and (f). That is, this case involves the application of Iowa Code chapter 910 and the proper means to seek review of a restitution order when a deferred judgment has been imposed. The resolution of this case will have impact on the manner in which restitution orders may be challenged. Iowa R. App. P. 6.

STATEMENT OF THE CASE

Nature of the Case

T.J.W. appeals the restitution order for pecuniary damages. The Honorable Christine Dalton entered the restitution order in Scott County. The issues to consider include the correct form of review, whether the district court had subject matter jurisdiction, whether the court had authority to enter a restitution order after the court dismissed and expunged the charge, whether the court had a sufficient basis to order the amount of restitution imposed, and whether the court's dismissal and expungement of the case before restitution was entered constituted error.

Course of Proceedings

The Scott County Attorney charged T.J.W. with one count of third-degree criminal mischief, a violation of Iowa Code section 716.5, and punishable as an aggravated misdemeanor after she damaged C.B.'s cars. Trial Info. and Mins. of Testimony (4/8/20); App. 4-6; Conf. App. 4-14. The parties entered into a plea agreement under which T. J. W. pleaded guilty to the reduced charge of fourth-degree criminal mischief. Written Guilty Plea (8/19/21); App. 12-16. The district court deferred judgment and placed T. J. W. on unsupervised probation for one year. Order Deferred Judgment (8/19/21); App. 17-20. The court imposed a civil penalty of \$315, determined T. J. W. had the reasonable ability to pay “up to \$100 toward Category B restitution” and ordered a restitution hearing be set to determine the amount of restitution for pecuniary damages. Order Deferred Judgment (8/19/21); App. 17-20. The court also set a hearing on the deferred judgment for February 18, 2022, to determine if T. J. W. completed the requirements of the deferred judgment. Order Deferred Judgment (8/19/21); App. 17-20.

Despite the district court's reasonable ability to pay determination in its deferred judgment order, T. J. W. filed a

combined financial affidavit and request for a reasonable ability to pay determination. Req. Reasonable Ability to Pay/Financial Affidavit (8/19/21); Conf. App. 16-17. The district court set a hearing on restitution for October 28, 2021, and later continued the hearing until December 9, 2021. Order (9/17/21), Order for Continuance (10/28/21); App. 21-22; 23-24.

According to the docket for this case, there is no indication that a hearing occurred, although the sheriff served a subpoena. *See* Trial court docket, Subpoena Return (Doss) (12/8/21); App. 25. The next entry on the electronic docket is the order dismissing and expunging the deferred judgment on February 15, 2022. Deferred Judgment Review Order (2/15/22); App. 26-27. The order also provides, “the case will not be expunged until all monies owing have been paid in full.” Deferred Judgment Review Order (2/15/22); App. 26-27.

Approximately two hours after the entry of the deferred judgment review order, the district court filed an order setting a restitution hearing on March 24, 2022. Order (2/15/22); App. 28-29. The court held a hearing on March 24, 2022, and later entered an order imposing restitution for pecuniary damages in the amount of \$6067.44. Order (4/8/22); App. 30-32.

T. J. W. filed a notice of appeal on May 5, 2022, and challenged the district court's restitution order. Not. of Appeal (5/5/22); App. 33-34. On May 17, 2022, the Iowa Supreme Court noted that a right to appeal does not exist from a restitution order when a deferred judgment is entered. Sup. Ct. No. 22-0771 Order (5/17/22). The court directed T. J. W. to file a statement regarding appellate review and why review should be granted. Sup. Ct. No. 22-0771 Order (5/17/22). T. J. W. subsequently filed a petition for writ of certiorari/and or application for discretionary review. Pet. Writ of Cert./Discretionary Review (7/5/22). The State resisted the petition/application, however, the Supreme Court granted the application for discretionary review. Resistance (7/11/22), Sup. Ct. Order (7/29/22).

Facts

In her written guilty plea, T. J. W. admitted:

. . . on February 19, 2020 in Davenport Scott County Iowa, I intentionally damaged vehicle belonging to the victim. The cost or repairing the vehicle will cost more than \$500.00.

Written Guilty Plea (8/19/21); App. 12-16.

ARGUMENT

I. THIS CASE SHOULD BE CONSIDERED AS A PETITION FOR WRIT OF CERTIORARI AS THIS IS THE PROPER MEANS TO CHALLENGE RESTITUION UNDER IOWA CODE SECTIONS 901.3(1) AND 910.7(5).

Appellate Review

In the supreme court's order granting discretionary review, the court directed the parties to address the proper means of review. The State asserts that this court should consider the issues raised as certiorari action in accordance with Iowa Code sections 910.3(10) and 901.7(5).

Certiorari

The State agrees with T. J. W. that the proper form of review is certiorari. However, the State disagrees with the basis for certiorari review.¹ In *State v. Patterson*, 984 N.W.2d 449, 454 (Iowa 2023), this court recently addressed the proper means to challenge a restitution order. The *Patterson* court found that, under the Iowa Constitution, our appellate jurisdiction is subject to “such restrictions as the general assembly may, by law, prescribe.” *Patterson*, 984

¹ T. J. W. did not discuss *State v. Patterson*, 984 N.W.2d 449 (Iowa 2023) because it had not been decided when she filed her proof brief in this case. The court issued *Patterson* three days after T. J. W. filed her proof brief.

N.W.2d at 454 (citing Iowa Const. art. V, § 4). Ordinarily, Iowa Code section 814.6 – which generally provides criminal defendants with a “right of appeal” - determines whether we have “subject-matter jurisdiction for the review of a criminal defendant's appeal.” *State v. Propps*, 897 N.W.2d 91, 96 (Iowa 2017); *see also* Iowa Code § 814.6(1)(a).

But the *Patterson* court noted that the legislature has also enacted special provisions that govern appellate review of restitution orders. *Patterson*, 984 N.W.2d at 454. The court further determined that its “analysis must account for those provisions.” *See id.* § 4.7 (directing that “[i]f a general [statutory] provision conflicts with a special ... provision,” and if the conflict “is irreconcilable,” then “the special ... provision prevails”). *See generally* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 183–88 (2012) (discussing the “general/specific canon”).

Iowa Code section 910.3 sets out how a court is to determine restitution and how a defendant may challenge restitution orders. Iowa Code § 910.3. There are two provisions in section 910.3 that address challenging restitution orders. *See* Iowa Code § 910.3. Section 910.3(8) addresses restitution orders that are entered at the

time of sentencing. Iowa Code § 910.3(8). The court did not enter an order for pecuniary damages at the time it deferred judgment. Order Deferred Judgment (8/19/21), Order (4/8/22); App.17-20; 30-32. The order assessed a \$315 civil penalty which constitutes category A restitution. Order Deferred Judgment (8/19/21); App. 17-20; Iowa Code § 910.1(1). The deferred judgment order did not include an amount of restitution for pecuniary damages or for category B restitution, however, the court stated that T. J. W. had the reasonable ability to pay \$100 in category B restitution. Order Deferred Judgment (8/19/21); App. 17-20.

Iowa Code section 910.3(10) applies when, as in this case, the court enters a restitution order after the time of sentencing. Iowa Code § 910.3(10). That section provides:

A permanent restitution order may be superseded by subsequent orders if additional or different restitution is ordered. A permanent restitution order entered after the time of sentencing shall only be challenged pursuant to section 910.7.

Iowa Code § 910.3(10)(emphasis added). The district court sentenced T. J. W. on August 19, 2021, however, the court did not enter a restitution order until April 8, 2022. Order Deferred Judgment (8/19/21), Order (4/8/22); App. 17-20; 30-32. Section 910.3(10)

requires that a permanent order of restitution entered after sentencing “shall only” be challenged pursuant to section 910.7. Iowa Code § 4.1(30) (the word “shall” imposes a duty); *State v. Klawonn*, 609 N.W.2d 515, 522 (Iowa 2000) (“we have [also] interpreted the term ‘shall’ in a statute to create a mandatory duty, not discretion.”) Iowa Code section 910.7(5) provides:

Appellate review of a district court ruling under this section shall be by writ of certiorari.

Iowa Code § 910.7(5). Thus, the statute requires restitution challenges entered after the date of sentencing to be challenged by certiorari.

In *Patterson*, the court stated that a “writ of certiorari lies where a ... court has exceeded its jurisdiction or otherwise acted illegally...” Section 910.7(5) provides that “appellate review of a district court ruling . . . shall be by writ of certiorari.” *Lozano Campuzano v. Iowa Dist. Ct.*, 940 N.W.2d 431, 434 (Iowa 2020) (second omission in original) (quoting *Weissenburger v. Iowa Dist. Ct.*, 740 N.W.2d 431, 434 (Iowa 2007)). “We have interpreted this standard liberally.” *Bousman v. Iowa Dist. Ct.*, 630 N.W.2d 789, 794 (Iowa 2001). An “illegality” occurs “when the court's findings lack substantial evidentiary support, or when the court has not properly applied the law.” *State v. Iowa Dist. Ct.*, 828 N.W.2d 607, 611 (Iowa

2013) (quoting *State Pub. Def. v. Iowa Dist. Ct.*, 747 N.W.2d 218, 220 (Iowa 2008)). Because T. J. W. asserts that the district court acted illegally in ordering restitution after the case had been dismissed and expunged and the amount of restitution imposed lacked a “factual basis,” certiorari is the appropriate means to consider the claims raised. Similarly, the State asserts that certiorari review is appropriate because if the district court’s order expunging and dismissing the case extinguished the court’s ability to order restitution, that order dismissing and expunging the case amounts to an illegal sentence. *See* Issue V. The district court was required to impose restitution in accordance with Iowa Code § 910.2(1)(a), and the court’s failure to do so constitutes an illegal sentence.

Discretionary review

The State notes, however, that *State v. Stessman*, 460 N.W.2d 461, 464 (Iowa 1990), provides that “the proper route of possible review for a restitution order issued as part of or following a deferred judgment is an application for discretionary review.” Although the *Stessman* court rejected the defendant’s request to consider the restitution challenge following entry of a deferred judgment as a certiorari action, sections 910.3(10) and 910.7(5) did not exist when

the court decided the case. *Id.* at 463. The State submits that the changes to section 910.3 and 910.7 have statutorily overruled *Stessman. Ogden v. Iowa Dist. Court for Polk County*, 309 N.W.2d 401 (1981) (per curiam) (no comparable statute was in effect at the time this court decided the case). Review should be by certiorari.

II. THE DISTRICT COURT HAD SUBJECT MATTER JURISDICTION WHEN IT ENTERED THE RESTITUTION ORDER; THE ORDER REGARDING THE EXPUNGEMENT OF THE DEFERRED JUDGMENT DID NOT TAKE EFFECT UNTIL “ALL MONIES OWING HA[D] BEEN PAID IN FULL.”

Preservation of Error

The State does not contest error preservation. A lack of subject matter jurisdiction can be raised at anytime. *State v. Mandicino*, 509 N.W.2d 481, 482 (Iowa 1993).

Standard of Review

“Our review of the proceedings concerning subject matter jurisdiction is at law. . .” *Tigges v. City of Ames*, 356 N.W.2d 503, 512 (Iowa 1984).

Merits

The district court had subject matter jurisdiction to impose restitution for pecuniary damages following the defendant’s guilty plea to fourth-degree criminal mischief. The district court’s order

regarding the “deferred judgment review” did not extinguish the court’s jurisdiction over the matter.

Subject matter jurisdiction is:

. . . the power of a court to hear and determine cases of the general class to which the proceedings in question belong, not merely the particular case then occupying the court's attention. Jurisdiction over the subject matter of a claim must be conferred by a constitutional or statutory grant.

DeStefano v. Apts. Downtown, Inc., 879 N.W.2d 155, 164

(Iowa 2016) (internal quotation marks and citations omitted).

T. J. W. pleaded guilty to a serious misdemeanor offense. Written Guilty Plea (8/19/21); App. 12-16. The district court had jurisdiction over the criminal offense by virtue of the Iowa Constitution and Iowa Code sections 602.6306 and 910.2(1)(a). Iowa Const. art. V, § 6, Iowa Code §§ 602.6306 and 910.2(1)(a).

Article V, section 6 of the Iowa Constitution provides that “[t]he district court shall be a court of law and equity . . . and have jurisdiction in civil and criminal matters . . . in such manner as shall be prescribed by law.” Iowa Const. art. V, § 6. Iowa Code section 602.6306 states that district associate judges have jurisdiction of indictable misdemeanors, class “D” felony violations, and other felony arraignments. Iowa Code § 602.6306; *State v. Iowa District Court*

for Polk County, 581 N.W.2d 640, 644 (Iowa 1998) (district associate judges have jurisdiction over indictable misdemeanors).

The court’s jurisdiction over the indictable misdemeanor in this case also required the court to order restitution in the criminal case under Iowa Code section 910.2(1)(a). Iowa Code § 910.2(1)(a). That section provides:

In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that pecuniary damages be paid by each offender to the victims of the offender’s criminal activities. . .

Iowa Code § 910.2(1)(a). Thus, these constitutional and statutory provisions conferred jurisdiction over the matter at hand. Iowa Const. art. V, § 6, Iowa Code §§ 602.6306 and 910.2(1)(a).

T. J. W. asserts, however, that the court lacked jurisdiction to impose restitution because the case the court “discharge[d]” and “expunge[d]” the deferred judgment. Her interpretation of the order dismissing the charges is short-sighted. The order provides that the “charge(s) should now be **dismissed** and **expunged**. **All dismissed charges shall now also be expunged.**” Deferred Judg. Review Order (2/15/22) (original emphasis); App. 26-27. The next line states “Defendant is hereby advised that the case will not be

expunged until all monies owing have been paid in full.” Deferred
Judg. Review Order (2/15/22); App. 26-27.

The order informed T. J. W. that the charges would be
dismissed and expunged *only after* all monies had been paid in full.
Deferred Judg. Review Order (2/15/22); App. 26-27. The order did
not preclude the court from ordering restitution for pecuniary
damages in the case. The order was a temporary order because the
financial obligations still needed to be determined and paid. Deferred
Judg. Review Order (2/15/22); App. 26-27. It was incumbent upon
the court to enter the order for restitution, in particular, pecuniary
damages. Indeed, the State requested restitution for pecuniary
damages *prior* to the entry of the guilty plea. Stmt. Pecuniary
Damages (6/9/20) and (2/8/21); App. 7-8; 9-11. T. J. W. requested a
reasonable ability to pay hearing and filed a financial affidavit after
the court accepted her plea. Req. Ability to Pay Hearing (8/19/21),
Financial Affidavit (8/19/21); Conf. App. 16-17. Two hearings had
been set but the court did not enter an order on restitution. Order
Setting Hearing (9/17/21), Order for Continuance (10/28/21); App.
21-22; 23-24. The court is required by statute to enter an order on
restitution and the deferred judgment review order represents an

acknowledgement that the charges would be dismissed and expunged *only after* “all monies owing have been paid in full.” Deferred Judgment Review Order (2/15/22); App. 26-27. Thus, the court still had to determine the amount of restitution.

Roughly two hours after the issuance of the deferred judgment review order, the district court scheduled a restitution hearing. Order Setting Hearing (2/15/22); App. 28-29. Because the district court entered an order for a restitution hearing on this case even after the charges were “dismissed,” the reasonable conclusion is that the court – and the parties --- understood the court still had to enter the amount of restitution. Once restitution was ordered, T. J. W. would know the amount she had to pay to get the charges expunged. The district court committed no error in ordering restitution for pecuniary damages after the entry of the deferred judgment order.

T. J. W. maintains that “once the case was dismissed, the district court no longer had subject matter jurisdiction to enter the restitution order.” Def. Brief at 39. She continues that once the case was dismissed, it was beyond the power of the court to act. Def. Brief. But, this argument does not fully address the facts of this case.

T. J.W.'s argument does not address all of the language in the district court's order. The State acknowledges that the deferred judgment review order provides that the "charge(s) should now be **dismissed and expunged. All dismissed charges shall now also be expunged.**" Deferred Judg. Review Order (2/15/22);

App. 26-27. But, the next line of the order also states "Defendant is hereby advised that the case will not be expunged until all monies owing have been paid in full." Deferred Judg. Review Order (2/15/22); App. 26-27. The order must be read in its entirety with consideration given to all of the language in it.

T. J.W. also cites to *State v. Jensen*, 378 N.W.2d 710, 712-13 (Iowa 1985), to support her claim that the court lacked subject matter jurisdiction to enter the restitution order. In *Jensen*, the defendant received a deferred sentence and the court placed her on two years' probation. *Id.* at 710. Three days prior to the expiration of her probation, the State filed an application to revoke her probation due to a series of alleged probation violations. *Id.* The court held the probation revocation hearing after the original period of probation would have expired. *Id.* At this hearing, the court revoked the defendant's probation. *Id.* The defendant appealed the revocation

and argued that the court lacked jurisdiction to revoke her probation. *Id.* The Iowa Supreme Court rejected the challenge and found that “the district court does not lose jurisdiction of a revocation proceeding that has been commenced but not completed before the period expires.”

As with *Jensen*, this court should also find that the district court did not lose jurisdiction over the case and the court could impose restitution. As argued above, State requested restitution for pecuniary damages before she entered her guilty plea. Stmt. Pecuniary Damages (6/9/20) and (2/8/21); App._____. The court scheduled two restitution hearings yet never held a hearing or entered the restitution order before it entered the deferred judgment review order. Order Setting Hearing (9/17/21), Order for Continuance (10/28/21); App. 7-8; 9-11. This is not an instance where the State failed to act. Rather, the State did what was required of it under section 910.3(1). Iowa Code § 910.1(3) (the prosecuting attorney shall prepare a statement of pecuniary damages to victims of the defendant . . .). If anything, the district court’s failure to impose restitution in a timely manner as required by section 910.2(1)(a) is an illegal action that this court must correct. *See* Issue V.

III. THE DISTRICT COURT HAD AUTHORITY TO ENTER A RESTITUTION ORDER ON THE “DISMISSED AND EXPUNGED” CASE.

Preservation of Error

The State does not agree error has been preserved on this claim. *Mandicino*, 509 N.W.2d at 483 (an impediment to a court’s authority can be obviated by consent, waiver, or estoppel). T. J. W. consented to the imposition of restitution by participating in the hearing. In addition, T. J. W. waived any claim by failing to challenge the court’s authority to enter a restitution order below knowing that the court previously entered an order “dismissing and expunging” the deferred judgment. Rest. Tr. p. 1, line 1 through p. 3, line 13. This claim cannot be considered.

To the extent that T. J. W. asserts that the imposition of restitution following the dismissal and expungement is an illegal sentence, she is incorrect. Def. Brief at 19. If an illegality exists in this case, it is the failure to order restitution before dismissing and expunging the case. The court could not dismiss or expunge the case until restitution had been ordered. *See* Issue V.

Standard of Review

Review is for errors at law. *Iowa District Court for Polk County*, 581 N.W.2d at 643 (review on certiorari is for the correction of errors at law).

Merits

The district court had authority to enter the restitution order. The court's prior order "dismissing and expunging" the charge of criminal mischief did not preclude the entry of the restitution order which the court was required to impose under section 910.2(1)(a). The order "dismissing and expunging" the charge informed T. J. W. that the charge would be expunged only after "all monies owing have been paid in full." Thus, the order cannot be read to extinguish the court's authority to order restitution when the amount had not yet been determined.

As discussed above, subject matter jurisdiction refers to the power of a court to deal with a class of cases to which a particular class belongs. *DeStefano*, 879 N.W.2d at 164. Although a court may have subject matter jurisdiction, it may lack the authority to hear a particular case for one reason or another. *In re Estate of Falck*, 672 N.W.2d 785, 789-90 (Iowa 2003). A court's lack of authority "is not

conclusively fatal to the validity of an order.” *In re Marriage of Seyler*, 559 N.W.2d 7, 10 n. 3 (Iowa 1997). Thus, if a party waives the court’s authority to hear a particular case, the judgment becomes final and is not subject to collateral attack. *Falck*, 672 N.W.2d at 790.

In this case, the district court had the authority to enter the restitution order because the order “dismissing and expunging” the charge was more akin to a notice to T. J. W. that her charge would be dismissed and expunged *when her restitution obligation had been satisfied*. Deferred Judg. Review Order (2/15/22); App. 26-27. The order did not extinguish her obligation to pay restitution.

If the court finds that the court lacked authority to enter the restitution order after it previously dismissed and expunged the charge, the restitution order is still valid. T. J. W. did not challenge the entry of the restitution but actively participated in the hearing and challenged the amount of restitution the victim, C. B., sought. Rest. Tr. p. 17, line 15 through p. 20, line 10, p. 21, line 5 through p. 25, line 2. She did not challenge the court’s authority to impose it. Thus, T. J. W. consented to the entry of the restitution order and/or waived any challenge. The district court’s restitution order must stand.

IV. THERE IS SUBSTANTIAL EVIDENTIARY SUPPORT FOR THE RESTITUTION AMOUNT THE COURT ORDERED.

Preservation of Error

The State does not contest error preservation.

Standard of Review

The court reviews restitution orders for correction of errors at law. *State v. Hagen*, 840 N.W.2d 140, 144 (Iowa 2013).

Merits

Restitution is a creature of statute. *Hagen*, 840 N.W.2d at 149. The framework for restitution is found in Iowa Code chapter 910. When ordering criminal restitution, a court applies the provisions of that chapter. *Id.*

Under the statute, “restitution” is defined 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 § 910.1(4). “Pecuniary damages” means “all damages to the extent not paid by an insurer . . . which a victim could recover against the offender in a civil action or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium.” Iowa Code § 910.1(6) (2021). The purpose of these criminal restitution statutes is to protect the public by compensating victims for criminal

activities and rehabilitate the offender by instilling responsibility in the offender. *State v. Shears*, 920 N.W.2d 527, 530–31 (Iowa 2018) (citing *State v. Izzolena*, 609 N.W.2d 541, 548 (Iowa 2000)); *State v. Kluesner*, 389 N.W.2d 370, 372 (Iowa 1986).

Restitution is mandatory “[i]n all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered.” Iowa Code § 910.2; *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). The burden is on the State to show the victim is entitled to restitution. *Shears*, 920 N.W.2d at 532. The State must produce evidence on the amount of damages sought. *Id.*

The State sought restitution for the damage T. J. W. and her co-defendant, B. D., caused to C. B.’s vehicles. Stmt. Of Pecuniary Damages (6/9/20) and (2/8/21);App. 7-8, 9-11. At the restitution hearing, C.B. testified that on February 19, 2020, T. J. W. and B. D. came to her apartment and were banging on the door. Rest. Tr. p. 5, lines 4-23. T. J. W. and B. D. were yelling “all kinds of stuff about her son.”

Rest. Tr. p. 5, lines 18-23. T. J. W. is a former girlfriend of C. B.'s son. Rest. Tr. p. 4, lines 18-23.

C. B. did not let T. J. W. or B. D. into the apartment. Rest. Tr. p. 5, lines 9-17. She looked outside the window and saw the two women damaging her two vehicles; a 2004 Ford Escape and a 2004 Hyundai sedan. Rest. Tr. p. 5, line 24 through p. 6, line 11. C. B. saw B. D. scratching the hood of the Hyundai. Rest. Tr. p. 6, lines 12-25. While B. D. scratched the hood, T. J. W. opened the rear doors of the sedan and threw out several items that were in the backseat. Rest. Tr. p. 6, lines 12-25, p. 8, lines 8-21. C. B. grabbed her phone and recorded the incident. Rest. Tr. p. 6, line 18 through p. 7, line 18.

B. D. realized that she was being recorded and walked away. Rest. Tr. p. 7, lines 1-8. T. J. W. continued the destruction. Rest. Tr. p. 7, lines 1-8. She grabbed a metal crowbar and a jack that C. B. had in the backseat to repair her brakes. Rest. Tr. p. 7, lines 1-8. T. J. W. threw the items at the Hyundai and shattered the windshield of the Hyundai. Rest. Tr. p. 7, lines 1-8. She also used the metal objects to dent the sedan. Rest. Tr. p. 7, lines 1-8. T. J. W. walked over to the 2004 Escape and damaged it by breaking the windshield and scratching and denting it. Rest. Tr. p. 7, line 12 through p. 8, line 21.

There was substantial damage to both cars “all over.” Rest. Tr. p. 9, lines 8-17.

C. B. testified that she had to “junk” the Hyundai. Rest. Tr. p. 9, line 15 through p. 10, line 17. The cost to repair the vehicle exceeded its value. Rest. Tr. p. 9, lines 15-24. The Blue Book value ranged from \$1479 to \$3460 with a “private party value of “\$2470.” Rest. Tr. p. 10, lines 3-17, Exh. 1; Exhibit App. 3-4. She did not have insurance for the vehicle. Rest. Tr. p. 10, lines 21-25. She received \$150 for the Hyundai when she disposed of it. Rest. Tr. p. 10, lines 16-20.

C. B. could only afford to repair the windshield of the Ford Escape. Rest. Tr. p. 11, lines 7-19. The cost to repair the windshield was \$234.84. Rest. Tr. p. 11, lines 7-23, Exh. 3; Exhibit App. 8. The Escape, however, needed additional repairs that she could not afford to make on her own. Rest. Tr. p. 12, line 10 through p. 16, line 3, Exh. 3; Exhibit App. 8. The repair estimate for the Escape was \$3512.60. Exh. 3; Exhibit App. 8.

After hearing this testimony, the district court entered a restitution order in the amount of \$6067.44. Rest. Order (4/8/22); App. 30-32. The order found “T. J. W. and B. D. are joint and

severally liable for payment of \$6067.44” in victim restitution payable to Bruckner. Rest. Order (4/8/22);App. 30-32.

T. J. W. argues, however, that the amount of restitution the court ordered does not follow the measure of damages for automobiles. She cites the following rules for establishing the damages for automobiles:

- (1) When the motor vehicle is totally destroyed or the reasonable cost of repair exceeds the difference in reasonable market value before and after the injury, the measure of damages is the lost market value plus the reasonable value of the use of the vehicle for the time reasonably required to obtain a replacement.
- (2) When the injury to the motor vehicle can be repaired so that, when repaired, it will be in as good condition as it was in before the injury, and the cost of repair does not exceed the difference in market value of the vehicle before and after the injury, then the measure of damages is the reasonable cost of repair plus the reasonable value of the use of the vehicle for the time reasonably required to complete its repair.
- (3) When the motor vehicle cannot by repair be placed in as good condition as it was in before the injury, then the measure of damages is the difference between its reasonable market value before and after the injury, plus the reasonable value of the use of the vehicle for the time reasonably required to repair or replace it.

Papenheim v. Lovell, 530 N.W.2d 668, 671 (Iowa 1995); *Long v.*

McAllister, 319 N.W.2d 256, 261 (Iowa 1982). T. J. W. asserts that C.

B.’s video and the photos introduced at trial are the “best evidence” of

the damaged T. J. W. and co-defendant, B. D., caused. This argument, however, does not consider C. B.'s testimony from the restitution hearing which cannot be overlooked.

T. J. W. contends that the State did not present evidence regarding the cost to repair the 2004 Hyundai. Def. Brief at 49. She continues that the court is "required to employ the standard which compensates a victim but does not provide a windfall." Def. Brief at 49. She asserts that the State needed to present evidence regarding the value of the vehicle *before* the women damaged it to determine reasonable cost to repair the damage she and her co-defendant caused. Def. Brief at 49.

This argument fails to consider everything the court had before it which included the video, the Blue Book value, the \$150.00 junk value, and C. B.'s testimony. C. B. described the damage the Hyundai sustained:

. . . She threw something at –metal bar, broke the sunroof in the Hyundai, the windshield was shattered and busted. She tried breaking the driver's side window, she couldn't bust it, but there was marks from, like, the metal bar she was using all over the windshield – or driver's side window. And then she – like I said, B. D. took something, a razor or something, and she was drawing big, big circles around on the hood of the Hyundai, so.

Rest. Tr. p. 8, lines 12-21. In addition, C. B. testified that she had to “junk” the Hyundai because “it would have cost me too much to fix it, so – than what it was worth. . .” Rest. Tr. p. 9, lines 15-21. The State established that the value of the vehicle at the time the crime occurred was less than the cost to repair. As such, the court awarded the proper amount of restitution for the 2004 Hyundai.

T. J. W. makes the alternative argument that if the district court applied the proper standard, the Hyundai was not in “good condition” as C. B. claimed. Def. Brief at 50. The district court viewed the video, the exhibits, and listened to C. B.’s testimony. The court correctly determined the condition of the Hyundai and assessed the proper amount of restitution. Substantial evidence supports the court’s ruling. *State v. Bonstetter*, 637 N.W.2d 161, 166 (Iowa 2001).

T. J. W. also challenges the amount of restitution the district court imposed for the 2004 Ford Escape. T. J. W. incorrectly asserts that the damage to the Ford that she caused “was all caught on the video.” Def. Brief at 51. That is only partially true as the two women were vandalizing the cars before C. B. began filming and there are two instances on the video where the view is obstructed. Rest. Tr. p. 6, line 16 through p. 7, line 8; Exh. 5 (00:00-00:14), (00:59-01:04),

(01:21-01-26). In the video, T. J. W. is standing in front of the hood with the lug wrench on the hood before she throws it at the windshield. Exh. 5 (01:26-1:28). With these breaks in the video and the fact that the vandalism began before C. B. began recording, the video is strong evidence of the damage but not exclusive evidence of it. T. J. W.'s claim that she only damaged the windshield does not tell the entire story her criminal act. The full extent of the crime does not begin and end with the damage to the windshield. In addition, the windshield is one part of a vehicle that consists of multiple parts that fit tightly together and can be impacted in varying degrees when one part is damaged. The estimate is the best gauge to determine the amount of restitution. The court correctly imposed the amount restitution established by the evidence. *Bonstetter*, 637 N.W.2d at 166. The district court must be affirmed.

V. CERTIORARI SHOULD BE GRANTED TO CORRECT THE ILLEGAL SENTENCE THAT RESULTED FROM THE COURT'S FAILURE TO ORDER RESTITUTION IN A TIMELY MANNER.

Preservation of Error

Our rules of error preservation are circumvented when a party claims their sentence is illegal. *State v. Bruegger*, 773 N.W.2d 862, 871 (Iowa 2009). "Where, as here, the claim is that the sentence itself

is inherently illegal, whether based on constitution or statute ... the claim may be brought at any time.” *Bruegger*, 773 N.W.2d at 872. This includes claims brought for the first time on appeal. *See id.* at 870–72.

Standard of Review

Review of a challenge to an illegal sentence is for errors at law. *State v. Tindell*, 629 N.W.2d 357, 359 (Iowa 2001) (citing *State v. Carstens*, 594 N.W.2d 436, 437 (Iowa 1999)).

Merits

If this court finds that the district court could not order restitution after the charge was “dismissed and expunged,” the State asserts that the order dismissing and expunging the charge was illegal. *Bruegger*, 773 N.W.2d at 872. A district court has a mandatory duty to impose restitution in “all criminal cases” and the court’s failure to order restitution in a timely manner is an illegal sentence. Iowa Code § 910.2(1)(a). The court lacked power to dismiss the charge when the court still had the statutory duty to impose restitution.

Restitution is a creature of statute. *Hagen*, 840 N.W.2d

at 149. The framework for restitution is found in Iowa Code chapter 910. When ordering criminal restitution, a court applies the provisions of that chapter. *Id.*

The purpose of these criminal restitution statutes is to protect the public by compensating victims for criminal activities and rehabilitate the offender by instilling responsibility in the offender. *State v. Shears*, 920 N.W.2d 527, 530–31 (Iowa 2018) (citing *Izzolena*, 609 N.W.2d at 548; *Kluesner*, 389 N.W.2d at 372).

Restitution is mandatory “[i]n all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered.” Iowa Code § 910.2; *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).

At the time the district court entered the deferred judgment review order on February 15, 2022, the court had not entered an order for restitution on the requested pecuniary damages. Deferred Judg. Review Order (2/15/22); App. 26-27. The State requested pecuniary damages, B. D. requested a reasonable ability to pay

hearing, and she filed a financial affidavit. Stmt. Pecuniary Damages (6/9/20) and (2/8/21), Req. Reasonable Ability to Pay (8/19/21), Financial Affidavit (8/19/21); App. 7-8, 9-11; Conf. App. 16-17. The district court set two hearings to determine restitution and the reasonable ability to pay, but court did not enter an order of restitution until April 8, 2022. Order (9/17/21), Order for Continuance (10/28/21); App. 21-22; 23-24.

The court ordered restitution after it entered the order dismissing and expunging the case. Rest. Order (4/8/22); App. 30-32. If the order dismissing and expunging the case was final and divested the court of jurisdiction over the case, the court acted illegally. The court could not dismiss or expunge the charge until the matter of restitution had been addressed. A court has a mandatory duty under the statute to enter a restitution order. Iowa Code § 910.2(1)(a). When, as in this case, restitution was requested, and the court failed to order restitution until after the case was dismissed or expunged, the order dismissing or expunging the case is illegal because the court had to order restitution. Iowa Code

§ 910.2(1)(a). The district court's order dismissing or expunging the case is illegal because restitution had not yet been determined. The order dismissing and expunging the case must be reversed.

CONCLUSION

The district court's restitution order must be affirmed.

REQUEST FOR NONORAL SUBMISSION

The State requests to be heard in oral argument as it would benefit the court in resolving the issue of first impression that this case presents.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa



MARTHA E. TROUT
Assistant Attorney General
Hoover State Office Bldg., 2nd Fl.
Des Moines, Iowa 50319
(515) 281-5976
Martha.trout@ag.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:

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MARTHA E. TROUT

Assistant Attorney General

Hoover State Office Bldg., 2nd Fl.

Des Moines, Iowa 50319

(515) 281-5976

martha.trout@ag.iowa.gov