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**CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS**

No. A-25-684

IN THE NEBRASKA COURT OF APPEALS

STATE OF NEBRASKA,

Appellee,

v.

JOSHUA J. CARPENTER,

Appellant.

**APPEAL FROM THE DISTRICT COURT OF
GAGE COUNTY, NEBRASKA**

The Honorable Ricky A. Schreiner, District Judge

BRIEF OF APPELLEE

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STATEMENT OF THE CASE

A. Nature of the Case

This is a direct appeal of Joshua J. Carpenter's plea-based conviction for obstructing a public road. As part of his sentence, the county court ordered Carpenter to pay restitution to the county for the cost it incurred in removing the obstruction from the road.

B. Issue Before the District Court

As relevant here, the issue before the district court was whether the county court erred by finding the cost incurred by the county in removing the obstruction from the road was a loss for which restitution could be ordered pursuant to Neb. Rev. Stat. § 29-2280 (Reissue 2016).

C. How the Issue Was Decided

The district court affirmed the county court's decision.

D. Standards of Review

In an appeal of a criminal case from the county court, the district court acts as an intermediate court of appeals, and its review is limited to an examination of the record for error or abuse of discretion. *State v. Anderson*, 317 Neb. 435, 455-56 (2024). When deciding appeals from criminal convictions in county court, the appellate court applies the same standards of review that are applied to decide appeals from criminal convictions in district court. *Id.*

Statutory interpretation presents a question of law that an appellate court resolves independently of the trial court. *State v. Strawn*, 318 Neb. 859, 865 (2025).

PROPOSITIONS OF LAW

I.

A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted. *State v. Street*, 306 Neb. 380 (2020).

II.

If the defendant's offense results in damage, destruction, or loss of property, the court may require return of the property to the victim, if possible. *State v. Street*, 306 Neb. 380 (2020).

III.

Restitution for actual damages or actual loss are meant to make the victim whole by returning the victim to the position the victim was in before the defendant's actions. *State v. Street*, 306 Neb. 380 (2020).

IV.

When a person leaves an obstruction on a public road, any officer in charge of road work, after giving reasonable notice to the owner of the obstruction or person so obstructing, may remove the obstruction and recover the cost of removal from the owner or obstructor in an action in county court. *See* Neb. Rev. Stat. § 39-301 (Reissue 2016).

STATEMENT OF FACTS

In June 2024, Carpenter was transporting a mobile home on a county road when its axle broke and it became stranded in the middle of the road. (23:16-24:18). Sheriff's deputies told Carpenter to remove the mobile home from the road or the county would need to do it and charge him for the cost of removal. (*Id.*). Carpenter twice attempted to remove the mobile home from the road but was unsuccessful, so the county sheriff paid an excavator \$15,000 to remove it. (33:8-37:20).

On September 27, 2024, Carpenter was charged by complaint in Gage County Court in **Count I** with criminal mischief, less than \$500, a Class III misdemeanor, and in **Count II** with obstructing a public road, a Class V misdemeanor. (T2-3). The county court later appointed a public defender to represent Carpenter. (4-13; T4).

On March 6, 2025, Carpenter appeared before the county court at a change of plea hearing. (13-28). Pursuant to an agreement with the State, Carpenter pleaded no contest to Count II, and the State dismissed Count I. (16:9-18:25; 23:12-15; 25:16-23). Because the parties had no agreement regarding restitution, the State requested a hearing on the matter which the court granted. (*Id.*; 27:3-28:2; T5).

On March 31, 2025, Carpenter appeared before the county court at his restitution hearing. (28-57). The State called Sheriff Gustafson to testify about Carpenter's failure to remove the mobile home, the problems that it caused, and his decision to hire an excavator. (31:23-42:3). The State also offered an itemized invoice for \$15,000. (*Id.*; E1). Carpenter chose not to present any evidence, noting he was disputing whether restitution was legally permissible, "not the factual basis of how much." (42:11-25). Thereafter, the court heard argument from the parties. (43:5-57:15). The State argued restitution was appropriate since Carpenter was legally responsible for removing the mobile home, and his failure to do so caused the county to incur a \$15,000 loss. (*Id.*). Alternatively, the State requested the court to enter a civil judgment against Carpenter. (*Id.*). Carpenter conceded he may be civilly liable for reimbursing the county but argued that § 29-2280 authorized the court to order restitution only if he had damaged or stolen the county's property, not because the county incurred cost removing an obstruction from the road. (*Id.*). The court disagreed and found the cost incurred by the county was not an expected expenditure but rather a loss caused by Carpenter's crime which could be compensated either by restitution in his criminal case or by a judgment in a separate civil action. (*Id.*).

Carpenter appealed the county court's decision to the district court. (T8). He again argued § 29-2280 authorized restitution only if he

had damaged or stolen the county's property, not because the county incurred costs related to removal. (T23-30; T33-42 (briefs)). The district court disagreed and affirmed the county's court's decision. (T44-48).

ARGUMENT

Carpenter claims both lower courts erred by interpreting § 29-2280 to include the \$15,000 expended by the county sheriff to remove the mobile home from the road. More specifically, he claims § 29-2280 authorizes a court to order restitution only where the defendant has either damaged or stolen the victim's property. The State disagrees.

Section 29-2280 provides in relevant part that “[a] sentencing court may order the defendant to make restitution for the *actual* physical injury or *property damage or loss sustained by the victim as a direct result of the offense* for which the defendant has been convicted.” *State v. Street*, 306 Neb. 380, 387-88 (2020) (emphasis in the original). Section 29-2282 further provides that “if the offense results in damage, destruction, or loss of property, the court may require ... [r]eturn of the property to the victim, if possible.” *Id.* at 388. The purpose of these provisions is to make the victim whole by returning the victim to the position the victim was in before the defendant's actions. *Id.* at 390.

Here, Carpenter was convicted under Neb. Rev. Stat. § 39-301 (Reissue 2016), which makes it a crime to obstruct a public road by leaving any obstruction thereon. The record shows Carpenter left a mobile home on a public road, which created a safety hazard, and that the county sheriff spent \$15,000 to remove it only because Carpenter failed to remove it after being directed to do so. Because money is a form of property, and the cost incurred by the county sheriff directly resulted from Carpenter's criminal conduct, both lower courts correctly found Carpenter could be ordered to pay restitution under § 29-2280.

To the extent Carpenter claims the Legislature did not intend restitution to apply to the cost incurred by the county in this case, his claim is belied by § 39-301, which expressly authorizes any officer in charge of road work, after giving reasonable notice to the owner of the

obstruction or person so obstructing, to remove the obstruction and recover the cost of removal from the owner or obstructor in an action in county court. The term “action” is a comprehensive one and is applicable to almost any proceeding in a court of justice by which an individual pursues that remedy which the law affords. *Champion v. Hall County*, 309 Neb. 55, 76 (2021). Here, the State chose to seek restitution in Carpenter’s criminal case rather than file a separate civil action, although it is entitled to do both. *See* Neb. Rev. Stat. § 29-2287.

CONCLUSION

For the foregoing reasons, the Appellee respectfully requests this Court to affirm the judgment of the district court.

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the word count and typeface requirements of Neb. Ct. R. App. P. § 2-103. This brief contains 1,512 words, excluding this certificate, and was created using Microsoft Word 365.

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Certificate of Service

I hereby certify that on Friday, January 16, 2026 I provided a true and correct copy of this *Brief of Appellee* to the following:

Joshua J Carpenter represented by Lee Matthew Timan (24882) service method: Electronic Service to **lee@nctlaw.net**

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