

S-25-0684 *State of Nebraska* (Appellee) v. *Joshua J. Carpenter* (Appellant)

Appeal from the District Court for Gage County, Judge Rick A. Schreiner on appeal from the County Court for Gage County, Judge Jeffrey A. Gaertig

Attorneys: Melissa R. Vincent (Attorney General's Office) --- Lee Timan (Nelson Clark & Timan, P.C. for Appellant) and Melissa R. Vincent (Asst. Attorney General for Appellee)

Criminal: Obstructing a public road

Appellant was moving a mobile home through rural Gage County when one of the wheel axels broke. The broken axel caused the mobile home to become immobilized, which caused the county road to be blocked. Over the next five (5) days, Appellant unsuccessfully tried to remove the mobile home from the road. To clear the road, the Gage County Sheriff's Office hired a service to move the mobile home from the roadway.

Appellant was later charged with criminal mischief (property damage of less than \$500) and obstructing a public road. Obstructing a public road is a Class V misdemeanor, which is punishable by a maximum fine of \$100 with no jail time. Appellant agreed to plead to the count of obstructing a public road, and the State agreed to dismiss the criminal mischief charge. The parties did not agree on restitution. Restitution is the legal concept of compensating a victim for loss or damage. At a restitution hearing, the sheriff testified about what it paid for the service to move the mobile home off the roadway, and Appellant argued restitution was not appropriate. After the hearing, the county court ordered that Appellant pay \$15,000 in restitution to Gage County.

Appellant appealed to the district court. On appeal, the district court determined that the county court did not err in finding that the expense incurred by Gage County Sheriff's Department was a loss for which restitution may be ordered. However, the district court found that the county court failed to meaningfully consider Appellant's earning capacity, employment status, financial resources, and family or other legal obligations. The district court set aside the restitution and with an order that the county court conduct a new evidentiary hearing on the issue.

On appeal, Appellant argues that the district court erred when it determined that restitution was appropriate. He argues the expense that the sheriff's office incurred to move the mobile home did not qualify for restitution under the Nebraska restitution statutes. That is, he asserts that the cost to move the mobile home was not because he damaged the roadway, and he did not reduce the value of the roadway. He suggests that a civil lawsuit may be an appropriate way for Gage County to recover against him, but he insists that ordering restitution in his criminal case is not authorized by the statute.

The State argues that the statute contemplates awarding restitution in these circumstances. That is, the State cites to language in the statute that permits 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.” The State suggests that restitution is to make the victim whole by returning the victim to the position they were in before the defendant’s actions. The State asserts that the county chose to seek restitution in Appellant’s criminal case rather than file a separate civil action, although it could choose either option.

The parties have filed briefs with the Nebraska Supreme Court, and the case is ready to be argued. Each side will have ten minutes to argue before the Supreme Court and to answer questions from Supreme Court Justices.