

**IN THE SUPREME COURT OF THE STATE OF MONTANA**

No. DA 23-0519

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

LOREN DEAN RAVER,

Defendant and Appellant.

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**BRIEF OF APPELLEE**

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On Appeal from the Montana Thirteenth Judicial District Court,  
Yellowstone County, The Honorable Jessica T. Fehr, Presiding

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## **STATEMENT OF THE ISSUES**

Whether the district court properly ordered restitution for damages to a stolen truck that occurred while the truck was being used and possessed by Appellant.

## **STATEMENT OF THE CASE**

On November 24, 2020, the State charged Loren Dean Raver (Raver) via Information with six counts, including felony theft under Mont. Code Ann. § 45-6-301(1). (Doc. 3.) The State alleged that on November 19, 2020, Raver had exerted unauthorized control over a 2012 Ford F-150 pickup, with the purpose of depriving the owner of possession of the property. (*Id.*) Further, Raver had spools of stolen copper and wiring tools in the bed of the pickup. (Doc. 1 at 2.)

On March 13, 2023, Raver entered into a plea agreement, which included a global resolution of this case, DC-20-1562, and several other pending criminal matters. (Doc. 74 at 3.) In exchange for pleas of nolo contendere to Count II, felony theft for the truck, and Count VI, misdemeanor theft for the stolen copper, the parties agreed to recommend that the district court impose three years to the Department of Corrections, with all three years suspended. (*Id.* at 2.) Raver reserved his right to challenge the restitution amount. (*Id.*)

At the change of plea hearing on March 13, 2023, the district court ordered a presentence investigation. (Doc. 73.) The district court ordered a sentencing hearing for May 17, 2023. (Doc. 78.)

On May 17, 2023, the district court awarded restitution in the amount of \$17,470.36, which reflected \$2,759 to the truck's owner, Stacie Grandpre (Grandpre), and \$14,711.36 to State Farm Insurance. (Docs. 80, 83.)

### **STATEMENT OF THE FACTS**

#### **I. The offense<sup>1</sup>**

On November 19, 2020, a Yellowstone County deputy observed a black Ford F-150 pickup truck that resembled a stolen vehicle that had been discussed at a briefing. The truck had a temporary tag on the rear. The deputy ran the tag number and confirmed that the truck had been stolen. The deputy initiated a stop, and another deputy responded as backup.

The first deputy ordered the driver, identified as Raver, to exit the vehicle. The passenger also exited, and both were placed in handcuffs. The deputies

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<sup>1</sup> All descriptions of the offense in this section are taken from the motion for leave to file an Information and the accompanying affidavit. (Doc. 1.) At no point has Raver refuted those allegations or the court's reliance upon them.

determined that both Raver and the passenger had outstanding warrants for their arrest.

Raver informed the deputies that there was a syringe in the vehicle but no other illegal articles. Raver stated that he got the vehicle from a friend, but was not sure of that individual's name.<sup>2</sup>

Deputies contacted the registered owner of the truck, Grandpre, who gave consent for them to search it. Grandpre informed deputies that she did not know Raver and had not given him permission to drive her truck. During their search, deputies located an empty syringe in the sunglass holder above the center console. In a bag on the back passenger side were two new syringes and a spoon with a crystalline substance on it.

In the bed of the pickup, deputies found some spools of copper wire that were tagged by Montana Rail Link (MRL), as well as some wiring tools. An MRL employee responded to the scene and identified the copper and tools as MRL property that had been taken from an unmanned location.

Grandpre responded to the scene and took possession of her truck.

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<sup>2</sup> The motion for leave to file an Information and supporting affidavit attributed this statement to Raver in the same paragraph that summarized his other post-*Miranda* statements. (Doc. 1 at 2.) At the plea hearing, the State attributed this statement to the passenger. (3/13/23 Tr. at 19-20.)

## II. The restitution hearing

At the May 17, 2023 hearing, the State called Cleve Shaw (Shaw), a claims specialist for State Farm Insurance. (5/17/23 Transcript [Tr.] at 8.) Shaw described his duties as, “I investigate the claims, mostly theft claims or coverage investigations. I obtain, you know, evidence into the claim. I will send assignments for damage reviews, things like that. And then I issue payments based on what the coverage through the policy is able to pay for.” (*Id.*) Shaw identified Grandpre as State Farm’s insured for this case. (*Id.* at 9.)

The State asked Shaw about “Supplement 5,” a seven-page document later made part of the record as State’s Exhibit 1.<sup>3</sup> (*Id.* 10-11.) State’s Exhibit 2 reflected that on February 25, 2021, State Farm requested \$14,986.36 in total restitution,

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<sup>3</sup> Per the district court’s instruction (Tr. at 48), the State organized the restitution documents into seven exhibits, which was apparently done after the hearing. (*See* Doc. 81.) State’s Exhibit 1 was a seven-page document labeled, “Supplement 5,” which showed the total amount of repairs to the stolen truck as \$14,986.36. State’s Exhibit 2 was State Farm’s initial restitution request, dated February 25, 2021. State’s Exhibit 3 was State Farm’s amended request, dated July 2, 2021, which included the rental car payments for an amended total of \$15,711.36. State’s Exhibit 4 documented a payment to Enterprise rental company for \$550. State’s Exhibit 5 documented another payment to Enterprise for \$175. State’s Exhibit 6, titled “Second Amended Restitution Recap,” reflects that Grandpre was requesting a total of \$2,759, and State Farm was requesting \$14,711.36. State’s Exhibit 7 was Grandpre’s Affidavit in Support of Financial Loss, which included her \$1,000 deductible and \$1,759.99, which was the replacement cost of hunting gear that was in Grandpre’s truck when it was stolen.

which included \$13,986.36 for State Farm's payments and \$1,000 for Grandpre's deductible. (*Id.* at 11; State's Ex. 2.)

On July 2, 2021, State Farm submitted an amended restitution request that reflected payments to Grandpre for her to drive a rental while her truck was being repaired. (Tr. at 12; State's Ex. 3.) Documentation of the rental car payments was introduced into evidence as State's Exhibits 4 and 5. (Tr. at 14-15.) Based on those payments, the total amount of restitution State Farm requested was increased to \$15,711.36. (*Id.* at 12; State's Ex. 6.)

During his cross-examination, Shaw clarified that the date of loss of the pickup was November 13, 2020, and it was recovered on November 19, 2020. (Tr. at 19.) When Raver's attorney asked why State Farm paid for a replacement engine for the pickup, Shaw explained, "When we inspected the engine at the repair facility's request, they demonstrated that the engine had damages that were not reparable. We deemed them to be related to the theft." (*Id.* at 28.)

Their exchange continued:

Q. And how did you deem them to be related to the theft?

A. The insured stated that the damages were not there prior to the theft.

Q. Any other investigation into that?

A. We would have spoken with the insured, we would have looked for additional claims for the vehicle, if any had existed, and we found none. I believe.

So it basically came down to, you know, the insured stated that the vehicle was running fine prior to the vehicle being stolen, and then when it was recovered, it had issues and when it went to the mechanic, the mechanic found damage in the engine that was apparently from the seven days while it was gone.

*(Id. at 28-29.)*

During his redirect examination, the State asked Shaw to clarify the entries on [State's Exhibit 1]. Shaw responded:

Okay. Yeah. So these items would be items that we have inspected, either physically or through documented photos that were submitted to us either from a repair facility, or it can be an insured or what have you, but there's documentation that there was damage to these items, and the investigation of the claim determined that the damage to these items most likely happened during the theft. That means that we do not have any proof or anything that it didn't happen during the theft and, therefore, we are going to cover it as related damage to the theft.

*(Id. at 30-31.)* Shaw continued:

There was just nothing out there that supported that our insured, you know, was—was reporting damages to us that were—or at least nothing that we had—that we were able to review that would suggest that they were reporting damages that were prior or preexisting.

Q. Mm-hmm. And did these damages in Supplement[] 5, [State's Exhibit 1,] did they all exist?

A. Yes.

Q. Okay. And did you determine that they resulted from the criminal conduct of the thief or whoever had this—

A. Yes.

Q. —truck without authority?

A. Yes.

(*Id.* at 33.)

Raver testified at the hearing. (*Id.* at 36.) He admitted that he had possessed the stolen truck for seven days. (*Id.* at 37.) Raver alleged that the truck “sat in [his] yard” for those seven days, and when police caught him driving it, he had driven it for a total of “[f]ive blocks.” (*Id.* at 37-38.)

Raver testified that he knew there was nothing wrong with the vehicle’s engine because he was a mechanic, and that if something were wrong, he would have fixed it. (*Id.* at 38.) Raver denied observing anything “overtly apparent” that was wrong with the body of the truck. (*Id.*) Despite claiming that he had only driven the truck for five blocks, Raver admitted that he “dirtied it up” on both the inside and the exterior. (*Id.* at 39.)

Raver objected to restitution, with the exception of \$250 in cleaning expenses identified as “line item 60 of Supplement 5.” (*Id.* at 42; *see also* State’s Ex. 1 at 4.) Additionally, Raver did not object to restitution for the payment of Grandpre’s rental car expenses. (Tr. at 42; *see also* State’s Exs. 4 and 5.) Based upon those amounts, Raver’s attorney asked the district court to order total restitution in the amount of \$975. (Tr. at 43.)

The district court addressed Raver directly, and stated, “At the end of the day, Mr. Raver, you have been a one-man wrecking crew in this county. Every

time I let you out, you get popped two, three, maybe if I'm lucky, four days later in a car with another lady with more drugs.” (*Id.* at 45.)

The district court continued:

I can't even count the number of times we've had [this] conversation, in the five years that I've been on the bench.

You participated in and were a party to thefts from community members, that took time, energy, money, because you took it. And now we're arguing about whether you should pay original cost or replacement cost. That's probably a fight that [Grandpre] had to have with her insurance company because of what you participated in. And now you're trying to say, you don't want to pay what the insurance company paid because she is lying.

(*Id.* at 47-48.) The district court found that there was a causal connection between

Raver's use of the stolen truck and the damage that occurred, stating:

I do find from the testimony of the State Farm representative, as well as the attachments—and they all need to be specifically marked as exhibits, Ms. Gallagher . . . that there is a reasonable and causative connection between the damage to that vehicle, your participation in the theft and then use of that vehicle.

(*Id.* at 48.)

The district court added:

I get it, it's an old truck, I get it, the truck had issues. But you know what, the truck was drivable, and the truck was functioning before you had it. And then what we hear from the insurance representative, is that when you were done with it, they had to replace all kinds of parts. And now you are arguing, well, I didn't do that damage, when I had it stolen, and I was using drugs and I was running around the community stealing copper from Montana Rail Link, I didn't do any damage to the vehicle.

When somebody says it out loud, can you—I know, I can see it registering in your head, Mr. Raver, that you[’re] understanding where I am coming from.

[RAVER]: I am.

(*Id.*) The district court concluded:

I will make the specific finding as set forth based on the evidence today and the exhibits, which will become of record by the State, as well as the restitution recap and supportive documentation and the testimony of the insurance representative today, that Ms. Grandpre, the victim of this crime, is absolutely entitled to \$1,759.99 in restitution.

(*Id.* at 49.)

The district court clarified that “[\$]1759 is for the items that were in the vehicle that were stolen, that had to be replaced. \$1,000 is the deductible for the damage to the vehicle that had to be paid for by State Farm . . . \$14,711.36 to State Farm will be awarded as restitution.” (*Id.* at 50.)

On appeal, Raver has abandoned his challenge to restitution for the hunting gear that was stolen from Grandpre’s truck, conceding that the restitution order should account for “cost of rental cars, truck cleaning, and hunting gear.”

(Appellant’s Br. at 11.) Based upon that concession, he now alleges that the proper amount of restitution should be \$2,734.99.<sup>4</sup> (*Id.*)

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<sup>4</sup> The cleaning costs were \$250. (State’s Ex. 1 at 4.) The replacement value of the stolen hunting gear was \$1,759.99. (State’s Ex. 7 at 1-2.) Rental car expenses totaled \$725. (State’s Exs. 4 and 5.)

## SUMMARY OF THE ARGUMENT

The district court correctly found that Raver was responsible for damages to the stolen truck he unlawfully possessed for seven days and used to transport stolen property. This finding was supported by substantial record evidence, including a mechanical inspection that revealed damages to the engine that were not reparable, Grandpre's indications to State Farm that the damages documented in State's Exhibit 1 did not exist prior to the theft, and Grandpre's affidavit stating that Raver had ruined her truck.

The district court was familiar with Raver, and logically determined that his testimony that he did not damage the truck during the seven days he possessed it, while he "dirtied it up" and used it to haul stolen property, was not credible.

## ARGUMENT

### **I. Standard of review**

Restitution orders present mixed questions of law and fact, which this Court reviews de novo. *State v. Cleveland*, 2018 MT 199, ¶ 7, 392 Mont. 338, 432 P.3d 1074. This Court reviews the appropriateness of imposing restitution for correctness and a district court's findings regarding the amount of restitution to determine whether they are clearly erroneous. *Cleveland*, ¶ 7; *State v. Pierre*, 2020 MT 160, ¶ 10, 400 Mont. 283, 466 P.3d 494 (restitution orders are reviewed

for compliance with Mont. Code Ann. §§ 46-18-241 through -249). This Court finds clear error where the findings are not supported by substantial evidence.

*State v. Dodson*, 2011 MT 302, ¶ 8, 363 Mont. 63, 265 P.3d 1254.

A finding of fact is clearly erroneous if it is not supported by substantial evidence, if the lower court has misapprehended the effect of the evidence, or if this Court’s review of the record convinces it that the lower court made a mistake. *State v. Passwater*, 2015 MT 159, ¶ 9, 379 Mont. 372, 350 P.3d 382 (citing *State v. Aragon*, 2014 MT 89, ¶ 9, 379 Mont. 391, 321 P.3d 841). “Substantial evidence ‘is evidence that a reasonable mind might accept as adequate to support a conclusion; it consists of more than a mere scintilla of evidence, but may be somewhat less than a preponderance.’” *Aragon*, ¶ 9 (quoting *State v. Jent*, 2013 MT 93, ¶ 10, 369 Mont. 468, 299 P.3d 332).

## **II. The district court correctly ordered restitution for damages that occurred while Raver used and possessed the stolen truck.**

### **A. Applicable law**

A sentencing judge must require a convicted person to make “full restitution” to a crime victim who has suffered a pecuniary loss. *State v. Simpson*, 2014 MT 175, ¶ 10, 375 Mont. 393, 328 P.3d 1144; Mont. Code Ann. § 46-18-201(5). “The measure of the restitution is ‘all special damages . . . substantiated by evidence in the record’ that the victim could recover in a civil action based on the

same facts or events.” *State v. McClelland*, 2015 MT 281, ¶ 9, 381 Mont. 164, 357 P.3d 906 (quoting Mont. Code Ann. § 46-18-243(1)). Restitution is not a criminal punishment, but is a civil remedy administered by the courts for the convenience of victims. *McClelland*, ¶ 10. Montana’s Rules of Evidence do not apply at sentencing, although a defendant has a due process right to explain, argue, and rebut any information presented at the hearing. *Aragon*, ¶ 12.

The sentencing court may find the requisite causal nexus for restitution, between an offender’s admitted or adjudicated criminal conduct and the asserted victim loss, upon an admission, by implication from proof of the elements of the charged offense, upon victim affidavits included with a PSI, or upon other evidence presented at or incident to sentencing.

*Pierre*, ¶ 13.

Under Mont. Code Ann. §§ 46-18-201(5) and -241(1), if a person has been found guilty of an offense and the sentencing judge finds that any “victim” has sustained a “pecuniary loss,” the sentencing judge shall, as part of the sentence, require the offender to pay full restitution to the victim.

“Thus, a sentencing judge is not only authorized, but required to impose a restitution obligation on the offender if a person has suffered loss of property as a result of the commission of the offense.” *State v. Breeding*, 2008 MT 162, ¶ 13, 343 Mont. 323, 184 P.3d 313.

**B. The district court correctly found a causal nexus between the underlying offense and the pecuniary loss.**

First of all, the damage to the stolen truck giving rise to the restitution claim in this case was well-documented and did exist. (Tr. at 33; *see also* State's Ex. 1.)

As Shaw testified:

There was just nothing out there that supported that our insured, you know, was—was reporting damages to us that were—or at least nothing that we had—that we were able to review that would suggest that they were reporting damages that were prior or preexisting.

Q. Mm-hmm. And did these damages in Supplement[] 5, [Exhibit 1,] did they all exist?

A. Yes.

(Tr. at 33.)

Further, Grandpre's pickup was drivable prior to Raver stealing it or receiving it from his mystery friend. When officers caught Raver using the pickup to haul stolen property and it was returned to Grandpre, it was no longer in that condition.

As Shaw testified, "When we inspected the engine at the repair facility's request, they demonstrated that the engine had damages that were not reparable. We deemed them to be related to the theft." (*Id.* at 28.) The damages were deemed to be related to the theft because Grandpre specifically indicated that the damages "*were not there prior to the theft.*" (*Id.* (emphasis added).) As Shaw summarized:

So it basically came down to, you know, the insured stated that the vehicle was running fine prior to the vehicle being stolen, and then when it was recovered, it had issues and when it went to the

mechanic, the mechanic found damage in the engine that was apparently from the seven days while it was gone.

*(Id. at 28-29.)*

Raver contends that the statement in Grandpre's affidavit, that Raver "ruined" her truck, is "vague" and "speculative." (Appellant's Br. at 16.) However, Grandpre's affidavit was accompanied by documentation of the extensive work that was required to make the truck drivable again. (State's Ex. 1.) That documentation revealed that Grandpre's statement that Raver ruined her truck, while succinct, was a fairly accurate description of what Raver did to the truck as opposed to being vague or speculative.

Further, as the district court found:

I do find from the testimony of the State Farm representative, as well as the attachments—and they all need to be specifically marked as exhibits, Ms. Gallagher . . . that there is a reasonable and causative connection between the damage to that vehicle, your participation in the theft and then use of that vehicle.

*(Tr. at 48.)*

In other words, the district court found Grandpre's affidavit and Shaw's testimony credible. Both were corroborated by significant documentation, as well as Grandpre's statements to State Farm that the damages were not present when the pickup was stolen.

By contrast, the only evidence to support Raver's contention that he did not cause damage to the stolen truck was his own self-serving testimony. Raver's

claim that the truck sat in his yard for seven days and he had only driven the truck for “five blocks” prior to being stopped by police was suspect on its face. The district court, which was familiar with Raver, logically found that his testimony lacked credibility.

As the district court explained:

I get it, it’s an old truck, I get it, the truck had issues. But you know what, the truck was drivable, and the truck was functioning before you had it. And then what we hear from the insurance representative, is that when you were done with it, they had to replace all kinds of parts. And now you are arguing, well, I didn’t do that damage, when I had it stolen, and I was using drugs and I was running around the community stealing copper from Montana Rail Link, I didn’t do any damage to the vehicle.

(*Id.*)

This Court has observed, “The weight of evidence and the credibility of witnesses are exclusively within the province of the trier of fact, and we will not reweigh the evidence or the credibility of witnesses.” *State v. Zimmerman*, 2018 MT 94, ¶ 20, 391 Mont. 210, 417 P.3d 289 (quoting *State v. Nixon*, 2012 MT 316, ¶ 21, 367 Mont. 495, 291 P.3d 1154). This is logical because “[t]he trial court is in the best position to judge the credibility and demeanor of the witnesses and their testimony.” *Aragon*, ¶ 17 (quoting *Langford v. State*, 2013 MT 265, ¶ 17, 372 Mont. 14, 309 P.3d 993 (citing *State v. Lally*, 2008 MT 452, ¶ 24, 348 Mont. 59, 199 P.3d 818)).

In support of his argument that the district court erred in finding a causal connection between his unlawful use and possession of the truck and the damages to it, Raver relies primarily upon this Court's precedent in *Aragon, supra, Pierre, supra*, and *State v. Cole*, 2020 MT 259, 401 Mont. 502, 474 P.3d 323. (Appellant's Br. at 13-16.) These cases are readily distinguishable.

In *Aragon*, the victim asked for restitution to paint her entire house after the defendant had crashed his car into her garage. *Aragon*, ¶¶ 4, 6. In reversing the district court's restitution order, this Court reasoned:

However, the sentencing court here did not judge the credibility or demeanor of witnesses or their testimony, as there were none. Rather, the court was presented only with two estimates with significantly differing amounts, entirely devoid of context or explanation about the difference between the two.

*Aragon*, ¶ 17.

In this case, the district court's decision was undeniably based upon a credibility determination, and Raver does not contend otherwise. "The court received conflicting evidence whether the damage existed before the theft or was incurred afterward. [Raver] testified that he did not damage the truck."

(Appellant's Br. at 20-21.) As was exclusively within its province, the district court was persuaded by Shaw's testimony, Grandpre's affidavit, and the corroborating documents, and found that Raver's testimony was not credible.

*Pierre* involved multiple defendants who committed burglaries at a “main house” and a “guest house” belonging to the same victims. *Pierre*, ¶ 3. Pierre admitted that he entered the guest house on one occasion and removed collectible dolls found inside. *Id.* ¶ 4. He adamantly denied ever entering the main house or otherwise aiding the others in the commission of any main house burglary or theft. *Id.*

In reversing the district court’s order for joint and several restitution, this Court determined that there was “no record evidence that [Pierre’s] admitted commission of the guest house burglary directly caused any pecuniary loss resulting from any burglary of the main house . . . by others.” *Pierre*, ¶ 22.

Here, it is not disputed that Raver entered, used, and possessed the stolen truck for seven days. On appeal, Raver functionally admits that he emptied the truck of over \$1,700 worth of hunting gear. (Appellant’s Br. at 11.) Further, Raver admitted that he “dirtied it up,” and was using the stolen truck to transport stolen property. (Tr. at 39.) The holding in *Pierre*, where the State had “no record evidence” connecting the defendant to the damaged property, is not relevant here. The State presented overwhelming, undisputed evidence showing Raver used and possessed the damaged property for a week.

In *Cole*, this Court followed the holding of *Pierre*, and concluded that the record did not contain sufficient evidence of a causal connection between the

defendant's conduct and the damages he was being ordered to pay. *Cole*, ¶¶ 6, 11, 14.

Cole pleaded guilty to criminal possession of dangerous drugs and criminal possession of drug paraphernalia after law enforcement discovered methamphetamine and a pipe in his bedroom. *Id.* ¶¶ 4-6. The prosecutor clarified Cole's plea agreement as follows:

I want to be clear that there were multiple residents in the apartment, and we've only charged him with what we thought was in his bedroom, or at least we're dismissing the third count, would have been accountability for the other drugs in the other bedrooms. We are intending to proceed against codefendants with what was in their bedrooms . . . Mr. Cole is only taking responsibility for what was in his.

*Cole*, ¶ 6.

The victim claimed restitution for renovations to the entire apartment. *Cole*, ¶ 8. The district court imposed the full amount of restitution requested. *Id.* In overturning the restitution order, this Court held, "There was no evidence the criminal conduct to which Cole admitted and pled caused any damage to the apartment." *Id.* ¶ 16. This Court reasoned, "[I]t is too great a leap to conclude that since Cole possessed methamphetamine and a glass pipe [in his bedroom], that he caused over \$30,000 of damage to the apartment." *Id.* ¶ 17.

There is no such leap to be made in this case. Whether it was Raver or his mystery friend who initially stole the truck, it is not contested that Raver possessed

the stolen truck for seven days. (Tr. at 19, 37.) Raver admitted that during this time, he “dirtied it up,” and that he was using the stolen truck to haul stolen copper. (*Id.* at 39.)

When the truck was returned to Grandpre, it had sustained substantial damage and was no longer drivable. Consistent with the district court’s findings, the damage *necessarily* occurred while Raver used and possessed the stolen pickup. Raver pleaded guilty to a felony for that unlawful use and possession of Grandpre’s truck. There is a causal nexus between Raver’s criminal conduct and the pecuniary loss to the victims. Therefore, the district court was required to order restitution for the full amount of the damage.

Raver, a mechanic himself (*id.* at 38), had an opportunity to rebut the State’s evidence or present evidence that it was his mystery friend who damaged the truck. (*See* Appellant’s Br. at 20: “Whoever stole it may have caused some damage.”) A defendant has a due process right to “‘explain, argue, and rebut any information’ presented at sentencing.” *Aragon*, ¶ 12 (quoting *State v. Roedel*, 2007 MT 291, ¶ 65, 339 Mont. 489, 171 P.3d 694).

Importantly, Raver did not deny causing damage to the stolen pickup, nor did he blame his mystery friend. Raver testified that the damage did not exist. (Tr. at 38-40.) This feeble attempt to rebut the State’s evidence was not credible,

and Raver acknowledged as much during the following exchange with the district court:

[THE COURT:] I get it, it's an old truck, I get it, the truck had issues. But you know what, the truck was drivable, and the truck was functioning before you had it. And then what we hear from the insurance representative, is that when you were done with it, they had to replace all kinds of parts. And now you are arguing, well, I didn't do that damage, when I had it stolen, and I was using drugs and I was running around the community stealing copper from Montana Rail Link, I didn't do any damage to the vehicle.

When somebody says it out loud, can you—I know, I can see it registering in your head, Mr. Raver, that you[’re] understanding where I am coming from.

[RAVER:] I am.

(*Id.* at 48.)

### **C. The rear bumper**

Raver claims, “A photo from before the theft showed the bumper was tied together, or tied to the pickup, with camo string.” (Appellant’s Br. at 26.) No one bothered to make this photograph part of the record. This Court is left with vague descriptions of a string tied to the rear bumper, and Raver’s attorney’s summation of Grandpre’s description to police that the “driver side bumper [was] tied with camo string.” (Tr. at 26.)

Shaw, while observing the photograph, testified, “I see a green string, I have no idea what it’s doing there.” (*Id.*) When asked if he recalled whether the rear bumper had any issues, Raver responded, “No, just that it was tied up.” (*Id.* at 38.)

No preexisting damage to the rear bumper was or can be identified from this record, and the district court's order should be affirmed.

### **CONCLUSION**

The district court's order for restitution, which amounted to a credibility determination that was supported by substantial record evidence, should be affirmed.

Respectfully submitted this 15th day of November, 2024.

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## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 4,968 words, excluding the cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature blocks, and any appendices.

*/s/ Thad Tudor*  
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## **CERTIFICATE OF SERVICE**

I, Thad Nathan Tudor, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 10-24-2024:

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