IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. DA 24-0706

STATE OF MONTANA,

Plaintiff and Appellee,

vs.

TRISHA LYNN PETERSON,

Defendant and Appellant

APPELLANT'S REPLY BRIEF

On Appeal from the 7th Judicial District Court
Dawson County, Montana Cause No. DC 11-2024-09-IN
The Honorable Olivia Rieger

Appearances

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FACTUAL MATTERS TO BE CLARIFIED

There are a few factual matters where Peterson and the State disagree regarding what the record contains. Those matters will be addressed in this section.

The State claims "The evidence established that the only station that was available to Guetter was the newer model, which costed [sic] $21,050." *Appellee's Br.*, Pg. 15. The record does not establish this. The evidence established it was the *only model available from All Paws Pet Wash*. That is significantly different than no model being available anywhere when we all have internet access one click away on our phones. The record shows Guetter did not contact anyone other than All Paws. He conducted no research on whether a used dog wash station was available. He asked All Paws if they had replacement doors. They did not. Then he got an estimate for a brand-new machine. *Sent./Rest. Transcr.*, 41:14-41:20. .

The State claims Peterson's attorney did not mention an inability to pay restitution. *Appellee's Br.*, Pg. 7. Peterson believes the record indicates otherwise. While Peterson did not testify, her attorney filed *Defense Memorandum Restitution and Fees*. Dkt. 24 (Sept. 27, 2024). Therein, Peterson presented a full page of legal authority regarding how ability to pay is determined. She then presented a page of argument as to why Peterson was not able to pay, including her status as in inmate, obligations to multiple victims, previously incurred debt and means by which to make payments. Dkt. 24, Pgs. 4-5. The record indicates Peterson did present evidence and argument pertaining to the issue of inability to pay.

The State claimed no evidence was presented by Peterson that showed an inability to pay. *Appellee's Br.*, Pg. 11. Peterson does not agree. The record reflects Peterson lives in Glendive, Montana. She earns approximately $1,400 per month, which is more than minimum wage. She is behind on her automobile loan

payment and her phone bill. She has a ten-year-old son and she intends to work to transfer her probation to North Dakota so she can be with him. She moved in with her mother because her mother needed help. Peterson is a high school graduate who flunked out of college after one semester. A mental health evaluation indicates she was at risk for mental health complications outside those related to stimulant use. PSI, Dkt. 20(July 24, 2025). Contrary to the State's representations, the record contains evidence pertaining to Peterson's inability to pay.

The State claims Peterson agreed to pay full restitution, then argued she couldn't. *Appellee's Br.*, Pg. 11. The implication is that Peterson agreed to pay $23,950 when she signed the *Plea Agreement.* Peterson does not believe the record supports the State's statement or the implications. On June 10, 2024, Peterson signed a plea agreement agreeing to pay "all restitution to Get er' Clean Car Wash." Dkt. 13, Pg. 3. A month later, she learned that, rather than the cost of repair or replacement, the State was arguing she was obligated to pay the cost of a newer model dog wash station, brand new from the manufacturer. *PSI*, Dkt. 20, Affidavit of Victim Pecuniary Loss, executed July 24, 2024. Had the State presented evidence consistent with this Court's requirements for determination of property damages, there would not have been an issue. The cost of the dog wash machine, brand new and four years before the hearing, was $17,000. Use and time resulted in depreciation. Peterson agreed to pay restitution in a legal amount and then the State decided to seek restitution in excess of what the law supports. The record does not support a claim that Peterson breached her agreement with the State and implications to the contrary are not well taken.

The State claims the brand new 2024 dog wash station was "the only station that was available to Guetter." *Appellee's Br.*, Pg. 15. The record does not support this and the issue is not whether a 2020 used dog wash station was "available." The issue is what the 2020 used dog wash station was worth. As to the State's

claim that the newer station was the only one available, the evidence does not support that. The evidence shows that Guetter asked *one* manufacturer if it had a 2020 model in stock. Not surprisingly, that manufacturer said no. Guetter then obtained an estimate for a 2024 brand new machine. *Sent./Rest. Transcr.*, 41:14-41:20. His efforts stopped there. The record does not establish that it is impossible to value a 2020 used dog wash machine or that one could not be found. The record establishes that the manufacturer no longer made that particular station and Guetter stopped investigating.

The State claims Guetter did not know how much money he had spent on replacement parts. *Appellee's Br.*, Pg. 7. The record shows Guetter had this information in his actual possession and chose not to bring it to court on the day of sentencing. He actually testified he was "sure" he had records of what he'd spent on replacement parts for the machine. *Sent./Rest. Transcr.*, 32:22-33:1. He has constructive knowledge of the amounts he spent on the dog wash station.

The State claims "Peterson's assertion that she is only responsible for $300 in restitution does not align with the record. At a minimum, Peterson pleaded guilty and admitted to causing over $1,500 in damage to Guetter's property." While Peterson admitted to causing over $1,500 in damage, the district court was obligated to award restitution based on the evidence presented and the State had the burden of proof to present that evidence. The State presented two pieces of evidence pertaining to the amount of damage caused. Guetter spent $300 in replacement parts. *Sent./Rest. Transcr.*, 28:24-29:11. A brand new 2024 model of a different machine cost $23,050. While the State argues that Peterson's representation that the record only supports a total of $300 spent on repairs, it is unable to cite evidence that would show what was spent. The district court could not speculate as to damages in an effort to compensate the victim. While Guetter testified that replacement was cheaper than repair, he eventually conceded he had

no idea how much it would cost to repair it. He didn't bring information with him that would establish the amounts he spent. As to evidence which can support a restitution hearing, the only evidence supports an award of no more than $300. The State correctly notes Peterson admitted there was more than $1,500 in damages. The State just failed to establish that damage by anything more than speculation as to the cost of repairs.

ARGUMENT

I. Appellee completely failed to address legal authority stating an injured party is "not entitled to compensation on the basis of similar property in a brand-new condition."

Appellee argues Guetter's testimony was credible, the district court is in the best position to evaluate credibility and therefore, this Court should affirm the district court's decision. This argument glosses over the real issue, which has never been credibility. This is not an issue where one party presented evidence to show that a 2020 dog wash machine in used condition was worth $21,500 and another party said it was worth $1,000. The issue is the district court did not apply the correct legal standard for valuing the damaged property.

The standards for determining the value of used property are abundantly clear. Injured persons are not entitled to compensation on the basis of similar property in a brand-new condition. *Spackman v. Ralph M. Parsons Co.* (1966), 147 Mont. 500, 507, 414 P.2d 918. Recovery may ordinarily not exceed the value of the property just before it was damaged. *Id.* Appellant cited numerous cases establishing that Guetter was either entitled to the cost of repairing the 2020 dog wash machine in new condition or the amount it would take Guetter to purchase a used 2020 dog wash machine. *Lampi v. Speed*, 2011 MT 231, ¶ 21, 362, Mont. 122, 261 P.3d 1000. MPI2d 25.40. *Bos v. Dolojak* (1975), 167 Mont. 1, 6, 534 P.2d 1258, 1262.

Appellee could not explain how these cases were inapplicable. Appellee could point to no facts in the record to establish the value of the new machine was equivalent to the value of an older used machine. Appellee wasn't able to present the Court with legal authority stating the case law doesn't apply if the damaged property was a dog wash machine. Appellee wasn't able to present case law that states if it is difficult to find a similar piece of property in used condition, the injured party is entitled to compensation on the basis of a more convenient and more readily available option. Appellee utterly failed to address how the law pertaining to how property damage is determined supports the State's position.

Appellee then tries to blame Peterson for the lack of evidence pertaining to the cost of a used 2020 dog wash machine and concludes, since Guetter is credible, the district court had to award Guetter the cost of a brand-new dog wash machine because Peterson didn't present any other evidence. Such an argument asks this Court to ignore decades of case law holding that an injured party is *not* entitled to the cost of a similar item in brand new condition and numerous cases stating the State has the burden of proof. It also seeks to hold Peterson responsible for the State's failure to meet its burden of proof. The State had the burden of proof. That burden did not shift to Peterson simply because the State's wouldn't investigate and present evidence pertaining to the value of the machine Guetter owned.

The State strenuously argues a 2020 used dog wash machine was not available from the manufacturer and therefore the district court had no choice but to award the cost of a new machine. This is not correct. As vehicles are one of the most common items damaged, they offer significant insight into how this Court values used property. Assume a 2000 Chevrolet Silverado pickup in mint condition with 50,000 miles is totaled in an accident. The injured party will *never* be able to obtain a twenty-five-year-old Silverado in mint condition with 50,000 miles on it. Nor will he ever be able to buy a 2000 Silverado from the

manufacturer in 2025. Nonetheless, that person is not entitled to the $52,000 necessary to buy a 2025 brand new Chevrolet Silverado with zero miles on it. That the Chevrolet manufacturer does not have a 2000 Silverado on hand for sale in 2025 does not entitle the owner to stop his investigation there, throw his hands up, and claim he needs to be reimbursed in the amount of a new Silverado. Rather, he has to conduct research on the market value of the 2000 Chevrolet. In all likelihood, despite its condition and low miles, it isn't worth much *because it's old*. This Court has repeatedly acknowledged that there will be some instances where an item is nearly impossible to replace and it still holds the injured party is not entitled to the amount of money necessary to buy a newer item. A dog wash station is not an exception to this rule.

Plaintiff is not contesting Guetter's testimony for purposes of this appeal. Guetter contacted All Paws Pet Wash trying to find replacement doors. All Paws Pet Wash was not able to accommodate this request as it does not "sell each individual part. Like the door, for example." *Sent./Rest. Tr*., 18:13-18:20. All Paws did not sell individual parts of the dog wash machines and, on that basis, stated that it would be cheaper to buy a new machine than to repair the old machine. *Id.* Absent from the record is any evidence that it would be cheaper to by a new machine than to buy a 2020 dog wash station in used condition.

An owner of a 2000 Chevrolet Silverado who cannot obtain a replacement from the manufacturer after an accident in 2025 is not entitled to a 2025 Chevrolet Silverado. Nor can Guetter be awarded restitution in the amount of a brand new 2024 dog was machine simply because All Paws, a manufacture, did not carry a 2020 dog wash machine. Guetter had the same obligation as the owner of the pretend 2000 Chevrolet Silverado; he had to research the market value of the damaged item from sources other than the manufacture. As he failed to present evidence that would establish the value of the 2020 dog wash station in used

condition, the district court erred in awarding him anything more then the few hundred dollars he spent on replacement parts.

II. Guetter's attempts to mitigate his damages were not reasonable.

The State argues Guetter, a non-expert in repairing dog wash stations, made reasonable efforts to mitigate his damages by repairing a few pieces, failing, and deciding he was entitled to a new machine. Here, again, Peterson is not contesting Guetter's credibility in the context of this appeal. Peterson's position is that based on his testimony, the facts he provided do not establish reasonable efforts to mitigate his damages.

The State goes to extensive lengths to hammer on the idea that Guetter did not request lost profits from the machine. The subliminal message is that since Guetter did not request lost wages, it's not a big deal if the district court awarded too much in restitution for the damaged machine because Guetter should be getting lost wages. The Court should reject any temptation to accept this. Guetter did not present evidence of lost wages. He testified the machine still isn't working seventy-percent of the time. Guetter had insurance. If this machine was generating income, a reasonable person would have turned the damage in to the insurance carrier to obtain the proceeds necessary to get an income generating asset up and running. That Guetter was so indifferent in his approach to fixing, or replacing, an income generating asset indicates the asset was likely not actually generating income. The Court should not be swayed by Guetter's implication that he is entitled to an inflated replacement value because he did not request lost wages.

Guetter was not skilled in repairing dog wash machines. He stated he didn't know why the electrical wasn't working and excused this lack of knowledge because he isn't an electrician. As to his efforts, he stated:

> I did not call a machine shop for cutting a new door. I did not call welders to cut out metal and re-weld anything in. I simply got the estimates for replacing another machine.

Assuming Guetter is credible, his own testimony establishes that he didn't take mitigation seriously. He didn't believe he was required to "take the depreciation". *Sent./Rest. Transcr.* 43:1-43:13. He "simply got estimates for replacing another machine." Guetter got frustrated because he was the victim of a criminal act and decided to just get estimates for replacement. The mitigation efforts were not reasonable.

III. Peterson's ability to pay was not appropriately considered.

The unrefuted facts before the district court reflect an average monthly income of $1,400, an income that exceeds minimum wage. The district court found Peterson to be capable of employment. It did not find Peterson to be capable of employment in a capacity that earns more than $1,400 per month.

The State asks the Court to assume that since Peterson was able to procure a $15,000 truck loan, her financial situation was not dire. *Appellee's Br.*, Pg. 17. This argument asks the Court to speculate about a whole lot. First, the only evidence in the record is that Peterson has debts in the amount of $12,000, which covers an auto and a phone. *Presentence Investigation*, Pg. 2. There's no indication as to how much debt is the auto and how much is the phone. The nature of the auto loan, or its origin, is not established. Did a parent or friend co-sign? The record is clear Peterson gets financial assistance from her mother, friends and son's paternal grandparents. Did a parent buy the vehicle for Peterson on the condition that Peterson would eventually pay the parent? PSI, Pg. 9. Peterson is not asking the Court to speculate about where the loan came from. She is asking the Court not to speculate, as claimed by the State, that Peterson obtained "a

significant automobile loan which she has paid down by at least a few thousand dollars." *Appellee's Br.*, Pg. 17. The evidence simply doesn't support the State's claim.

The State's indication that Peterson does not have monthly expenses is also not supported by the record. She moved in with her mother to help out because the mother's boyfriend went to prison. The Presentence Investigation reports Peterson is behind on the auto loan and her phone bill. She wants her probation transferred to North Dakota so she can be with her ten-year-old son.

The State correctly notes Peterson does not contest that she is thirty-three, in good health and employable. This is, again, an issue where the State misses the point, or attempts to sidestep the issue. Peterson is employed. She is generating an income in an amount higher than minimum wage. Unfortunately, that income is still $1,400 per month. She is a high school graduate who flunked out of college. The State advises the Court she is not responsible for children. Appellant's Br., Pg. 17. The record actually reflects that she has a ten-year-old child, has legal custody of that child and intends to work to transfer her probation to North Dakota to be with her son.

Peterson does not claim she's not employable. The problem is the level of income she can obtain, which is miniscule. She cannot support a child, pay her own living expenses and pay $21,500 in restitution.

As a final note, the State argues Peterson agreed to pay restitution and then violated that agreement. *Appellee's Br*., Pg. 11. This is ridiculously unfair. Peterson did agree to pay restitution and she intends to follow through on that agreement. She could not have foreseen that the State would argue for a measure of damages this Court has repeatedly rejected. The legal authority setting forth how the amount of restitution is calculated is presented in Peterson's opening brief. Lawyers and courts are to uphold the law. The State did not start arguing Guetter

was entitled to the cost of a 2024 brand-new model dog wash machine until *after Peterson signed her plea agreement*. Had the district court awarded restitution based on the applicable legal authority and the evidence presented – less than $1,000 – there would not be an issue of Peterson's ability to pay. It is not beyond comprehension that when Peterson agreed to pay full restitution, she expected the prosecutor and the district court to obey this Court's directives in setting the amount.

"Full restitution" is the amount to repair the damage or to replace a 2020 used dog wash station. Peterson never agreed to pay restitution in excess of that supported by applicable legal authorities. The State has no valid basis for claiming Peterson agreed to pay restitution and then changed her mind by arguing $23,950 was beyond her means. If the Court is going to change the prior standards applicable to evaluating property damage, it also needs to consider that Peterson has no ability to pay over $20,000 in restitution.

IV. The evidence presented by Guetter and the State supports a restitution award in the amount of $300 and no more.

The State chose not to present evidence as to what a 2020 dog wash station in used condition is worth. The district court cannot rescue the State from its failure by imposing restitution based on what a brand new 2024 model dog was station is worth. The only remaining evidence to consider, because the State didn't present any other information, is the amount Guetter paid for repairs to the machine. Guetter had that information in his possession and chose not to bring it to court. Thus, the only facts given to the district court as to costs of repair were that Guetter spent $300 on hinges but repaired or replaced additional. While everyone might "know" Guetter spent more than $300 to repair the machine, he chose not to present that evidence. By all appearances, this was a strategic decision as he

wanted a restitution award far in excess of the amounts he actually paid. The Court is not in a position to rescue injured persons from their strategic litigation decisions. The State chose to present evidence that 1) Guetter spent at least $300 on repairs and 2) a brand-new machine cost $23,950. To award the latter gave Guetter illegal relief. He is stuck with the evidence presented, which shows that he is entitled to restitution in the amount of $300.

CONCLUSION

Whether a replacement property is available has never been this Court's method of valuing damage to property. The measure of value is 1) the difference between the value of property immediately before and immediately after the damage; 2) the cost of repair; or 3) if repair is not possible, the exact value of the property destroyed on the date of its destruction. The State did not cite a single case to support its arguments that different method of evaluating property damage should be applied.

The unrefuted facts in the record are that Guetter owned a 2020 used dog wash station which was worth no more than $17,000 when it was new and the district court awarded him the purchase price of a brand new 2024 dog wash station. Those facts, alone, establish the district court erred in the amount of restitution it awarded.

The evidence in the record shows Peterson to be employed and there's no evidence to indicate she's underemployed. While she is likely able to pay restitution in the correct amount, she cannot pay restitution in the amount set by the district court and the district court erred in failing to adequately address Peterson's inability to pay $21,500.

Respectfully submitted this 17th day of December 2025.

HUGHES LAW, P.L.L.C.

/s/ Jacquelyn M. Hughes
Attorney for Appellant

APPELLANT'S CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Brief complies with Rule 11 of the Montana Rules of Appellate Procedure. In accordance with Rule 11(a), the required portions are double spaced and printed in Times New Roman, proportionately spaced, fourteen-point typeface, with a total word count of 3,972 as calculated by this party's word processing system.

/s/ Jacquelyn M. Hughes

CERTIFICATE OF SERVICE

I, Jacquelyn Marjorie Hughes, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 12-17-2025:

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