

STATE OF IDAHO)
County of KOOTENAI)^{ss}

FILED _____

AT _____ O'clock _____ M
CLERK, DISTRICT COURT

Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

STATE OF IDAHO,)
)
Plaintiff,)
)
vs.)
)
)
ANDREW P. RHEIN,)
)
Defendant.)
_____)

CASE NO. CR-F03-18573

***MEMORANDUM DECISION AND ORDER TO
PAY RESTITUTION AS CONDITION
OF PROBATION***

Judgment is hereby entered against the defendant, Andrew P. Rhein, in the amounts that follow. Such amounts to bear statutory interest from the date indicated and shall be paid to the Kootenai County Clerk, 324 W Garden Avenue, Coeur d'Alene, Idaho 83814 in the form of cash, certified check or money order:

<u>TO:</u>	<u>AMOUNT</u>
Kathleen Foley	\$1,827.35

ORDER TO PAY RESTITUTION
AS A CONDITION OF PROBATION :

3390 Quincy St
Butte MT 59701

Robin Foley
3390 Quincy St
Butte MT 59701

\$573.00

TOTAL: \$2,399.35

These amounts are broken down as follows: Kathleen Foley: Car repairs in the amount requested, \$495.55 (Plaintiff's Exhibit 9). Personal belongings taken from the car in the amount of \$1,010.00. Plaintiff's Exhibit 1. Defense counsel argued that Kathleen's shoes were used, and she was claiming "new" shoe price values. The Court isn't going to make Kathleen go to a thrift store and purchase used shoes worn by other people in order to recompense her for the shoes taken from her car by the defendant. That argument simply does not comport with "the statute's broad definition of economic loss and the deterrent and rehabilitative aspects of victim restitution." *State v. Olpin*, 04.14 ICAR 528, 529, 2004 Opinion No. 38 (Ct.App. June 16, 2004). Additional car repairs in the amount of \$156.00 as shown in Exhibit 8. Kathleen's lost wages in the amount of \$165.80 (\$80.80 for her wage loss in Idaho at Chili's for time spent on previous court matters, \$85 for wage loss from her job in Butte, Montana for her testimony at the July 12, 2004 hearing).

Robin Foley is the mother of Kathleen Foley. Robin Foley testified she bought the car taken by defendant, and she arranged the repairs of the vehicle. Because of that, and because defendant was unwilling to stipulate to restitution in an amount greatly in excess of what was ultimately ordered by the Court, Kathleen Foley had to travel from Butte, Montana for the July 12, 2004 restitution hearing. Damages for time spent on investigation of the victim's damages

and attendance at hearings is allowed under I.C. § 19-5304. *State v. Olpin*, 04.14 ICAR 528, 529, 2004 Opinion No. 38 (Ct.App. June 16, 2004). Robin Foley's time loss was six hours at \$29.00 per hour for prior work, and six hours at that hourly rate for the July 12, 2004 hearing. That totals \$348.00. Robin Foley is awarded her transportation costs in the amount of \$225.00 (600 miles at \$.375)

The Court specifically finds defendant's account as stated in his Affidavit signed July 12, 2004 (defendant's Exhibit A), **incredible**. While it is consistent with what he told the Presentence investigator, his version of the events in question is not credible at all. Such a story is completely contradictory to the crime of Operating a Motor Vehicle Without the Owner's Consent, I.C. § 49-227. Defendant entered a plea to that crime, not an Alford plea. Defendant chose not to appear at the restitution hearing, which further compromises the Court's ability to make any other finding than that his story does not hold up, and he is thus, not credible. The fact that defendant was found in possession of methamphetamine does nothing to increase his credibility. The Court specifically finds Robin Foley and Kathleen Foley credible as to all their testimony.

Defense counsel put on no evidence of defendant's ability to pay restitution. This is a factor for the Court to consider under I.C. § 19-5304(7). Failure to put on any such evidence of inability will be construed against the defendant. The presentence investigation indicates he was unemployed in Idaho at the time of sentencing (but now lives in Arkansas where he has family support), "but has the potential to obtain employment." Presentence report, p. 2. Since defense counsel put on no evidence to the contrary, it is presumed defendant is now in fact working in Arkansas, or has the ability to work. The Court has considered that factor.

The Court recognizes that this is a matter committed to the Court's discretion the Court believes it is acting within the boundaries of that discretion and has set forth the reasons for the Court's decision.

This order is entered pursuant to Idaho Code Section 19-5304 and 20-520(3) and shall include statutory interest pursuant to Idaho Code 28-104(2) accruing from August 30, 2003 together with all post judgment attorney's fees and costs extended in the collection of this judgment as allowed by law.

The defendant shall pay court ordered restitution at a rate to be determined by your probation officer.

A Civil Judgment has been entered this date separate from this order. To the extent the victims recover on the Civil Judgment, the Defendant shall be credited the amount paid through the Civil Judgment against this restitution order.

IT IS FURTHER ORDERED that the Judgment shall be entered upon the records Kootenai County as public record.

ENTERED this 15th day of July, 2004.

John T. Mitchell, District Judge

CLERK' S CERTIFICATE OF MAILING

I hereby certify that on the _____ day of _____, 2004, that a true and correct copy of the foregoing were mailed/delivered by regular U.S. Mail, postage prepaid, Interoffice Mail, Hand Delivered, or Faxed to:

Prosecutor _____ Defense Attorney, Monica Brennan _____
Defendant _____ KCPSB _____
Auditor _____ Police Agency _____
Probation & Parole _____ Other _____

DANIEL ENGLISH
CLERK OF THE DISTRICT COURT

By _____