

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1085
A24-1098**

State of Minnesota,
Respondent,

vs.

Gale Allen Rachuy,
Appellant.

**Filed June 9, 2025
Affirmed in part, reversed in part, and remanded
Slieter, Judge**

Dakota County District Court
File No. 19HA-CR-23-743

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Kathryn M. Keena, Dakota County Attorney, Alexander J. Goering, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sean Michael McGuire, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Cochran, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant was convicted and sentenced for the offense of theft by swindle involving a vehicle he received in exchange for a check that, ultimately, was not honored due to

insufficient funds. As part of his sentence, appellant was ordered to pay restitution, which is the sole issue in this direct appeal. Appellant claims that the district court erred in awarding restitution for his use of the vehicle and for the victim's expense of having the vehicle towed. Because there is no evidence in the record to support restitution for the value of appellant's use of the vehicle, we reverse in part and remand. However, because the victim incurred a towing expense to return the vehicle, we affirm in part.

FACTS

In April 2023, respondent State of Minnesota charged appellant Gale Allen Rachuy with one count of theft by swindle in violation of Minn. Stat. § 609.52, subd.2(a)(4) (2022). Rachuy pleaded guilty to the charged offense in December 2023.

Rachuy's conviction was the result of his purported desire to purchase a vehicle from J.M. Rachuy provided a check to J.M. for \$1,700 and drove away with the vehicle. The check was returned to J.M. due to insufficient funds. When J.M. informed Rachuy that the check was returned on October 4, 2022, Rachuy assured J.M. that by October 11 he would pay for the vehicle or return it. Because Rachuy neither paid for nor returned the vehicle by October 11, J.M. contacted law enforcement.

Rachuy was criminally charged with theft by swindle because he neither paid for nor returned the vehicle. Because the vehicle had not been returned, J.M. filed a restitution affidavit in May 2023, which included the agreed-upon purchase price of \$1,700. In February 2024, an impound lot informed J.M. that the vehicle was in their possession. When J.M. attempted to retrieve the vehicle, he learned that it had a flat tire and missing license plates, so he paid to have it towed to his home.

The district court sentenced Rachuy to 18 months' imprisonment and ordered that he pay restitution in the amount of \$3,190.54, representing (1) \$1,700 related to Rachuy's use of the vehicle; (2) a \$350.31 impound fee; (3) a \$390.23 tow fee; (4) a \$200 cleaning fee; (5) \$50 for the missing license plate and license reinstatement; and (6) \$500 in time away from work.

Rachuy appeals.

DECISION

Rachuy argues that the district court erred by ordering restitution for two of the items: \$1,700 for his use of the stolen vehicle and the \$390.23 tow fee. He argues that there is no evidence in the record to support a value for his use of the vehicle and that the tow fee is improper because the district court also awarded J.M. \$200 in lost wages for traveling to pick up the vehicle.¹

"A district court has broad discretion to award restitution, and the district court's order will not be reversed absent an abuse of that discretion." *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). "A [district] court abuses its discretion when its decision is based on an erroneous view of the law." *State v. Boettcher*, 931 N.W.2d 376, 380 (Minn. 2019) (quotation omitted). "The district court's factual findings will not be disturbed unless they are clearly erroneous." *Andersen*, 871 N.W.2d at 913. "Whether a particular claim for restitution fits within the statutory definition is a question of law, which this court

¹ Rachuy also argues that J.M. is not a victim because he is not the registered titleholder of the vehicle. Because this argument applies only to the value of the vehicle and we reverse that portion of the restitution order, we need not address this claim.

reviews de novo.” *In re Welfare of M.R.H.*, 716 N.W.2d 349, 351 (Minn. App. 2006), *rev. denied* (Minn. Aug. 15, 2006).

“A victim of a crime has the right to receive restitution as part of the disposition of a criminal charge A request for restitution may include, but is not limited to, any out-of-pocket losses resulting from the crime,” and may include “replacement of wages and services.” Minn. Stat. § 611A.04, subd. 1(a) (2022). The record must provide the court with a factual basis to award restitution. *State v. Johnson*, 851 N.W.2d 60, 65 (Minn. 2014). This may be supported by the victim’s restitution affidavit or “other competent evidence.” Minn. Stat. § 611A.04, subd. 1(a).

Use of Vehicle

Rachuy claims, and the state agrees, that there is no evidence to support the \$1,700 in restitution awarded to compensate for his use of the vehicle. We agree as well.

The purpose of restitution is “to restore crime victims to the same financial position they were in before the crime.” *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007). The district court reasoned that an award of \$1,700 as a “vehicle usage fee” was reasonable based upon a calculation of \$100 per month for the 17 months during which Rachuy possessed the vehicle.

But J.M.’s restitution claim was not based upon Rachuy’s use of the vehicle. Instead, J.M. sought restitution for the value of the vehicle based upon the agreed purchase price of \$1,700 because it had not been returned at the time of the restitution request. J.M. sought no restitution for Rachuy’s *use* of the vehicle, however, and the record provides no

evidence to support such a loss. The district court therefore erred in awarding \$1,700 for Rachuy's use of the vehicle as part of the restitution amount.

Towing Fee

Rachuy argues that J.M. should not have been awarded the towing fee, because he was awarded for his loss of work when he attempted to retrieve the vehicle. We are not persuaded.

During the sentencing hearing, J.M. testified regarding his restitution request and specifically explained why he had to have the vehicle towed to his home from the impound lot. J.M. explained that he did not learn of the vehicle's flat tire or missing license plates until he arrived at the impound lot. Because he was not able to drive the vehicle home, he needed to have it towed. The record therefore supports that J.M. incurred two expenses related to his retrieval of the vehicle—one related to time away from work and another related to towing the inoperable vehicle. The district court therefore acted within its discretion by awarding J.M. restitution for the tow fee.

In sum, we affirm the restitution award except for the \$1,700 for Rachuy's use of the vehicle, and we remand to the district court to amend its sentencing order accordingly.

Affirmed in part, reversed in part, and remanded.