

COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
FILE NO. 2013-SC-000425-D

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SUPREME COURT

TAMMY DILLARD

APPELLANT

VS.

**Discretionary Review from Court of Appeals
No. 2011-CA-000917-DG
Jefferson Circuit Court, Division Thirteen
File No. 11-XX-00017**

COMMONWEALTH OF KENTUCKY

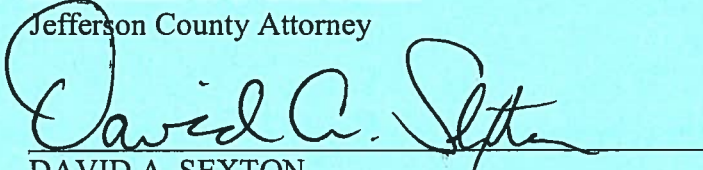
APPELLEE

BRIEF FOR THE COMMONWEALTH

Respectfully submitted,

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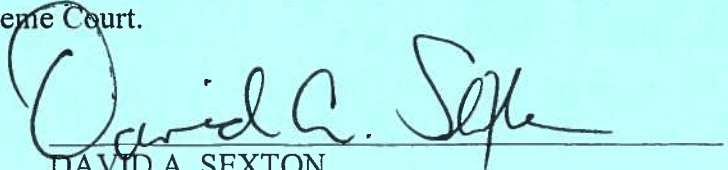
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Brief For The Commonwealth* was mailed by U.S. First Class mail, postage prepaid, to: Honorable Bruce P. Hackett, Deputy Appellate Defender, Louisville Metro Public Defender, 200 Civic Plaza, 719 West Jefferson Street, Louisville, Kentucky 40202; the Honorable Frederic Cowan, Judge, Jefferson Circuit Court, Division 13, Jefferson County Judicial Center, 600 West Jefferson Street, Louisville Kentucky 40202; to the Honorable Jennifer B. Wilcox, Judge, Jefferson District Court, Division 101, Jefferson County Judicial Center, Louisville, Kentucky 40202; Clerk of Court of Appeals, Court of Appeals of Kentucky, 360 Democrat Drive, Frankfort, Kentucky 40601; and to the Office of the Attorney General, Office of Criminal Appeals, 1024 Capital Center Drive, Frankfort, Kentucky 40601 on Friday, November 7, 2014. I further certify that the record on appeal has not been removed from the Clerk of the Supreme Court.


DAVID A. SEXTON

INTRODUCTION

This appeal is from a conditional plea of guilty to the offense of Failure of an Owner to Maintain Required Insurance, First Offense, in the Jefferson District Court reserving the right to contest the imposition of restitution. After granting discretionary review, the Court of Appeals affirmed the Jefferson Circuit Court's dismissal of the Appellant's appeal for want of jurisdiction as being an appeal from an interlocutory order.

STATEMENT CONCERNING ORAL ARGUMENT

Pursuant to CR 76.12(4)(c)(ii), the Commonwealth of Kentucky respectfully requests that this Honorable Court conduct oral argument in this appeal. The Appellant correctly notes in her brief that the precise issue presented by her appeal “is an issue of first impression in the Commonwealth.”

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COUNTERSTATEMENT OF THE CASE

There is no dispute that on February 12, 2010 the Appellant in this appeal was involved in a multi-vehicle automobile crash in Jefferson County.¹ The Appellant conceded in her *Statement of Appeal* filed in the Jefferson Circuit Court that the officer who investigated the multi-vehicle crash “determined that Ms. Dillard was at fault...” (Transcript of Record, hereinafter “TR”, p. 22). As a result of a police investigation by the Louisville Metro Police Department, the Appellant was charged with violating KRS 304.39-080 which requires that every owner or operator of a motor vehicle in this Commonwealth maintain insurance on their motor vehicles. *See*, KRS 304.39-080(5). For failing to maintain insurance as required by law, the Appellant in this case was subject to potential criminal penalties of a sentence of imprisonment of up to 90 days in jail or the imposition of a \$1,000.00 fine, or both. *See*, KRS 304.99-060(2).

The Appellant ultimately entered a conditional guilty plea to the charged offense reserving the right to contest on appeal the authority of the Jefferson District Court to take up and consider the issue of restitution. Prior to the entry of her conditional guilty plea to the charged offense the Appellant correctly observes that “the district court heard oral arguments on the restitution issue in Ms. Dillard’s case.” (*Brief for Appellant*, p. 1). At the hearing on the issue of the Jefferson District Court’s authority to consider restitution the Commonwealth set out in summary fashion its version of events regarding the crash. The Commonwealth summarized for the Jefferson District Court that the Appellant was involved in a three automobile crash on February 12, 2010. (CD 1-7-11, 1:05). The Appellant’s vehicle struck a vehicle in front of her which belonged to Sarah Halk. (CD 1-7-11, 1:09). The Halk vehicle then

¹ The record on appeal contains a five page *Kentucky Uniform Police Traffic Collision Report* in the one volume transcript of record as part of the record of the Jefferson District Court proceedings which is found at page 1 of the Transcript of Record.

struck the vehicle in front of her which belonged to Myra Napper. The Commonwealth explained that Ms. Napper had full coverage on her automobile and that the Commonwealth would **not** be seeking restitution for damages to the Napper car should the Appellant be ultimately convicted. (CD 1-7-11, 1:40).

However, the Commonwealth further explained that Ms. Halk sustained damages as a result of the crash and that **if** the Appellant was ultimately convicted of the charged offense then restitution in the amount of \$3,600.00 would be sought. (CD 1-7-11, 1:50). Ultimately, the Jefferson District Court rejected the Appellant's claim that somehow the law prohibited the Jefferson District Court from taking up and considering restitution following conviction in an effort to compensate any persons who may have suffered economic loss as a result of the Appellant's failure to properly insure her automobile.² Appellant's appeal to the Jefferson Circuit Court from her conditional plea of guilty then followed.

After the parties filed their respective *Statement of Appeal* and *Counterstatement of Appeal*, the Jefferson Circuit entered its *Opinion and Order* on August 3, 2011 dismissing the Appellant's appeal and remanding the matter back to the Jefferson District Court. (TR, pp. 57-59). While the Jefferson Circuit Court acknowledged that the Appellant had entered a conditional plea of guilty that allowed her to appeal the Jefferson District Court's ruling concerning the authority of that court to consider and impose restitution, in the view of the Jefferson Circuit Court the ruling appealed from did not constitute a properly appealable final judgment. The Jefferson Circuit Court wrote that "[h]aving reserved the issue of the amount of

² The complained about ruling of the Jefferson District Court simply went to the authority of the Jefferson District Court to take up and consider restitution upon conviction of the charged offense. On the day the conditional plea of guilty was accepted, the Jefferson District Court noted the contingent nature of the issue of restitution observing "if she is ordered to pay restitution...". (CD 2/8/11, 4:15). Further, the court's docket entry at the time the conditionally discharged sentence was imposed noted that "*restitution to be determined*". (TR, p. 47).

restitution for later determination, the District Court's order in the instant case is by no means final since it does not "adjudicate the rights of all the parties in an action or proceeding" as required by Cr 54.01." (TR, p. 58). Nevertheless, the Jefferson Circuit Court went on to explain that it agreed with the Commonwealth's position on the underlying merits so long as any further restitution hearings complied with due process protections as required by Fields v. Commonwealth, 123 S.W.3d 914 (Ky.App. 2003) and if the Commonwealth could establish through the evidence that the victim in this case suffered property damage as a proximate result of the Appellant's driving. (TR, pp. 58-59). According to the Jefferson Circuit Court if the victim in the case suffered property damage as a proximate result of the Appellant's negligent driving, "then the victim certainly suffered damage as a result of the Appellant's "crime" – i.e., her failure to maintain liability insurance – within the meaning of KRS 533.030(3), and both this statute and KRS 532.032(3) will require the District Court to order restitution." (TR, p. 59).

Thereafter, the Appellant made a motion to alter, amend, or vacate the *Opinion and Order* of August 3, 2011 which was denied by the Jefferson Circuit Court in an *Opinion and Order* entered on September 19, 2011. (TR, pp. 70-72). According to the Jefferson Circuit Court, the Appellant's appeal was interlocutory in nature and subject to dismissal since "the Order of Probation/Conditional Discharge appealed from does not contain an amount of restitution; indeed, it does not contain an order of restitution at all. Therefore, the restitution order is invalid." (TR, p. 71).

The Appellant then sought and obtained discretionary review in the Court of Appeals. The Court of Appeals, in its *Opinion* of May 31, 2013 affirmed the Jefferson Circuit Court's dismissal of the appeal. (Appendix, pp. 1-7). The Court of Appeals wrote that "we determine there is no final judgment imposing restitution. The district court's oral advisory ruling did not

impose restitution or constitute a final order.” (Appendix, p. 3). Accordingly, the Court of Appeals explained that “[w]e cannot review this issue on the merits in the absence of a final judgment and order of restitution.” (Appendix, p. 4).

The Court of Appeals then went on to “provide some guidance as to what circumstances would allow restitution to be ordered for a violation of KRS 304.99-060.” *Id.* The Court of Appeals explained that “[w]e disagree with Dillard’s contention that a crime lacks a victim.” *Id.* The Court of Appeals explained that “[t]he Kentucky Supreme Court has indicated that the MVRA is remedial legislation to be liberally interpreted to accomplish its broad public policy goals.” *Id.* The Court of Appeals observed that “Dillard’s failure to maintain insurance prevented Halk from receiving the benefits of the MVRA’s provisions that were designed to protect motorists” and that “the remedial purposes of the MVRA are best served by allowing Halk to seek compensation through the restitution system, rather than having to pursue recovery in tort litigation.” (Appendix, p. 5).

The Court of Appeals went on to explain that “[w]hether Halk qualifies as a victim depends on whether the Commonwealth can establish that Halk’s damages are the result of Dillard’s crime” and that any “conviction for failure to maintain insurance does not by itself establish liability for the accident.” *Id.* As the Court of Appeals correctly observed, “restitution may only be ordered if both liability for the accident and the amount of damages is proven by a preponderance of the evidence.” *Id.*

Appellant’s appeal on discretionary review to this Court now follows:

ARGUMENT

1. The Conditional Guilty Plea.

The Commonwealth and the Appellant are in agreement concerning the first issue which the Appellant raises in the Argument section of her brief. Appellant continues to argue, and the Commonwealth agrees, that this case was properly appealable by the Appellant pursuant to the provisions of RCr 8.09. As shall be set forth below, the Appellant's appeal was properly taken as it fell within the confines of RCr 8.09 permitting appeal from adverse determinations in the trial court.

In the Jefferson District Court, the Jefferson Circuit Court and the Court of Appeals, the Commonwealth took the position that the Appellant was entitled to reserve the right to contest the Jefferson District Court's authority or jurisdiction to impose restitution in her case pursuant to a validly entered conditional plea of guilty as authorized by RCr 8.09. The Commonwealth continues to take that position in this Court. While mindful that the parties cannot somehow confer jurisdiction upon a court by their mere agreement, the Commonwealth believes that the provisions of RCr 8.09 permit the sort of conditional guilty plea and subsequent appeal which was ultimately dismissed by the Jefferson Circuit Court and subsequently affirmed by the Court of Appeals.

As this Court explained in Dickerson v. Commonwealth, 278 S.W.3d 145, 149 (Ky. 2009), issues on appeal from a conditional guilty plea will be considered if they "(1) involve a claim that the indictment did not charge an offense or the sentence imposed by the trial court was manifestly infirm, or (2) the issues upon which appellate review are sought were expressly set forth in the conditional plea documents or in a colloquy with the trial court, or (3) that the

issues upon which appellate review is sought were brought to the trial court's attention before the entry of the conditional guilty plea even if the issues are not specifically reiterated in the guilty plea documents or plea colloquy." Dickerson, at 149. The facts and circumstances of this case easily satisfy the standards for appellate review of RCr 8.09 conditional pleas of guilty as set forth in Dickerson. As the Appellant correctly notes in her brief, the issue of the authority of the Jefferson District Court to order restitution was specifically reserved as explained in both the plea colloquy before the Jefferson District Court **and** in the order of the Jefferson District Court which accepted the conditional plea of guilty which went on to specifically recite that "the court's ruling regarding the issue of restitution is reserved" (TR, 67). Given these facts and circumstances, the issue concerning restitution was properly appealable pursuant to the express language of RCr 8.09 which broadly permits "review of the adverse determination of any specified trial or pre-trial motion [emphasis added]." The determination by the Jefferson District Court regarding the authority or jurisdiction to take up and consider the issue of restitution was most assuredly an "adverse determination" which could be properly litigated on appeal pursuant to the express language of RCr 8.09.

Finally, that the issue raised in this appeal was the authority of the Jefferson District Court to take up and consider restitution, and not a specified amount of restitution, does not change the equation. The conditionally discharged sentence which was entered as a result of the Appellant's conditional plea of guilty was a final and appealable judgment. The Commonwealth agrees with the Appellant that the Jefferson Circuit Court simply misapplied the provisions of KRS 533.020 and RCr 8.09. (*Brief for Appellant*, p. 5). Pursuant to the provisions of KRS 533.020 the conditionally discharged sentence was properly appealable and was a final judgment for purposes of appeal since a conditionally discharged sentence can be subsequently modified or

even revoked. See, KRS 533.020(3). Lastly, the Jefferson Circuit Court's reliance on Rollins v. Commonwealth, 294 S.W.3d 463 (Ky.App. 2009) as somehow supporting the dismissal in this case is misplaced. In Rollins, an attempt to enforce restitution was made **after** the underlying sentence had been completely served out. Rollins was not an appeal pursuant to RCr 8.09 but was an attempt to create a restitution obligation some seven years after the original judgment was entered by the trial court. In contrast, the issue in this case is properly before the Court of Justice given the provisions of RCr 8.09 for conditional guilty pleas and KRS 533.020 governing conditionally discharged sentences.

2. The District Court's Restitution Authority.

The Jefferson District Court properly concluded that it had the legal authority to take up and consider restitution for those persons who may have suffered economic loss as a result of the offense to which the Appellant conceded her guilt. Having conceded that she committed the offense of operating a vehicle in this Commonwealth without the mandated liability insurance, the Jefferson District Court was required by law to consider whether any persons who suffered economic loss as a result of that failure to obtain insurance should be provided restitution by the Appellant. The compulsory automobile insurance law in this Commonwealth addresses "the evil" of financially irresponsible persons operating motor vehicles on the public roads and highways of the state. Veech v. Commonwealth, 927 S.W.2d 826 (Ky. 1996); Crenshaw v. Weinberg, 805 S.W.2d 129 (Ky. 1991).

The Appellant's continued suggestion that somehow there is not a victim in this case and other cases like it flies in the face of the reason why we have compulsory insurance laws in the first place. Surely, Ms. Halk would differ with the Appellant's continuing bold claim that the offense "is a victimless crime." (*Brief for Appellant*, p. 16). As noted earlier herein, the

Commonwealth possessed information that the Appellant was the proximate cause of the damages sustained by Ms. Halk and because of the Appellant's failure to secure insurance the damages that would have been covered by a policy of insurance on Appellant's vehicle were not covered. Such laws obviously exist to insure compensation for those who have sustained economic loss in automobile crashes. The Appellant, by her own admission in open court, flaunted her legal obligation to purchase automobile liability insurance as mandated by Kentucky law and attempted to shift the costs of her conduct onto others by first failing to obtain insurance and then contesting the authority of the Jefferson District Court to even consider the matter of restitution. The Jefferson District Court below correctly declined to permit the Appellant to continue to avoid the economic costs of her decision to drive without liability insurance. The criminal act of driving without insurance resulted in precisely the sort of "monetary damage" which restitution is intended to compensate. See, KRS 533.030(3).

A. Statutory Authority.

The Appellant neglects the generally applicable statutory authority for restitution in this Commonwealth – KRS 532.032. As it did in the court below, the Commonwealth continues to rely upon Fields v. Commonwealth, 123 S.W.3d 914, 916 (Ky.App. 2003) for its observation that "KRS 532.032 (and the statutes incorporated therein) is now the generally applicable criminal restitution statute."

KRS 532.032(1), the criminal restitution statute, provides:

Restitution to a named victim, if there is a named victim, shall be ordered in a matter consistent, insofar as possible, with the provisions of this section and KRS 439.563, 532.033, 533.020, and 533.030 in addition to any other part of the penalty for any offense under this chapter. The provisions of this section shall not be subject to suspension or non-imposition [emphasis added].

Further, it must also be remembered that on the entry of the conditional plea of guilty the Jefferson District Court conditionally discharged the sentence. KRS 532.032(3) expressly mandates that “[i]f probation, shock probation, conditional discharge or other alternative sentence is granted, restitution shall be a condition of the sentence [emphasis added].” Additionally, restitution for crime victims for “monetary damage” is also specifically authorized by KRS 533.030(3) when probation or conditional discharge is imposed. KRS 533.030(3) expressly requires restitution “where a victim of crime has suffered monetary damage as a result of the crime due to his property having... its value substantially decreased as a result of the crime,”.

Uninsured drivers who cause damage to other vehicles should rightly be required to compensate those they have caused to suffer “monetary damage” as a result of not having liability insurance as required by law. Expressed somewhat differently, the victim had her car’s value “substantially decreased as a result of the crime” of no insurance, a “monetary damage” which would not have occurred **but for** the Appellant’s lack of liability insurance to provide appropriate compensation. KRS 532.350(1)(a) defines restitution as “any form of compensation paid by a convicted person to a victim for counseling, medical expenses, lost wages due to injury, or property damage and other expenses suffered by a victim because of a criminal act.” The restitution statute applies regardless of whether a person is sentenced to incarceration or is placed on probation or conditional discharge. Commonwealth v. O’Bryan, 97 S.W.3d 454 (Ky.App. 2003). In short, because the Appellant was convicted of a criminal offense by her concession of guilt the Jefferson District Court was required by statute to take up and consider the matter of restitution to any persons who suffered an economic loss flowing from the

Appellant's decision to operate her motor vehicle without the appropriate liability insurance as required by Kentucky law.

B. The Proof Required for Restitution.

As set out above, the Jefferson District Court was required by the law of this Commonwealth to take up and consider the issue of restitution. Of course, a hearing is required on the matter of restitution as to the amount thereof since "the record must establish an adequate factual predicate for a restitution order." Fields, at 918. When ordering restitution, a trial court must base an award on reliable facts. United States v. Silverman, 976 F.2d 1502, 1504 (6th Cir. 1992). In Fields, the Court of Appeals addressed the standard of proof necessary to establish the basis for restitution, and explained that restitution is to be considered at a sentencing hearing where due process standards are less. Although a lower standard of due process applies at sentencing proceedings, the facts relied on by the trial court must "have some minimal indicium of reliability beyond mere allegation." Fields, at 917 *citing* Silverman, 976 F.2d at 1504. Of course, in order to satisfy this standard, a defendant must have some meaningful opportunity to be heard and the record must establish a factual predicate for any restitution order entered by a trial court. Fields, at 918.

The Jefferson District Court is required by law to take up and consider the issue of compensation for any persons who may have suffered economic or monetary loss as a result of the decision by the Appellant to operate a motor vehicle without the mandated liability insurance. Accordingly, the Commonwealth is entitled to be heard at a restitution hearing in Jefferson District Court to take up and consider the issue of restitution. The Jefferson District Court correctly determined that it had not just the authority, but was required by state statute to take up the issue of restitution for any persons who may have suffered economic loss from the

Appellant's admitted violation of the law. As it has throughout this case, the Commonwealth readily acknowledges that at a restitution hearing it must produce evidence on the issue of causation **and** the actual amount of damages.

The Commonwealth has never taken the position in this case that somehow the Appellant is liable for restitution for all damages flowing from the crash simply because she was uninsured. Of course, the law requires the Commonwealth to demonstrate that Appellant's actions were the proximate cause of any damages sustained by any victim in this case. It is fundamental that a defendant from whom restitution is sought is liable only for harms that he proximately caused. United States v. Monzel, 641 F.3d 528, 535 (D.C. Cir. 2011). ("It is a bedrock rule of both tort and criminal law that a defendant is only liable for harms he proximately caused.") The Commonwealth bears the burden of showing that the Appellant was the responsible party in the crash and that Halk sustained economic damage since the Appellant failed to insure her vehicle. At the restitution hearing in the Jefferson District Court the Commonwealth will be required to produce evidence demonstrating that the Appellant caused the damages to the Halk vehicle. Of course, the Appellant is entitled to present any countervailing evidence she may possess on the issue of causation which apparently consists of some sort of allegation by her of a mysterious unidentified driver who left the scene of the crash. (CD 1-7-11, 2:50).

As set out earlier herein, the Commonwealth gave its preview of coming attractions when it summarized the evidence in the case by describing how the Appellant collided with one vehicle which then was pushed into the Halk car. The Commonwealth will present evidence from witnesses or persons in the crash as well as the evidence obtained from the subsequent crash scene investigation. Further, the Commonwealth readily acknowledges that it will also be required to demonstrate a sufficient factual basis concerning the actual amount of any restitution.

The Commonwealth will not pull an amount of restitution out of thin air but will be required to present credible facts to the sentencing trial court to establish the amount of restitution that the Appellant ought to be required to pay to Ms. Halk. Of course, the Appellant is entitled to introduce any and all “countervailing evidence” she might be able to summon to defeat a finding that her actions were the proximate cause of the economic loss sustained by Ms. Halk or on the issue of the amount of restitution she is responsible for paying to the victim. Due process of law demands no less.

Lastly, the Court of Appeals correctly rejected the notion that the rule announced in Commonwealth v. Morseman, 379 S.W.3d 144, 152 (Ky. 2012) somehow shielded the Appellant from having to pay restitution in this case. In Morseman, this Court held by a trial court may not order a criminal defendant to pay restitution to a victim for a crime for which he or she is not convicted unless the defendant voluntarily agrees to make restitution as part of a plea agreement. The Commonwealth is not trying to make the Appellant to pay restitution for an unconvicted crime related to causing the accident. Instead, the Commonwealth is attempting to make the Appellant pay restitution for the offense she plead guilty to in the Jefferson District Court. The Appellant conceded that she committed the offense of operating her car without insurance and as a result of her action Ms. Halk suffered economic harm for which she is entitled to compensation through restitution. As the Court of Appeals correctly observed, “[i]f the Commonwealth can establish causation, restitution would be required based upon the crime for which she is convicted.” (Appendix, p. 5).

C. No Independent Civil Trial Required.

The Appellant also continues to assert that somehow she is entitled to full-blown civil trial independent of the criminal proceedings. She is wrong. It is well-settled that procedures at

a restitution hearing such as “discovery... and fact-finding by a jury” are simply not constitutionally mandated. Fields, at 917. As this Court has explained, restitution is **not** an additional penalty but is “merely a system designed to restore property or the value thereof to the victim.” Hearn v. Commonwealth, 80 S.W.3d 432, 436 (Ky. 2002). “Such restitution is intended to fully compensate for the loss incurred, serves to emphasize the seriousness of the crime and to deter similar offenses in the futures... as well as making the victim whole.” *Id.* The law could not be any more clear in this Commonwealth – restitution is to be considered as a part of a trial court’s sentencing authority in a criminal case.

The Appellant creatively conjures up any number of imagined problems that arise from taking up the issue of restitution at sentencing. She claims that restitution hearings of the sort contemplated by our state statutes unnecessarily clog our courts and are somehow not an appropriate forum in which to address the issue. Of course, the Appellant’s demand that issues regarding restitution must be taken up and considered through independent civil actions would clog our courts and unnecessarily frustrate the ability of the victims of crime to be appropriately and effectively compensated for the economic lose they sustain as a result of others’ criminal actions. Further, it ought to be pointed out that the Appellant’s claim she is entitled to a trial by jury in this case would seemingly strike down the ability of courts to take up restitution at sentencing in all criminal cases.

It is precisely its unique understanding of the circumstances of each individual case which puts the trial court in a criminal prosecution in the best position to determine the amounts and types of appropriate restitution. The trial court, which is given the statutory power to set restitution under KRS 533.030, knows the facts of the case, the seriousness of the offense, the ability of the defendant to pay, and the needs of the victim. In Commonwealth v. Bailey, 721

S.W.2d 706, 707 (Ky. 1986), this Court held that a restitution payment could be determined at the time when a defendant was released from custody. In doing so, this Court noted the importance of the trial court's understanding of the material facts of the case:

It is also not fatal to the judgment or order herein that the final establishment of the payment schedule for restitution was deferred until such time as respondent is released from custody. It is only then that the court and respondent will have the complete information from which a fair and comprehensive plan may be evolved, taking into consideration such things as employment, dependents, other debts, etc. Although deferment is not specifically mentioned in the statute, it is implicit that the court, once empowered to order restitution, may make such act workable, meaningful and considerate of the rights of all the parties [emphasis added].

Contrary to the Appellant's contention, the trial court is not only empowered by statute to make decisions on restitution, it is also in the best position to do so in an appropriate, fair, and well-informed manner. These fundamental principles apply with equal force to the facts and circumstances of this case.

The Jefferson District Court correctly determined that it had not only the legal authority but also a statutory obligation to take up and consider the issue of restitution in this case. The Appellant's assertion that her offense of driving without insurance has no victim rings especially hollow. Those who suffer economic loss from the actions of uninsured drivers would surely disagree. Restitution in this case will advance the fundamental policy of the Commonwealth that those who choose to operate a motor vehicle without insurance shall bear the economic costs of their conduct. The complained-about decision of the Jefferson District Court was correct and this matter should be remanded back to the Jefferson District Court so that the Commonwealth can finally have an opportunity to establish a factual basis for restitution in this case.

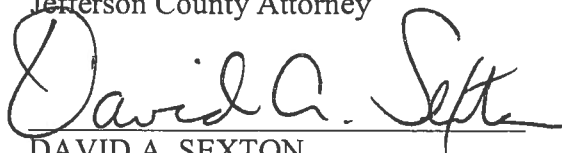
CONCLUSION

For the reasons set out above, this Court should reverse the decision of the Court of Appeals insofar as it upheld the dismissal of this appeal and otherwise uphold the authority of the Jefferson District Court to take up and consider the issue of restitution given the Appellant's confession of guilt to the charged offense.

Respectfully submitted,

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Jefferson County Attorney

A handwritten signature in cursive script that reads "David A. Sexton". The signature is written in black ink and is positioned above the printed name and title of the signatory.

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