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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case No. 15AP863-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

BARBARA THIRY,

Defendant-Appellant.

---

On Appeal from a Judgment of Conviction and Order for  
Restitution Entered In Waupaca County, the Honorable  
Raymond Huber Presiding

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REPLY BRIEF OF  
DEFENDANT-APPELLANT

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**ARGUMENT**

**I. THIRY IS NOT RESPONSIBLE FOR  
PAYING RESTITUTION FOR ALL  
HORSES BECAUSE SHE WAS  
CONVICTED OF ONLY ONE CRIME  
RELATING TO ONE SPECIFIC HORSE**

The thrust of the state's argument is that Thiry's interpretation of Wis. Stat. § 173.24(3) is too simplistic.

(Resp. Brief at 5-6.) However, the State's reasoning for this is based purely on a hypothetical situation which is inapplicable to the specific facts of this particular case.

Cases cannot be decided upon hypothetical facts. *Dunn County v. Wis. Empl. Rels. Comm'n*, 2006 WI App 120 ¶20, 293 Wis. 2d 637 (citing *See Pension Mgmt., Inc v. DuRose*, 58 Wis. 2d 122, 128, 205 N.W.2d 553 (1973)). The state is likely correct that it would be impossible to identify or isolate a specific animal in cases where collective charges were filed. However that is not what happened here. Here, the state swung for the fences and attempted to obtain 15 convictions. Here, the state did correlate specific animals to specific charges. And the facts here, the actual facts of the case, are all that this Court can take into consideration when issuing a decision. This Court should not give any credence to the state's hypothetical scenario regarding collective charges for large numbers of animals.

The state offers no further argument for why this Court should reject the defendant-appellant's interpretation of Wis. Stat. §173.24(3).

The state does, however, argue that language in Wis. Stat. §951.18(4)(a)2 provides that "a sentencing court shall require a criminal violator to pay restitution. . ." and that this language doesn't require specificity. (Resp. Brief at 6). However, this argument ignores the rest of the statute, which goes on to state that the restitution must be paid "for any pecuniary loss suffered by the person as a result of *the crime*." Wis. Stat. §951.18(4)(a)2 (emphasis added). Similar to §173.24(3), §951.18(4)(a)2 uses the word "the" to specify that restitution can only be ordered for a crime in which there was a conviction. There is no language within this statute to

suggest that a single conviction can be used to create a blanket restitution order covering all aspects of costs incurred by the county.

Finally, the state suggests that because another court issued an order to seize and dispose of the horses it is reasonable that Thiry be ordered to pay the expenses. (Resp. Brief at 7). The problem with this argument is that there is no legal basis for it. The mere fact that another court issued an order relating to the seizure and disposition of the horses does not create a justification for ordering complete restitution in this case as a consequence of the single conviction and as a condition of probation.

### **CONCLUSION**

For all the reasons stated, the defendant, Barbara Thiry, respectfully asks this Court to order that the restitution order be amended to the amount of \$905.47, the total cost incurred by the county for the car and maintenance of “Lady”.

Dated this 28th day of August, 2015.

Respectfully submitted,

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## **CERTIFICATION AS TO FORM/LENGTH**

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 488 words.

Dated this 28th day of August, 2015.

Signed:

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**CERTIFICATE OF COMPLIANCE  
WITH RULE 809.19(12)**

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 28th day of August, 2015.

Signed:

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## **CERTIFICATION OF MAILING**

I hereby certify that:

This brief was, on August 28, 2015, delivered to the US Postal Service for delivery to the Clerk of Court of Appeals within three calendar days pursuant to Wis. Stat. § 809.80 (3)(b). I further certify that the brief was correctly addressed and postage was pre-paid.

Dated this 28th day of August, 2015.

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