

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 25-0413

CITY OF HELENA,

Plaintiff and Appellee,

v.

SKYLAR DEXTER ITTNER,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana First Judicial District Court,
Lewis and Clark County, The Honorable Christopher Abbott, Presiding

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STATEMENT OF THE ISSUES

Whether Ittner failed to preserve his challenge to the amount of restitution.

Whether the municipal court erred when it ordered Ittner to pay restitution.

STATEMENT OF THE CASE

On April 22, 2023, Skylar Dexter Ittner was cited for changing lanes when unsafe to do so. (Docs. 1, 14.) When Ittner changed lanes, he struck a truck and trailer driven by Mark Smith. (*Id.*)

On June 28, 2023, the municipal court convicted Ittner of the offense following a bench trial.¹ (Docs. 1, 14.) At sentencing, Smith testified to the pecuniary losses he suffered because of the incident. (*Id.*) Ittner did not cross-examine Smith or present any rebuttal evidence. (*Id.*) The municipal court imposed \$1,254.90 in restitution. (*Id.*)

Ittner appealed to the district court, challenging the sufficiency of the evidence for his conviction and the amount of restitution. (Docs. 1, 3.) On

¹The municipal court transferred the pleadings and the investigating officer's dashcam video to the district court. (Doc. 1.) The municipal court also provided instructions on how the district court could access the digital recordings of the trial and sentencing hearings from For the Record. (Doc. 1.) However, none of the digital media was transferred to this Court as part of the record by the district court. Ittner stated in his Opening Brief that he included a DVD containing the officer's dashcam video and audio recordings of the trial and sentencing. (Opening Brief (Br.) at 24.)

October 8, 2024, the court denied Ittner's appeal after reviewing the record. (Doc. 14.)

On June 13, 2025, Ittner petitioned this Court for leave to file an out-of-time appeal. (Petition.) Ittner asserted he had not learned of the district court's order until May 2025. (*Id.*) This Court granted Ittner's petition on July 1, 2025. (Order.)

STATEMENT OF THE FACTS

I. Municipal court proceedings

On April 22, 2023, Mark Smith turned left from the Lowe's parking lot onto Sanders Avenue, travelling southbound. (Docs. 1 (posttrial judgment), 14.) Smith was driving a truck and pulling a 16-foot trailer. (*Id.*) Smith drove in the center lane which turns into a designated left-hand turn lane near the intersection with Custer Avenue. (*Id.*) Ittner also turned left onto Sanders Avenue out of the Lowe's parking lot. (*Id.*) Instead of queuing up behind the other vehicles in the southbound center lane before it turns into the left-turn lane, Ittner drove past the line of vehicles and attempted to merge into the lane. (*Id.*)

When traffic began moving, Smith pulled forward, but Ittner continued to nose into the lane. (Docs. 1 (posttrial judgment), 14.) Ittner's vehicle collided

with the side of Smith's truck and his trailer. (*Id.*) The investigating officer cited Ittner with making an unsafe lane change. (*Id.*)

Ittner was found guilty of the offense following a bench trial and the municipal court set sentencing for August 14, 2023. (Docs. 1, 14.) Ittner did not appear for sentencing and the hearing was continued to August 28, 2023. (*Id.*) On Ittner's motion, the municipal court continued the hearing for two days. (*Id.*)

Ittner arrived 15 minutes late to the August 30, 2023 sentencing hearing. (Doc. 14.) Smith testified about the financial losses he suffered because of the incident. (*Id.*) Smith requested a total of \$4,597 in restitution, which included his deductible, lost wages, mileage to travel to court, parts to repair his trailer (that he said he could do himself), and body work on his truck. (*Id.*) When asked if he had questions for Smith, Ittner complained that Smith's insurance had not paid to fix his vehicle. (*Id.*) Ittner did not ask Smith any questions or present any rebuttal evidence or argument concerning restitution. (*Id.*) Nor did Ittner ask for additional time. (*Id.*)

The municipal court ordered Ittner to pay a total of \$1,254.90 in restitution as follows: \$500 for deductible; \$600 for lost wages to attend two days of court proceedings; \$88.92 for mileage (136 miles at the state rate); and \$65.98 to cover parts to repair the trailer. (*Id.*) Ittner timely appealed to the district court. (Docs. 1-3, 14.)

II. District court proceedings

Ittner challenged the sufficiency of the evidence and argued that Smith had admitted fault during the sentencing hearing. (Doc. 3.) Ittner also argued the municipal court's restitution order was not supported by facts. (*Id.*) Ittner asserted there were several problems with Smith's restitution request, but claimed they "could not have been pointed out at sentencing, as they only became apparent after further research." (*Id.* at 4.) Ittner did not challenge the mileage costs but did question the necessity for Smith to close his business for two full days. (*Id.*) Ittner speculated his insurance may cover Smith's \$500 deductible and asserted the parts to repair Smith's trailer were available at a lower price. (*Id.*)

In its response, the City summarized the evidence presented at trial that supported the guilty verdict. (Doc. 9.) The City asserted that Smith's statements at sentencing were not an admission of responsibility. (*Id.*) Finally, the City noted that Ittner had not challenged the restitution amount and summarized Smith's testimony that supported the court's order. (*Id.*)

In his reply to the City's argument that he failed to challenge the restitution at sentencing, Ittner asserted he did not have time to research the issue at the sentencing hearing. (Doc. 12.) Ittner stated that he "only did not object at the time because the claims seemed reasonable at first glance; only after several minutes of

research did [he] find issues with the amounts claimed.” (*Id.* at 2.) Ittner did not allege he was not given the opportunity to challenge the evidence presented. (*Id.*)

The district court affirmed Ittner’s conviction. (Doc. 14.) The court found that the trial evidence demonstrated that Ittner had attempted to merge into a lane where there was no room to do so and, thus, substantial evidence supported the conviction. (*Id.* at 5.) The court also explained that whether Smith had improperly driven in the center turn lane, or had stated as much at sentencing, was irrelevant to Ittner’s guilt. (*Id.* at 5.)

Next, the district court affirmed the amount of restitution ordered. (Doc. 14 at 6.) First, the court concluded that Ittner had failed to preserve the specific challenges that he raised on appeal and it would not consider any arguments or matters outside of the municipal court record. (*Id.*) Second, the court observed that Ittner “could have, but did not,” present any evidence about restitution. (*Id.*) Finally, the court found that “each item of damages awarded [was] supported by un rebutted testimony from Smith” and concluded the sentencing court’s “restitution award [was] not clearly erroneous.” (*Id.*)

STANDARD OF REVIEW

District courts function as an intermediate appellate court when a defendant appeals from a municipal court. *See* Mont. Code Ann. §§ 3-5-303, 3-6-110; *City of*

Bozeman v. Lehrer, 2020 MT 55, ¶ 6, 399 Mont. 166, 459 P.3d 850. If the district court’s decision is then appealed, this Court reviews the case “as if the appeal originally had been filed in this Court.” *Lehrer*, ¶ 6.

Restitution awards present a mixed question of law and fact, which this Court reviews *de novo*. *State v. Laforge*, 2025 MT 209, ¶ 17, 424 Mont. 105, 575 P.3d 976 (citation omitted). The sentencing court’s findings regarding the amount of restitution are reviewed to determine if they are clearly erroneous and the related conclusions of law are reviewed for correctness. *Id.* “A finding of fact is clearly erroneous if it is not supported by substantial evidence, the court has misapprehended the effect of the evidence, or [this Court’s] review of the record convinces [it] that a mistake has been made.” *Id.* “Substantial evidence is evidence that a reasonable person could accept as sufficient to support a conclusion [and] consists of more than a mere scintilla of evidence, but may be somewhat less than a preponderance.” *Id.* ¶ 33 (internal quotations and citations omitted).

SUMMARY OF THE ARGUMENT

Since this Court reviews an appeal originating in municipal court as if it had been originally filed with this Court, issues and legal theories Ittner presents for the first time in his Opening Brief should not be considered.

Ittner failed to raise the challenges to restitution in municipal court that he offered on appeal to the district court. The district court correctly determined Ittner had waived those claims.

Even if Ittner's challenge was preserved, the municipal court's restitution order was based on substantial, credible evidence. Smith used reasonable methods to determine his pecuniary losses and he provided the factual basis for the requested amounts. Despite having the opportunity, Ittner chose not to cross-examine Smith or provide any contradictory evidence undermining the amounts Smith requested. The municipal court's determination of the restitution amount was not clearly erroneous.

ARGUMENT

I. Claims raised for the first time on appeal to this Court should not be considered.

This Court will generally not consider issues raised for the first time on appeal since it is unfair to fault a lower court for making an incorrect ruling on information or arguments it did not have the opportunity to consider. *State v. Jacob*, 2025 MT 133, ¶ 13, 422 Mont. 431, 571 P.3d 1027.

For the first time, Ittner asserts that Smith's alleged admission of culpability undermined the reliability of his testimony about restitution. (Br. at 10, 16-18.) Ittner also suggests for the first time that he was denied an opportunity to respond

to Smith's restitution requests. (Br. at 11, 18-19.) Related to those arguments, Ittner further asserts, again for the first time, that the plain error review is warranted to consider those claims. (Br. at 19.)

None of these arguments or legal theories were raised in Ittner's briefing to the district court. Thus, Ittner is precluded from asserting them now. *Jacob*, ¶ 13.

Finally, Ittner also argues that an illegal sentence may be corrected anytime. (Br. at 20 (citing *State v. Hotchkiss*, 2020 MT 269, ¶ 11, 402 Mont. 1, 474 P.3d 1273).) However, Ittner did not raise this legal theory in his appeal to the district court. *State v. Johnson*, 2011 MT 286, ¶ 14, 362 Mont. 473, 265 P.3d 638. Moreover, this legal argument is misplaced and not compelling.

First, unlike here, in *Hotchkiss* the defendant preserved his challenge to the sentencing condition which had nothing to do with restitution. Second, Ittner's challenge to the restitution amount presented an objectionable sentence claim, not an illegal sentence claim that may be raised absent a contemporaneous objection to the sentencing court. As this Court explained in *Johnson*, a defendant's "failure to object to the restitution condition when the [sentencing court] orally imposed it at his sentencing forfeited the issue, and we decline to address whether the [sentencing court] erred when it imposed restitution for past counseling expenses incurred by the victim." *Johnson*, ¶ 14. *See also State v. Simpson*, 2014 MT 175, ¶ 12, 375 Mont. 393, 328 P.3d 114.

Legal theories and arguments Ittner raises for the first time in his Opening Brief should not be considered on appeal. *See Jacob*, ¶ 13.

II. The district court correctly affirmed the municipal court’s restitution order.

Ittner’s appeal to district court raised two claims: sufficiency of the evidence supporting his conviction; and whether sufficient evidence supported the amount of restitution awarded to Smith. (Docs. 3, 14.) On appeal, Ittner addresses only the issue of restitution. Thus, he has waived review of the district court’s order affirming his conviction and may not add that claim in his reply brief. *State v. Whalen*, 2013 MT 26, ¶ 43, 368 Mont. 354, 295 P.3d 1055 (Court “will not address the merits of an issue presented for the first time in a reply brief on appeal.”).

A. The district court correctly determined that Ittner had failed to preserve challenges to the restitution amount.

The district court correctly concluded that Ittner’s failure to timely challenge the evidence in support of restitution constituted a waiver of that claim for appeal. *See Jacob*, ¶ 13; *Johnson*, ¶ 14.

“To properly preserve an issue or claim for appeal, it is necessary that the issue or claim be timely raised in the first instance in the trial court.” *State v.*

Ament, 2025 MT 97, ¶ 9, 421 Mont. 502, 568 P.3d 535. To preserve an objection, “[a] party must set forth more than general assertions” in a timely fashion. *Id.* As this Court has explained, “[a]bove all else, the rationale underlying the timely- objection rule is judicial economy and bringing alleged errors to the attention of each court involved, so that actual error can be prevented or corrected at the first opportunity.” *Simpson*, ¶ 11 (internal quotations and citation omitted).

Just as in *Johnson* and *Simpson*, Ittner failed to object to the amount of restitution imposed. Ittner even admitted he failed to challenge the amounts, noting in his reply that “the claims seemed reasonable at first glance.” (Doc. 12 at 2.) Notably, Ittner did not ask the court for additional time to rebut Smith’s testimony.

Accordingly, Ittner forfeited his claim on appeal that the municipal court was not presented with adequate information to support that award by failing to object or present any contradictory evidence. *Johnson*, ¶¶ 19-21; *Simpson*, ¶ 12.

Although the district court correctly determined Ittner failed to preserve his challenge to the restitution amount, the court nonetheless evaluated the sentencing court’s restitution order and concluded it was supported by the evidence presented.

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B. Substantial evidence supported the restitution award entered by the municipal court.

When imposing a criminal sentence, the provisions at Mont. Code Ann. §§ 46-18-201(5), -241(1), and -243(1), require courts to order defendant's "to pay restitution in an amount sufficient to fully compensate victims for all pecuniary loss substantiated by record evidence to have been caused by the defendant's criminal conduct." *LaForge*, ¶ 34 (citation omitted). "Even when actual losses are uncertain, they may be recoverable if they are calculated by use of reasonable methods based on the best evidence available under the circumstances." *LaForge*, ¶ 34 (citing *Simpson*, ¶ 14). "Reasonable methods include a reasonably close estimate of the loss." *LaForge*, ¶ 34 (internal quotations and citations omitted).

The controlling restitution provisions do not mandate that either the court or victim "substantiate a restitution calculation with documentation," rather "the sentencing court may rely on victim testimony presented at the sentencing hearing." *LaForge*, ¶ 34 (internal quotations and citation omitted); *Simpson*, ¶ 14. A victim seeking restitution must "mitigate restitution damages," but is not "expected to do what is unreasonable or impracticable." *LaForge*, ¶ 34. Finally, although defendants have "a due process right to explain, argue, and rebut any information presented at sentencing," when the defendant does not provide rebuttal

evidence, the sentencing court “does not err in relying on a victim's estimates of loss.” *Simpson*, ¶ 14 (internal quotations and citations omitted).

The total amount of restitution that Smith requested was \$4,597.67. (Docs. 1, 9, 14.) Smith testified that he paid \$500 for his deductible to repair his truck, adding that he presumed Ittner’s insurance would not cover that cost. (*Id.*) The estimate from Top Gun Auto to repair his truck was \$3,242. (*Id.*) Smith travelled 136 miles to attend the trial and sentencing hearings and requested \$88.92 in reimbursement at the state rate. (*Id.*) Smith missed two days of work and estimated his lost income was \$600. (*Id.*) Smith testified he could repair the trailer, but he needed new bearings. (*Id.*) Smith found some on Amazon for a total of \$65.98.

When the court asked Ittner if he had any questions, Ittner indicated he did not, but argued about damages and losses he had allegedly suffered. (Docs. 9, 14.) Ittner added that he and his insurance company disagreed with the court’s verdict and complained that Smith’s insurance had not paid to fix his vehicle. (*Id.*)

The municipal court declined to impose restitution for the estimate to repair Smith’s truck, but it imposed the other losses that Smith had described. (Docs. 1, 9, 14.)

The municipal court did not misapprehend the effect of Smith’s testimony and its order for restitution was supported by substantial evidence. *LaForge*, ¶ 33.

Smith testified under oath about the reasonable methods he used to determine his pecuniary losses. Ittner did not challenge Smith's calculations or methods. Ittner presented no "contradictory evidence." *Simpson*, ¶ 14.

The municipal court did not err in relying on Smith's estimation of his pecuniary losses. The record contains substantial, credible evidence supporting the court's restitution award. Ittner has not demonstrated that the municipal court's findings were clearly erroneous or that its conclusions were incorrect.

LaForge, ¶ 33.

CONCLUSION

This Court should affirm the district court's order denying Ittner's appeal from the municipal court.

Respectfully submitted this 22nd day of December, 2025.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 2,776 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signatures, and any appendices.

/s/ *Katie Schulz*

KATIE SCHULZ

CERTIFICATE OF SERVICE

I, Kathryn Fey Schulz, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 12-22-2025:

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