

## SUMMARY STATEMENT

*State v. David Roy Bakke*

Docket No. 46426

David Roy Bakke was convicted of grand theft after he failed to return a rental vehicle to Avis Car Rental. The district court ordered Bakke to pay \$2,549.83 in restitution to the rental company, which was the weekly rental rate of the vehicle rental that Bakke agreed to pay multiplied by the weeks Bakke possessed the vehicle without payment. The court denied Bakke's Idaho Criminal Rule 35 motion for reduction in sentence.

On appeal, Bakke argues the district court abused its discretion in its order of restitution. Bakke contends that when a defendant keeps rental property past its return date, the restitution order should reflect what the victim could have earned from having the property to rent to others not the amount indicated in the rental agreement. Thus, Bakke alleges there was insufficient evidence to support the district court's order because the State did not present evidence that the rental company would have been able to rent the vehicle every day during the period that Bakke retained possession. Additionally, Bakke contends the district court abused its discretion in denying his Rule 35 motion for reduction in sentence because it did not consider evidence of his good conduct while incarcerated.

The Idaho Court of Appeals held that when an individual rents an item at an agreed upon rate as evidenced by a contractual agreement and then fails to compensate the rental company accordingly once the item is returned, the ensuing economic loss is not speculative. In assessing the relevant economic loss, the actual economic loss is established by the terms of the rental agreement. Therefore, the weekly rate Bakke agreed to pay multiplied by the weeks Bakke unlawfully retained the vehicle was an accurate measure of the economic loss to Avis Car Rental. Additionally, the Court held that the district court considered evidence of Bakke's good conduct while incarcerated but reasonably found that a reduction in sentence was not appropriate.

Therefore, the Idaho Court of Appeals affirmed the district court's order of restitution and its order denying the Rule 35 motion.