

**S 185961**

SUPREME COURT  
**FILED**

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IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

SEP - 3 2010  
Frederick K. Ohlrich Clerk  
Deputy

PEOPLE OF THE STATE OF CALIFORNIA  
  
Plaintiff and Respondent,  
  
v.  
  
LEROY GENE STANLEY,  
  
Defendant and Appellant.

C063661  
  
Yolo County  
Superior Court  
No. 093110

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**PETITION FOR REVIEW  
OF THE DECISION OF THE COURT OF APPEAL,  
THIRD APPELLATE DISTRICT  
Filed August 3, 2010**

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By Appointment of Court  
of Appeal under the Central  
California Appellate Program  
Independent Case system

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,  
Plaintiff and Respondent,  
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C063661  
Yolo County  
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No. 093110

**PETITION FOR REVIEW**

TO THE HONORABLE RONALD M. GEORGE, CHIEF JUSTICE OF CALIFORNIA, AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA: Appellant Leroy Stanley respectfully petitions for a review of the following published decision of the Third District Court of Appeal, filed August 3, 2010 (*People v. Stanley* (2010) 187 Cal.App.4th 120 [\_\_\_ Cal.Rptr.3d \_\_\_, 2010 WL 3008934]); the slip opinion is attached in the Appendix.

**ISSUES PRESENTED FOR REVIEW**

Whether, in awarding restitution for the cost of repair which was triple the purchase price, the Third District Court of Appeals properly rejected *People v. Yanez* (1995) 38 Cal.App.4th 1622 (Fourth Appellate District), which held that victim restitution for property damage should be set at the replacement value and not at a higher cost of repair, and instead relied on *In re Dina V.* (2007) 151 Cal.App.4th 486 (First Appellate District), which permits restitution for a higher cost of repair.

## NECESSITY FOR REVIEW

The questions presented raise issues of statewide importance which this Court should resolve and necessitate review in order to secure uniformity of decision. (Cal. Rules of Court, rule 8.500(b).)

## STATEMENT OF THE CASE

Leroy Stanley was charged with having vandalized a truck (CT 54-55), and entered a no contest plea to the vandalism in exchange for a 16-month sentence and dismissal of a number of remaining charges. (CT 56-58; RT 2-3.) Stanley was sentenced in accordance with the plea agreement. (CT 60-61, 72; RT 11-14.) The probation report recommended a direct victim restitution order for \$2,812.94, based on the cost of repair charged by the auto body shop. (CT 66; RT 11.)

At the preliminary hearing, the victim said the vandalized vehicle was a 1975 four-door Dodge pickup truck. (CT 39-40.) She further said she bought the truck 18 months earlier for \$950 in cash. (CT 44.) Repair of the truck was estimated at \$2,812.94. Thus, the cost of repair was about three times the worth of the vehicle at purchase. Appellant argued that restitution should be set at the purchase price paid by the victim and not the cost of repair as was held in *People v. Yanez* (1995) 38 Cal.App.4th 1622. The prosecution argued that restitution must be set at the cost of repair, citing section 1202.4, subdivision (f)(3)(A), and *In re Dina V.* (2007) 151 Cal.App.4th 486, which refused to follow the

opinion in *Yanez*. (CT 79-81.)

The court found that the victim here was entitled to an amount that it determined would make her “whole” which was the \$2,812.94 cost of repairing the vehicle. (CT 83; RT 21-22.)

### **STATEMENT OF THE FACTS**

Appellant, who was intoxicated, banged on the victim’s door demanding to be let in. She called the police and watched appellant who had moved to her truck and then she heard loud banging noises. After police arrived, she inspected her truck and found the driver’s side door was dented, and that damage had been done to the door trim and antenna as well. (CT 11.)

### **ARGUMENT**

**REVIEW SHOULD BE GRANTED TO DETERMINE WHETHER VICTIM RESTITUTION FOR PROPERTY DAMAGE CAN BE SET AT THE COST OF REPAIR EVEN WHEN REPAIR IS THREE TIMES MORE EXPENSIVE THAN THE REPLACEMENT COST**

#### **A. *People v. Yanez***

In *People v. Yanez* (1995) 38 Cal.App.4th 1622, Yanez bought a car he knew to be stolen. He switched the license plates and vehicle identification number from the stolen car with ones from the same kind of car which he owned, and installed new wheels and tires and repainted the car. The probation report said restitution should be set at

the “high Blue Book price” for the same vehicle in “top shape” which was \$4,100. The victim requested restitution of \$8,018.11, most of which was for repairs, replacement of tires and wheels, and repainting. The trial court ordered restitution totaling \$7,302.18. (*Id.* at 1624-1625.)

At the time restitution was ordered (1993), section 1203.04, subdivision (d), provided:

[R]estitution means full or partial payment for the value of stolen or damaged property . . . which losses were caused by the defendant as a result of committing the crime for which he or she was convicted. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(*Id.* at 1626.) *Yanez* looked to civil law to see whether a crime victim could recover the cost of repairing damaged property if that cost were higher than the item’s replacement value. Under civil law, *Yanez* found that a plaintiff is entitled only to the lower amount, be it the market value at the time of the loss or the cost of reasonable repair. (*Ibid.*)

The reviewing court reasoned that restitution should not provide a recovery for damages beyond those which would be recoverable under civil law, and where the civil measure of damages results in full compensation, the determination of the amount of restitution “should not result in a greater award.” (*Id.* at 1627.) The market value at the time the car was stolen was not determined in the trial court, but the Blue Book value was known to be less than the cost of repair, thus the

reviewing court reversed the restitution order and remanded the matter for a proper determination of its replacement value. (*Id.* at 1628.)

**B. *In re Dina V.***

*In re Dina V.* (2007) 151 Cal.App.4th 486, found that it was not an abuse of discretion for the juvenile court to ordering a juvenile, who had stolen a vehicle, to pay victim restitution of \$4,419.72, which equaled the cost of repairing the car, even though its replacement value was only \$3,000. (*Id.* at 488.) While acknowledging the *Yanez* decision, *Dina V.* rejected the contention that victim restitution was limited to the amount of damages recoverable in a civil action, and reasoned that as the applicable restitution statutes expressly permit restitution in the amount of the cost of repair, restitution was not limited to the item's replacement cost. (*Id.* at 488-489.)

*Dina V.* reasoned that limiting restitution to the replacement cost (the measurement of damages in a civil case) was “neither required nor logical.” Such a limitation burdened the victim with finding a similar vehicle, in a similar precrime condition, for sale at the replacement value set by the court, therefore “Limiting the amount of restitution to the replacement cost would not make the victim whole.” (*Id.* at 489.)

**C. Application of *Yanez***

The restitution statutes at issue in *Yanez* or *Dina V.* do not require that restitution for damaged property be the *lesser* amount of

either replacement cost of like property or repair of the item. They speak in terms of “full or partial payment” for the value of the damaged property by either method as appropriate under the facts. Because criminal restitution must be credited toward any civil judgment against the defendant for the same damage, the *Yanez* court read the statute as applying the limitation from civil tort law that recovery is set at the lower method of valuation (market value or repair). (*Yanez*, 38 Cal.App.4th at 1627, citing comparison to § 1203.4, subd (d).)

*Yanez* said that replacement value was

[t]he difference between (i) the market value of the property before the commission of the felony of which the defendant was convicted and which caused the injury and (ii) the market value afterwards . . .

(*Id.* at 1627.)

Here, as in *Yanez*, that value was not determined. The only evidence of the replacement cost for the victim’s 1975 truck was the \$950 she paid for it sometime around 2007 or 2008. In *Yanez*, the only figure available for the damaged vehicle was a Blue Book valuation for the same model in “top condition” at the time it was stolen which was about half the cost quoted for repair. Because there was no evidence of its market value in its damaged condition, the matter was remanded for further hearings to make that determination rather than using the “top condition” value of \$4,100 as the replacement cost. Here, because there was no evidence of market value of the victim’s truck after the

damage, the same result should have applied.

#### **D. Application of *In re Dina V.***

It is unclear what the *Dina V.* court believed was the “replacement” cost of a damaged item. In *Yanez*, the “replacement” cost of fully reparable property was defined as the amount of devaluation caused by the defendant’s conduct, citing *Smith v. Hill* (1965) 237 Cal.App.2d 374, 388. (*Yanez*, at 1626.) *Dina V.* noted that the trial court determined the replacement cost was \$3,000, but it did not explain how that figure was arrived at. (*Id.* at 488.) The reviewing court suggested that the procedure involved having the trial court determine a replacement cost (without specifying how), and added that the victim would then have to try to find an actual physical replacement of the damaged item with a like, but undamaged, item, at the cost determined by the trial court. (*Id.* at 489.) In contrast to *Yanez*’s specific formula derived from civil law, the closest *Dina V.* comes to giving direction on the issue is to state that “the court may use any rational method of fixing the amount of restitution, provided it is reasonably calculated to make the victim whole . . .” (*Id.* at 489.)

In this case, the only alternative figure to the cost of repair that was provided was the actual purchase price. Presumably, just through the effect of depreciation, the purchase price of a similar, undamaged 1975 Dodge truck would be less than the price paid by the victim. *Dina*

V. suggested, but did not expressly require, that replacement value includes the cost of the victim's efforts in acquiring a suitable replacement vehicle. In *People v. Foster* (1993) 14 Cal.App.4th 939, the \$8,000 purchase price of a stolen and unrecovered Persian rug was found sufficient proof of the item's replacement value, plus the trial court added 10 percent fee to the amount. (*Id.* at 943.) The fee is not explained by the court, but it might represent the burden of finding a replacement or the estimated appreciation of the stolen rug. However, the propriety of using the original cost as the measure of replacement had a rationale in *Foster* not present here:

[T]he stolen item was a Persian rug. The only information about its value easily available to the victim, unless she happened to be an expert in the field, was the cost of the item to her. Otherwise, she would have had to consult an expert appraiser, probably incurring a fee, to determine the replacement cost of the rug. Even an appraiser's opinion would necessarily be speculative because the appraiser would not be able to examine the age, quality, or condition of the stolen rug.

(*Id.* at 946 fn. 5.) Finding the actual replacement cost of a used pickup truck does not entail similar efforts or require any comparable level of expertise. Arguably, an undamaged but virtually identical item would make the victim more whole than a repaired one (certainly, it would be advantageous at any future resale of that property).

#### **E. The Restitution Awarded in this Case Was Unreasonable**

While *People v. Yanis, supra*, adhered to a strict civil law formula

for calculating restitution, the persistent principles in properly determining criminal victim restitution discussed in restitution cases are reasonableness and rationality, and avoiding arbitrary and capricious methods. This point was accentuated in the very recent decision of *People v. Chappelone* (2010) 183 Cal.App.4th 1159:

A restitution order is intended to compensate the victim for its actual loss and is not intended to provide the victim with a windfall. While the court need not order restitution in the precise amount of loss, it must use a rational method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious.

(*Id.* at 905, citations and quote marks omitted.)

“The burden is on the party seeking restitution to provide an adequate factual basis for the claim.” (*People v. Giordano* (2007) 42 Cal.4th 644, 664.) Here, the cost of repairing the vehicle was adequately established, but the replacement cost was not. However, the court’s method of determining the amount of restitution for the damaged truck was arbitrary. The trial court said: “And if repair exceeds the replacement value, that doesn’t mean the person is entitled to have what it was they had been owning all along.” (RT 21.) Apparently the court meant “not entitled,” i.e., a person should be restored to their property in its pre-damaged condition. Also, the court said restitution should be “based on what it is that the victim owned and which [sic] was damaged.” (*Ibid.*) But, those statements do not express a “method” of calculating the correct amount of restitution; they merely restate the

general directive that the victim should be made whole.

Here, the cost of repairing the truck was just slightly less than three times the victim's purchase price and other factors, like depreciation, could have made replacement even lower than the purchase price, making the disparity between replacement and repair even greater. In *Dina V.*, the same ratio as used here would have permitted \$9,000 in repairs for a \$3,000 car. (*Id.*, 151 Cal.App.4th at 488.) In *Yanez*, the presumed replacement cost was \$4,100, and the court awarded repairs totaling \$7,302, or less than twice the cost of replacement. (*Id.* at 1625.)

If the victim were awarded the cost of replacement and purchased that replacement, she would be made whole. Also, if she were given the cost of repair and fixed the item, she would be made whole. But, by rejecting *Yanez* and following *Dina V.*, the Third District Court of Appeal has condoned a method which is neither rational nor reasonable as it permits restitution by repair which can be three (or more) times as expensive as replacement, but which does not make the victim any "more whole" than replacement would. Appellant submits review should be granted on this important issue.

## CONCLUSION

For the foregoing reasons, appellant Leroy Stanley respectfully submits that review should be granted.

Dated: August 29, 2010

Respectfully submitted,

*/s/ Robert Navarro*

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ROBERT NAVARRO  
Attorney for Appellant

## CERTIFICATE OF WORD COUNT

### Pursuant to California Rules of Court, rule 8.204(c)

I, Robert Navarro, appointed counsel for Leroy Stanley, under penalty of perjury under the laws of the State of California, hereby certify that the attached Petition for Review contained 2,467 words (excluding cover and tables) as calculated by WordPerfect X3.

Dated: August 29, 2010

*/s/ Robert Navarro*

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## **APPENDIX**

CERTIFIED FOR PARTIAL PUBLICATION\*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Yolo)

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THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
LEROY STANLEY,  
  
Defendant and Appellant.

C063661  
  
(Super. Ct. No.  
09-3110)

APPEAL from a judgment of the Superior Court of Yolo County, Paul K. Richardson, Judge. Affirmed.

Robert Navarro, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, and Jeffrey D. Firestone, Deputy Attorney General, for Plaintiff and Appellant.

We here decide how to calculate a victim's property damages for purposes of a victim restitution order. When a criminal damages a victim's vehicle, we conclude the trial court may in

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\* Pursuant to California Rules of Court, rule 8.1110, this opinion is certified for publication with the exception of part II of the Discussion.

its discretion award the victim the cost of repairing the vehicle, even if that amount exceeds the replacement value of the vehicle. In doing so, we agree with *In re Dina V.* (2007) 151 Cal.App.4th 486 (*Dina V.*) and disagree with *People v. Yanez* (1995) 38 Cal.App.4th 1622 (*Yanez*).

#### BACKGROUND

Defendant Leroy Stanley pled no contest to felony vandalism of Patricia Short-Lyster's truck, in exchange for a 16-month prison sentence, the dismissal of other charges, and the prosecutor's promise not to file other charges. Short-Lyster and defendant were not acquainted.

The facts show that on July 2, 2009, defendant damaged Stoddard's pickup truck, a 1975 Dodge Adventurer, for which she paid \$950, a year and a half earlier. When purchased, the truck was in excellent condition. Stoddard's father, a former auto mechanic, looked at the truck and advised her to buy it. After defendant vandalized it, Stoddard obtained a body shop estimate to fix it, amounting to \$2,812.94.

The trial court sentenced defendant to a stipulated term of 16 months in state prison.

Over defendant's objection that it would give the victim a windfall, the trial court ordered restitution in the amount of the repairs, \$2,812.94.

Defendant timely appealed, specifying a challenge to the restitution amount.

## DISCUSSION

### I

#### *Victim Restitution*

Defendant contends the matter must be remanded for the trial court to reconsider the restitution award, because it was unreasonable to award the victim nearly three times the cost of her truck as restitution. We disagree.

"One portion of Proposition 8, the 'Victims' Bill of Rights,' passed by the people in the exercise of their reserved initiative powers in 1982, states 'that all persons who suffer losses as a result of criminal activity shall have the right to . . . restitution from the persons convicted of the crimes for losses they suffer.' (Cal. Const., art. I, § 28, subd. (b) (13) (A); see *People v. Saint-Amans* (2005) 131 Cal.App.4th 1076, 1081.)" (*People v. Bartell* (2009) 170 Cal.App.4th 1258, 1261.)

"'A victim's restitution right is to be broadly and liberally construed.' [Citation.] "'[S]entencing judges are given virtually unlimited discretion as to the kind of information they can consider'" in determining victim restitution. [Citations.] Restitution orders are reviewed for abuse of discretion. [Citation.] When there is a factual and rational basis for the amount of restitution ordered, no abuse of discretion will be found." (*People v. Phu* (2009) 179 Cal.App.4th 280, 283-284 (*Phu*).)

In a case involving the death of one victim, the California Supreme Court held as follows:

"The abuse of discretion standard is 'deferential,' but it 'is not empty.' [Citation.] '[I]t asks in substance whether the ruling in question "falls outside the bounds of reason" under the applicable law and the relevant facts [citations].' [Citation.] Under this standard, while a trial court has broad discretion to choose a method for calculating the amount of restitution, it must employ a method that is rationally designed to determine the surviving victim's economic loss. To facilitate appellate review of the trial court's restitution order, the trial court must take care to make a record of the restitution hearing, analyze the evidence presented, and make a clear statement of the calculation method used and how that method justifies the amount ordered." (*People v. Giordano* (2007) 42 Cal.4th 644, 663-664 (*Giordano*).)

In part, the implementing statute provides as follows:

"To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

"(A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of

repairing the property when repair is possible." (Pen. Code, § 1202.4, subd. (f)(3)(A).)

Thus, in this case the victim was entitled to "the replacement cost" of a similar vehicle, or "the actual cost of repairing" her vehicle. (Pen. Code, § 1202.4, subd. (f)(3).) The trial court recognized the difference between these two figures, and awarded the victim the repair cost.

In his supplemental brief, defendant contends that, although the market value of the truck (precrime) was not determined in the record, because the victim bought it for \$950 and used it for over a year, it was not worth *more* than \$950, and therefore awarding nearly three times that amount was unreasonable and gives the victim a windfall.

*Yanez, supra*, 38 Cal.App.4th 1622, lends support to defendant's contention. After quoting the statutory language (Pen. Code, former § 1203.04, subd. (d), now renumbered as § 1202.4, subd. (f)(3)(A)), *Yanez* stated as follows:

"That statutory language does not answer the question posed by the facts before us: what is the measure of damages to be applied when the property can be repaired, but only at a cost which is greater than the replacement cost of like property? Is the victim entitled to recover only the lesser of the two alternative measures, or can she insist on repairing her original [car], even though the cost of doing so is greater than the cost of purchasing a different one?

"Were the victim to sue in tort to collect compensation for her injuries, the answer would be clear. The measure of damages

for wrongful injury to personal property which can be fully repaired 'is the difference between the market value of the property immediately before and immediately after the injury, or the reasonable cost of repair if such cost be less than the depreciation in value.' [Citations.] Thus, '[i]f the cost of repairs exceeds the depreciation in value, the plaintiff may only recover the lesser sum. Similarly, if depreciation is greater than the cost of repairs, the plaintiff may only recover the reasonable cost of repairs.' [Citation.]

"These rules of tort law are designed to fully compensate the victim of the wrongful injury to personal property 'for all the detriment proximately caused thereby . . . .' [Citations.] . . . [R]estitution is not designed to lead to recovery of damages above and beyond those which would be recoverable under civil law. (Cf. [Pen. Code, former § 1203.04, subd. (d), current § 1202.4, subd. (j)] ['Restitution . . . shall be credited to any other judgments obtained by the victim against the defendant arising out of the crime for which the defendant was convicted.'].) If the civil measure of damages results in full compensation, the measure applied to determine the degree of restitution . . . should not result in a greater award.

"Accordingly, we conclude that, for purposes of [former] section 1203.04, subdivision (d), restitution for the value of damaged but reparable property is limited to the lesser of the following:

"(1) The difference between (i) the market value of the property before the commission of the felony of which the

defendant was convicted and which caused the injury and (ii) the market value afterwards; or

“(2) The reasonable cost of repairing the damaged property to the condition it was in prior to being damaged by the felony of which the defendant was convicted.” (*Yanez, supra*, 38 Cal.App.4th at pp. 1626-1627.)

*Yanez* limits a trial court’s discretion to choose between the statutory alternatives of replacement cost and feasible repair cost. (Pen. Code, § 1202.4, subd. (f)(3).) Under *Yanez*, civil tort principles are overlaid on the statute and impose a cap on the permissible restitution award. The cited support for the view that restitution was “not designed to lead to recovery of damages above and beyond those which would be recoverable under civil law” was a provision requiring restitution payments to be credited against a civil tort judgment. (Pen. Code, § 1202.4, subd. (j).) But that provision prevents duplicative recovery from the tort and criminal fora, it does not address what *amount* of restitution makes a crime victim whole as required by Proposition 8 and implementing legislation.

A more recent decision, also on similar facts, rejects the rigid application of civil tort principles to limit a trial court’s discretion to set restitution. *Dina V., supra*, 151 Cal.App.4th 486, upheld a juvenile delinquency restitution order in the amount of the repairs, although that amount exceeded the value of the vehicle. The analogous juvenile delinquency statute is identical to Penal Code section 1202.4, subdivision (f)(3)(A), as follows: “The value of stolen or damaged property

shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible." (Welf. & Inst. Code, § 730.6, subd. (h)(1).)

"Welfare and Institutions Code section 730.6 specifically defines the value of stolen or damaged property, for the purposes of restitution, to either the replacement value or the actual cost of repair. Judges have broad discretion in fixing the amount of restitution, and 'the court may use any rational method of fixing the amount of restitution, provided it is reasonably calculated to make the victim whole, and provided it is consistent with the purpose of rehabilitation.' [Citation.]" (*Dina V.*, *supra*, 151 Cal.App.4th at p. 489, original emphasis.)

"To limit the amount of restitution to the replacement cost, because that would be the manner of determining damages in a civil case, is neither required nor logical. As respondent points out, putting such a limit on restitution requires that the victim find a similar vehicle, in similar precrime condition, for sale for the replacement value determined by the court, at the victim's time and expense. Such an onus should not be placed upon the victim. Limiting the amount of restitution to the replacement cost would not make the victim whole." (*Dina V.*, *supra*, 151 Cal.App.4th at p. 489, fn. omitted.)

We agree with *Dina V.*: The statutes implementing Proposition 8 give the trial court a choice between market value and feasible repair cost. (Pen. Code, § 1202.4, subd. (f)(3)(A); Welf. & Inst. Code, § 730.6, subd. (h)(1).) To

engraft civil law principles on these choices would further burden victims and be inconsistent with the broad construction Proposition 8 and its implementing statutes must be accorded by judges. (*Giordano, supra*, 42 Cal.4th at p. 655; *Phu, supra*, 179 Cal.App.4th at p. 283; *People v. Lyon* (1996) 49 Cal.App.4th 1521, 1525.)

Our conclusion does not ignore the concerns underlying *Yanez*. As defendant points out, the restitution statutes are not designed to give windfalls, but to make victims whole. In some cases, the costs of repairing a vehicle that is readily replaceable might be so disproportionate to its market value that a trial court could rationally conclude the victim is not entitled to the repair cost. But to the extent *Yanez* set out a rigid rule that a trial court could never award more than a vehicle's market value, we disagree and decline to follow it.

In this case, no abuse of discretion is shown. As a matter of common sense, it would be hard to find a 1975 Dodge Adventurer in "excellent" condition for \$950, if for no other reason than there are not very many of them on the road. And the longer it would take the victim to find one, the greater her loss-of-use damages would be. (See *People v. Thygesen* (1999) 69 Cal.App.4th 988, 995.) Further, the victim's father, a former mechanic, advised her to buy the truck, from which one can rationally infer it was a good bargain at \$950. Thus, as in *Dina V.*, limiting the victim to her purchase price would impose on her a hardship, requiring her to engage in what would almost certainly be a fruitless search for a similar truck in excellent

condition for \$950. The fact that the repairs will cost about three times the victim's purchase price does not mean she will receive a windfall: It means she will have her truck back in the same condition it was before defendant vandalized it. This comports with the spirit of Proposition 8 and the text of the implementing legislation.

Accordingly, we conclude the trial court did not abuse its broad discretion to award restitution in the amount of the repair bill in this case.

## II

### *Other Matters*

Appointed appellate counsel filed a no-merit or *Wende* brief. (See *People v. Wende* (1979) 25 Cal.3d 436.) Such a brief is proper if and only if appointed counsel is unable to find any arguable issues that may benefit the defendant. Given that the issue we decide was litigated in the trial court, and defendant could have benefitted if we followed *Yanez*, it was not appropriate to file a *Wende* brief. That is why we solicited supplemental briefing from both sides of this case to address the matter. In any event, we also advised defendant of his right to file a supplemental brief within 30 days of the date of filing of the opening brief and he did not do so. We have examined the entire record, and we found no other arguable error that might benefit defendant.

DISPOSITION

The judgment is affirmed.

\_\_\_\_\_  
NICHOLSON, J.

We concur:

\_\_\_\_\_  
BLEASE, Acting P. J.

\_\_\_\_\_  
BUTZ, J.

## DECLARATION OF SERVICE BY MAIL

I am a resident of the State of California, over the age of eighteen and am not a party to this action. My business address is P.O. Box 8493, Fresno, California 93747. I am readily familiar with the business practices of the law office of Robert Navarro for the collection and processing of correspondence for mailing with the United States Postal Service, as described in Code of Civil Procedure section 1013(a). In the ordinary course of business, correspondence placed for collection and mailing is on the same day deposited with United States Postal Service in a sealed envelope with the postage fully prepaid. I am employed in the county where said collection and processing of mail takes place.

On August 30, 2010, the attached: **PETITION FOR REVIEW** (without opinion) in *People v. Stanley*, Third District Court of Appeal, No. C063661, was placed in envelopes for collection and mailing following our ordinary practice at P.O. Box 8493, Fresno, California 93747. The envelopes were addressed as indicated below:

Respondent

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Trial Court

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed August 30, 2010, at Fresno, California.

/s/ Robert Navarro