

COURT OF APPEALS OF OREGON

State v. Rich

349 Or. App. 48 (2026) · No. A181996 · Decided April 29, 2026

SUMMARY

The Oregon Court of Appeals addresses double-jeopardy issue preclusion, retrial, merger of criminal convictions, sentencing departures, criminal-history scoring, and restitution in a prosecution involving injuries to a child. The court held that the acquittal on first-degree assault did not preclude retrial or related evidence for other counts, but that two first-degree criminal-mistreatment convictions had to merge. The court reversed and remanded for entry of a single conviction on the merged counts and for resentencing, while otherwise affirming.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	Presiding Judge Shorr; Judge Powers; Judge O'Connor
JURISDICTION	Oregon Court of Appeals
DECIDED	April 29, 2026
DOCKET	A181996
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed a judgment imposing convictions, sentences, and restitution after a mixed verdict at his first jury trial, a conditional no-contest plea on retried counts, and sentencing proceedings.
STANDARD OF REVIEW	The court reviewed merger rulings and sentencing for legal error, reviewing supported trial-court factual findings with deference. Whether conduct constituted a single criminal episode was reviewed as a question of law, potentially dependent on historical factual findings. Restitution evidence was reviewed in the light most favorable to the state. Unpreserved claims were reviewed only if plain-error review was requested and warranted.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	Samuel Warren Rich v. State of Oregon

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QUESTIONS PRESENTED

1. Whether the jury's acquittal of first-degree assault on Count 1 barred retrial on Count 2 or barred the state from using evidence concerning the head injury in a prosecution involving Counts 6 and 7 under the Double Jeopardy Clause's issue-preclusion component.
2. Whether the convictions on Counts 2 and 7 for first-degree criminal mistreatment had to merge because the state failed to prove a sufficient pause between the acts.
3. Whether the trial court erred by imposing departure sentences without the state pleading or timely providing notice of enhancement facts.
4. Whether the trial court improperly reconstituted defendant's criminal-history score or imposed consecutive sentences based on convictions arising from the same criminal episode.
5. Whether defendant was entitled to a jury determination of restitution under the Oregon or federal constitutions.
6. Whether the restitution award for future medical expenses was unsupported because such expenses were not objectively verifiable or were too speculative.

HOLDINGS

1. The acquittal of first-degree assault on Count 1 did not necessarily decide that defendant had not intentionally or knowingly caused W's head injury; therefore, issue preclusion under the Double Jeopardy Clause did not bar retrial on Count 2.
2. The trial court did not err in denying defendant's motion to exclude evidence suggesting that he violently attacked W and intentionally or knowingly caused W's head injury in a subsequent prosecution involving Counts 6 and 7.
3. Counts 2 and 7 had to merge into a single conviction for first-degree criminal mistreatment because the state failed to prove a sufficient pause between the acts.
4. The trial court erred by imposing upward departure sentences on Counts 2 and 7 because the state neither pleaded enhancement facts nor provided timely notice of its intent to rely on them.
5. The trial court did not err in reconstituting defendant's criminal-history score for Count 3 because the injury offenses and the withholding-of-care offense arose from separate criminal episodes.
6. Defendant was not entitled to a jury determination of restitution under Article I, section 17, of the Oregon Constitution, the Sixth Amendment, or the Seventh Amendment.
7. The restitution award for future medical expenses was affirmed because the record supported that the expenses would be incurred and that they were objectively verifiable.

KEY QUOTATIONS

“When the same conduct or criminal episode violates only one statutory provision and involves only one victim, but nevertheless involves repeated violations of the same statutory provision against the same victim, there are as many separately punishable offenses as there are violations, except that each violation, to be separately punishable under this subsection, must be separated from other such violations by a sufficient pause in the defendant’s criminal conduct to afford the defendant an opportunity to renounce the criminal intent.” (59)

“A sentencing court may not rely on aggravating facts that were not included either in the indictment or in written notice to the defendant to support an upward departure.” (64-65)

“We also do not mean to imply that the recovery of ‘economic damages’ makes a restitution proceeding into a civil proceeding. Restitution is a penalty that serves a penal purpose.” (68-69)

FACTUAL BACKGROUND

Defendant was caring for his girlfriend's two-and-a-half-year-old son, W, on December 18, 2017, when W suffered a life-threatening head injury and numerous other injuries. W required extensive medical treatment and suffered permanent paralysis, blindness, and other disabilities. Defendant claimed W had fallen down stairs, while the state presented medical testimony that the injuries were inconsistent with that explanation and indicated abuse. The trial court later ordered approximately \$7.5 million in restitution, largely for future medical expenses.

PROCEDURAL HISTORY

Defendant was initially tried on seven counts arising from injuries to a child. The jury acquitted him of some charges, convicted him of others, and was unable to reach verdicts on Counts 2, 6, and 7. The trial court denied defendant's motions asserting double-jeopardy issue preclusion, defendant entered a conditional no-contest plea to Counts 2 and 7, Count 6 was dismissed, and the court imposed departure sentences and restitution. The Court of Appeals reversed and remanded as to the merger of Counts 2 and 7 and sentencing, while affirming the remaining challenged rulings, including restitution.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the convictions on Counts 2 and 7 and remand for entry of a judgment of a single conviction for first-degree criminal mistreatment. Remand for resentencing on all counts; on resentencing, the court may not rely on enhancement factors that were not pleaded or timely noticed. Affirm the judgment in all other respects, including the restitution award.

CASES CITED

- State v. Ballangrud, 338 Or. App. 701, 715, 568 P.3d 209 (2025)

- State v. Dodge, 373 Or. 156, 176, 178, 563 P.3d 339 (2025)
- Ashe v. Swenson, 397 U.S. 436, 444, 446 (1970)
- Yeager v. United States, 557 U.S. 110, 119 & n.4 (2009)
- Currier v. Virginia, 585 U.S. 493, 514 (2018)
- State v. Owen, 369 Or. 288, 505 P.3d 953 (2022)
- State v. Tellez-Suarez, 322 Or. App. 337, 338-39, 519 P.3d 561 (2022), rev. den., 370 Or. 827 (2023)
- State v. Chemxananou, 319 Or. App. 636, 640, 510 P.3d 954 (2022), rev. den., 370 Or. 303 (2022)
- State v. Nagy, 346 Or. App. 149, 165, 585 P.3d 5 (2025)
- State v. Allen, 321 Or. App. 678, 687-88, 517 P.3d 1055 (2022)
- State v. Cid, 331 Or. App. 231, 240-41, 545 P.3d 1278 (2024), rev. den., 372 Or. 787 (2024)
- State v. Slagle, 297 Or. App. 392, 395-97, 441 P.3d 644 (2019), rev. den., 365 Or. 557 (2019)
- State v. White, 280 Or. App. 170, 380 P.3d 1205 (2016), rev. den., 360 Or. 752 (2017)
- State v. Ostrom, 257 Or. App. 520, 306 P.3d 788 (2013)
- State v. Ortiz-Rico, 303 Or. App. 78, 84, 462 P.3d 741 (2020), rev. den., 366 Or. 827 (2020)
- State v. Reed, 256 Or. App. 61, 63, 299 P.3d 574 (2013), rev. den., 353 Or. 868 (2013)
- State v. Glazier, 253 Or. App. 109, 117-18, 288 P.3d 1007 (2012), rev. den., 353 Or. 280 (2013)
- State v. Mankiller, 344 Or. App. 327, 342, 580 P.3d 313 (2025), rev. den. (Apr. 9, 2026)
- State v. Zachery, 304 Or. App. 476, 479, 467 P.3d 827 (2020)
- State v. Moscote-Saavedra, 320 Or. App. 682, 691, 514 P.3d 1169 (2022)
- State v. Dearmitt, 321 Or. App. 628, 630, 517 P.3d 368 (2022)
- State v. Dent, 324 Or. App. 167, 172, 525 P.3d 487 (2023)
- State v. Crook, 331 Or. App. 524, 533, 547 P.3d 158 (2024), rev. den., 372 Or. 718 (2024)
- State v. Taylor, 293 Or. App. 460, 465, 428 P.3d 939 (2018)
- Orchard v. Mills, 247 Or. App. 355, 359, 270 P.3d 309 (2011), rev. den., 352 Or. 33 (2012)
- State v. Dillon, 292 Or. 172, 179-80, 637 P.2d 602 (1981)
- State v. Hart, 299 Or. 128, 137-39, 699 P.2d 1113 (1985)
- State v. Hval, 174 Or. App. 164, 180-81, 25 P.3d 958 (2001), rev. den., 332 Or. 559 (2001)
- State v. N. R. L., 354 Or. 222, 226, 311 P.3d 510 (2013)
- State v. Fox, 370 Or. 456, 468, 521 P.3d 151 (2022)
- State v. Ramos, 358 Or. 581, 599 n.11, 368 P.3d 446 (2016)
- State v. Campbell, 296 Or. App. 22, 27 n.5, 438 P.3d 448 (2019), rev'd on other grounds, 366 Or. 825, 470 P.3d 369 (2020)
- State v. Deslaurier, 277 Or. App. 288, 289, 371 P.3d 505 (2016)
- Parrott v. Carr Chevrolet, Inc., 331 Or. 537, 558 n.15, 17 P.3d 473 (2001)
- Minnesota & St. Louis Railroad Co. v. Bombolis, 241 U.S. 211 (1916)
- State v. Yocum, 247 Or. App. 507, 512, 269 P.3d 113 (2011), rev. den., 352 Or. 25 (2012)
- DeVaux v. Presby, 136 Or. App. 456, 463, 902 P.2d 593 (1995)

- State v. Kirkland, 268 Or. App. 420, 421, 342 P.3d 163 (2015)
- State v. Ardizzzone, 270 Or. App. 666, 673, 349 P.3d 597 (2015), rev. den., 358 Or. 145 (2015)

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