

SUPREME COURT OF THE STATE OF ARIZONA

State of Arizona v. Richard Allen Reed

State v. Reed · No. CR-20-0385-PR · Decided February 1, 2022

SUMMARY

The Arizona Supreme Court held that a crime victim’s privately incurred attorney fees may be awarded as criminal restitution only when an attorney is reasonably necessary to remedy harm directly caused by the criminal conduct or to enforce the victim’s rights. The court concluded that most of the fees awarded to voyeurism victim C.C. were consequential damages rather than directly caused losses, while remanding for further consideration of two billing entries concerning possible harassment. The court reversed the restitution order in part, vacated the Court of Appeals’ opinion, and remanded.

CASE DETAILS

COURT	Supreme Court of the State of Arizona
WRITING FOR THE COURT	Vice Chief Justice Timmer; Chief Justice Brutinel; Justice Bolick; Justice Lopez; Justice Beene; Justice King; Justice John Pelander (Ret.)
JURISDICTION	Arizona
DECIDED	February 1, 2022
DOCKET	CR-20-0385-PR
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review of the Arizona Court of Appeals' decision affirming a criminal restitution order. The Arizona Supreme Court reversed the restitution order in part, vacated the court of appeals' opinion, and remanded for further proceedings.
STANDARD OF REVIEW	Restitution orders are reviewed for abuse of discretion; statutory and constitutional interpretation are reviewed de novo.
PRECEDENTIAL VALUE	published, precedential Arizona Supreme Court opinion
PARTIES	Richard Allen Reed v. State of Arizona

TOPICS

- restitution criminal
- criminal procedure
- statutory interpretation
- appellate procedure
- remedies

PRACTICE AREAS

criminal law

victims' rights

criminal restitution

appellate procedure

QUESTIONS PRESENTED

1. Whether attorney fees voluntarily incurred by a crime victim during criminal proceedings are recoverable as criminal restitution.
2. What standard determines whether a victim's private attorney fees are directly caused by the criminal conduct rather than consequential damages.
3. Whether the record supported awarding C.C. restitution for the attorney-fee billing entries concerning Reed's alleged attempts to contact her.

HOLDINGS

1. Private attorney fees incurred by a crime victim during criminal proceedings are recoverable as restitution only when an attorney is reasonably necessary to remedy harm caused by the criminal conduct or to enforce the victim's rights.
2. The vast majority of C.C.'s attorney fees were not recoverable as restitution because they were incurred to navigate and monitor the criminal process, advise her, and assist with prosecution strategy rather than to enforce a right or remedy harm directly caused by Reed's offense.

KEY QUOTATIONS

“attorney fees are appropriately ordered as restitution when an attorney is reasonably necessary to remedy the harm caused by the criminal conduct.” (¶ 21)

“Victims’ economic losses incurred because they exercised, enforced, or defended their rights in a criminal case are allowed as restitution. But when those losses are private attorney fees, they are allowable as restitution only when an attorney is reasonably necessary to assist victims in enforcing those rights.” (¶ 30)

FACTUAL BACKGROUND

Reed used a mirror to look beneath the door of a bathroom occupied by C.C. A jury convicted him of voyeurism. C.C. retained private counsel to assist her in exercising her crime-victim rights during the criminal case, and the trial court awarded her \$17,909.50 in attorney fees as restitution, in addition to stipulated amounts for counseling and a protective-order expense.

PROCEDURAL HISTORY

A jury convicted Reed of voyeurism, and the trial court ordered him to pay restitution, including \$17,909.50 in attorney fees incurred by the victim during the criminal proceedings. The court of appeals initially affirmed the conviction, later dismissed Reed's appeal from the restitution order after his death, and then, following a remand from the Arizona Supreme Court and intervention by Reed's wife, affirmed the restitution order. The Arizona Supreme Court granted review, vacated the court of appeals' opinion, reversed the restitution award except as to two billing entries, and remanded for the trial court to determine whether those entries qualified as restitution.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must determine whether the attorney-fee amounts reflected in Keller's November 9, 2015, and November 19, 2015 billing entries were reasonably necessary to enforce C.C.'s rights, including her right to be free from intimidation or harassment, and therefore qualify as restitution. The court of appeals' opinion is vacated.

CASES CITED

- State v. Reed, 248 Ariz. 72, 74 ¶ 3 (2020)
- State v. Reed, 250 Ariz. 599, 601 ¶ 2 (App. 2020)
- State v. Patel, 251 Ariz. 131, 133 ¶ 2 (2021)
- State v. Wilkinson, 202 Ariz. 27, 28-30 ¶¶ 1, 6-12 (2002)
- Town of Gilbert Prosecutor's Office v. Downie ex rel. County of Maricopa, 218 Ariz. 466, 472 ¶ 28 (2008)
- State v. Slover, 220 Ariz. 239, 242-43 ¶¶ 4-9 (App. 2009)
- State v. Morris, 173 Ariz. 14, 17 (App. 1992)
- State v. Leteve, 237 Ariz. 516, 530 ¶ 58 (2015)
- State v. Lewis, 222 Ariz. 321, 323 ¶¶ 2, 5 (App. 2009)
- Johnson Utilities, L.L.C. v. Arizona Corporation Commission, 249 Ariz. 215, 219 ¶ 11 (2020)
- Nicaise v. Sundaram, 245 Ariz. 566, 568 ¶ 11 (2019)
- State v. Baltzell, 175 Ariz. 437, 438-39 (App. 1992)
- State v. Wideman, 165 Ariz. 364, 369 (App. 1990)
- State v. Lindsley, 191 Ariz. 195, 199 (App. 1997)
- State v. Madrid, 207 Ariz. 296, 300 ¶ 10 (App. 2004)
- State v. Hunziker, 56 P.3d 202, 204-10 (Kan. 2002)
- State v. Cox, 42 P.3d 182, 185, 187 (Kan. Ct. App. 2002)
- State v. Herfurth, 388 P.3d 1104, 1108 (Or. Ct. App. 2016)
- United States v. Fountain, 768 F.2d 790, 800 (7th Cir. 1985)
- United States Fidelity & Guaranty Co. v. Frohmiller, 71 Ariz. 377, 380 (1951)

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