

SUPREME COURT OF OREGON

State v. Kirschner

358 Or. 605 (2016) · No. SC S063069; CA A154602; CC F19697 · Decided February 19, 2016

SUMMARY

The Oregon Supreme Court held that wages lost by a victim who was subpoenaed to attend the defendant's criminal trial and restitution hearing could be awarded as restitution under ORS 137.106. The American Rule did not bar recovery of those costs, provided the state established that they resulted from the defendant's criminal activity and were reasonably foreseeable.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Walters, J.; Balmer, Chief Justice; Kistler, J.; Landau, J.; Baldwin, J.; Brewer, J.; Nakamoto, J.
JURISDICTION	Oregon
DECIDED	February 19, 2016
DOCKET	SC S063069; CA A154602; CC F19697
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant sought review of a Court of Appeals decision affirming a circuit court restitution award. The Oregon Supreme Court affirmed both the Court of Appeals decision and the circuit court judgment.
STANDARD OF REVIEW	The Supreme Court reviewed whether the trial court committed legal error in awarding the disputed lost wages as restitution under ORS 137.106.
PRECEDENTIAL VALUE	Published Oregon Supreme Court opinion; precedential
PARTIES	Kade William Kirschner v. State of Oregon

TOPICS

restitution criminal criminal procedure statutory interpretation remedies

PRACTICE AREAS

criminal law criminal restitution statutory interpretation

QUESTIONS PRESENTED

1. Whether wages lost by a victim while subpoenaed to attend the defendant's criminal trial qualify as economic damages recoverable as restitution under ORS 137.106.
2. Whether wages lost by a victim while subpoenaed to testify at a restitution hearing qualify as economic damages recoverable as restitution under ORS 137.106.
3. Whether the American Rule or ORCP 68 precludes awarding subpoena-related litigation costs as restitution.

HOLDINGS

1. Wages that a victim loses because the victim is subpoenaed to attend the defendant's criminal trial may be awarded as economic damages and restitution under ORS 137.106, provided the statutory requirements are satisfied.
2. The American Rule does not preclude an award of restitution for wages a victim loses while responding to a State-issued subpoena to testify at a restitution hearing.
3. A court may not award a victim's subpoena-related costs as economic damages unless the State establishes that the costs resulted from the defendant's criminal activity and were reasonably foreseeable.

KEY QUOTATIONS

“Although defendant is correct in his description of ORCP 68 and the American Rule, those rules do not preclude a party from recovering litigation costs incurred in a separate proceeding as “economic damages.”” (609)

“In that circumstance, the rationale that underlies the American Rule does not apply, and we will not rely on that rule to preclude an award of restitution.” (609-10)

“It is important to remember, however, that even in the circumstance in which a victim’s costs are incurred in the underlying criminal prosecution or in the victim’s role as subpoenaed witness in the restitution hearing, a court may not award a victim’s costs as “economic damages” unless the state also establishes that those costs “resulted from” a defendant’s criminal activity and were reasonably foreseeable.” (610)

FACTUAL BACKGROUND

Kirschner and a codefendant broke into the victim's home, fled after the victim confronted them, and Kirschner was later apprehended in possession of drugs and a concealed weapon. After Kirschner pleaded guilty to two drug-possession charges and carrying a concealed weapon, the State sought restitution for home repairs, wages lost making those repairs, and wages the victim lost while responding to subpoenas to attend the criminal trial and restitution hearing. The challenged trial- and hearing-related lost wages totaled approximately \$900.

PROCEDURAL HISTORY

Kirschner pleaded guilty to two drug-possession charges and carrying a concealed weapon after the State dismissed other charges. The circuit court ordered him to pay restitution, including approximately \$900 for

wages the victim lost while subpoenaed to attend defendant's criminal trial and the restitution hearing. The Court of Appeals affirmed in a per curiam decision, and the Oregon Supreme Court granted review and affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Ramos, 267 Or. App. 164, 340 P.3d 703 (2014)
- State v. Ramos, 358 Or. 581, 596-603 (2016)