

OREGON COURT OF APPEALS

State v. Weber

350 Or. App. 459 (2026) · No. A184017 (Control), A184018 · Decided June 10, 2026

SUMMARY

The Oregon Court of Appeals held that the defendant failed to preserve his challenge to the exclusion of a defense witness as a sanction for a discovery violation. The court accepted the state's concession that per diem fees could not be imposed for the first time in written judgments and remanded both cases for resentencing, while otherwise affirming the convictions.

CASE DETAILS

COURT	Oregon Court of Appeals
WRITING FOR THE COURT	Pagán, J.; Aoyagi, Presiding Judge; Egan, Judge; Pagán, Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	June 10, 2026
DOCKET	A184017 (Control), A184018
DISPOSITION	remanded
PROCEDURAL POSTURE	Defendant brought a consolidated appeal from judgments of conviction in two Polk County Circuit Court criminal cases, challenging exclusion of a defense witness for a discovery violation and the imposition of per diem fees in the written judgments.
PRECEDENTIAL VALUE	Published Oregon Court of Appeals opinion
PARTIES	Jacob Duschell Weber v. State of Oregon

TOPICS

- discovery criminal
- preservation of error
- sixth amendment
- sentencing
- appellate procedure

PRACTICE AREAS

- criminal procedure
- appellate procedure
- sentencing
- constitutional law

QUESTIONS PRESENTED

- Whether the trial court violated defendant's rights to compulsory process under Article I, section 11, of the Oregon Constitution and the Sixth Amendment by excluding a defense witness for an undisputed

discovery violation without considering a lesser sanction or continuance.

2. Whether the sentencing judgments could impose per diem fees when the fees had not been announced in open court at the sentencing hearing.

HOLDINGS

1. Defendant's claim that the trial court should have imposed a lesser sanction or ordered a continuance was not preserved because defendant did not object to the sanction imposed or request an alternative sanction. The court therefore declined to reach the compulsory-process argument, including plain-error review because defendant did not request it.
2. A trial court errs by imposing per diem fees in a defendant's judgment without first announcing those fees at the sentencing hearing. The judgments were remanded for resentencing because the fees were not announced in open court.

KEY QUOTATIONS

“When, as here, a party subject to a sanction for a discovery violation does not deny at trial that it is subject to some sanction, its failure to object to the particular sanction imposed by the judge or, in the alternative, to argue for some other sanction, fails to preserve a claim on appeal that the judge erred in failing to consider the availability of a less onerous sanction.” (350 Or. App. at 461)

FACTUAL BACKGROUND

In the theft case, after the state rested, defendant sought to call Spray as a defense witness even though her name had not been disclosed on the defense witness list. Defense counsel explained that the defense had learned of Spray during the week before trial and had confirmed her attendance only on the morning she was to testify. The trial court found a discovery violation and excluded the witness; neither party sought a continuance or requested an alternative sanction. The written judgments in both cases also required defendant to pay per diem fees that had not been announced in open court.

PROCEDURAL HISTORY

In Case No. 22CR59486, defendant was convicted after a bench trial of first-degree criminal possession of a forged instrument. In Case No. 23CR45662, he was convicted after a jury trial of first-degree theft. The Oregon Court of Appeals affirmed the convictions, accepted the state's concession regarding per diem fees, and remanded both judgments for resentencing.

DISPOSITION

remanded

REMAND INSTRUCTIONS

Remand the judgments in Polk County Case Nos. 22CR59486 and 23CR45662 for resentencing to correct the erroneous imposition of per diem fees; the convictions are otherwise affirmed.

CASES CITED

- State v. Cunningham, 197 Or. App. 264, 105 P.3d 929, rev. den., 339 Or. 406 (2005)
- State v. Mai, 294 Or. 269, 343, 656 P.2d 315 (1982)
- State v. Ardizzone, 270 Or. App. 666, 673, 349 P.3d 597, rev. den., 358 Or. 145 (2015)
- State v. Barr, 331 Or. App. 242, 244, 545 P.3d 772, rev. den., 372 Or. 720 (2024)

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