

COURT OF APPEALS OF OREGON

State v. Shepherd

346 Or. App. 242 (2025) · No. A179944 · Decided December 31, 2025

SUMMARY

The Oregon Court of Appeals held that the trial court legally erred in concluding that the defendant's plea agreement prevented her from relying on the victim's written waiver to request less than the full amount of restitution. The court also held that the trial court plainly erred by including \$14,660 in restitution for conduct charged in a case dismissed under the plea agreement, but declined to correct that error because the record supported an inference that defendant acknowledged the related economic damages. The supplemental restitution judgment was vacated and remanded for a new restitution hearing; the judgment was otherwise affirmed.

CASE DETAILS

COURT	Court of Appeals of Oregon
WRITING FOR THE COURT	O'Connor, J.; Ortega, Presiding Judge; Hellman, Judge; O'Connor, Judge
JURISDICTION	Oregon Court of Appeals
DECIDED	December 31, 2025
DOCKET	A179944
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant appealed from a supplemental restitution judgment entered after her no-contest pleas to two counts of first-degree criminal mistreatment. She challenged the restitution award, the trial court's calculation of economic damages, and restitution imposed for conduct underlying charges dismissed under the plea agreement.
STANDARD OF REVIEW	The meaning of a plea agreement is reviewed for legal error. The court reviews preservation issues under ordinary appellate-preservation principles and applies the plain-error framework to unpreserved legal errors. The Court of Appeals declined to reach the merits of the damages-calculation challenge because it was unpreserved.
PRECEDENTIAL VALUE	Published Oregon Court of Appeals opinion; precedential.
PARTIES	Trena Lee Shepherd v. State of Oregon

TOPICS

restitution criminal

plea bargaining

criminal procedure

preservation of error

appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

appellate procedure

restitution

plea agreements

QUESTIONS PRESENTED

1. Whether the plea agreement prohibited Shepherd from relying on D's written waiver and requesting that the court impose less than the full amount of restitution under ORS 137.106(2)(b).
2. Whether the trial court's calculation of economic damages was erroneous.
3. Whether the trial court plainly erred by imposing \$14,660 in restitution for conduct underlying charges dismissed as part of the plea agreement.

HOLDINGS

1. The plea agreement left restitution open for the court to determine and did not prohibit Shepherd from submitting D's written waiver or asking the court to impose no restitution or less than the full amount of economic damages under ORS 137.106(2)(b). The trial court therefore erred by concluding that those actions breached the plea agreement and by conditioning consideration of the waiver on open sentencing.
2. The court declined to reach the merits of Shepherd's challenge to the method of calculating economic damages because the argument was not preserved and Shepherd did not request plain-error review.
3. The trial court plainly erred by imposing \$14,660 in restitution for conduct underlying charges that were dismissed as part of the plea agreement because Shepherd was not convicted of, and did not admit on the record to, that conduct. The appellate court nevertheless declined to exercise its discretion to correct that plain error.

KEY QUOTATIONS

“Defendant retained the right to challenge the amount of restitution or to request a lesser restitution award than that requested by the state, including arguing for no restitution award.” (255)

“But a trial court cannot order a defendant to “pay restitution for pecuniary damages arising out of criminal activity for which [the defendant] was not convicted or which [the defendant] did not admit having committed.”” (260)

FACTUAL BACKGROUND

Shepherd and her elderly mother, D, shared a joint bank account, although D contributed more money to it. The state alleged that Shepherd misappropriated D's funds, leaving D without sufficient money for basic needs, and charged Shepherd with criminal mistreatment and theft offenses. Shepherd pleaded no contest to two counts of first-degree criminal mistreatment; the theft charges, including a later aggravated-theft case involving \$14,660

spent after Shepherd's release, were dismissed. At the restitution hearing, D submitted a written waiver and release, and Shepherd asked the court to impose no restitution or less than the full amount of economic damages.

PROCEDURAL HISTORY

The state charged Shepherd in Linn County Circuit Court case 21CR08338 with criminal mistreatment and theft-related offenses, and later charged her in case 21CR50912 with aggravated theft. Under a plea agreement resolving both cases, Shepherd pleaded no contest to two counts of first-degree criminal mistreatment, the remaining charges and the second case were dismissed, and restitution was left open for 90 days. After a restitution hearing, the trial court entered a supplemental judgment awarding \$109,280, including \$14,660 attributable to conduct in the dismissed case. The Court of Appeals vacated and remanded the supplemental judgment, while otherwise affirming.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the supplemental restitution judgment and conduct a new restitution hearing consistent with the opinion. The trial court need not redetermine the full amount of economic damages under ORS 137.106(2)(a); on remand, the parties may contest the effect of D's waiver under ORS 137.106(2)(b).

CASES CITED

- State v. Carachuri, 330 Or. App. 443, 446, 544 P.3d 410, rev. denied, 372 Or. App. 588 (2024)
- State v. Walsh, 373 Or. 714, 723, 725, 570 P.3d 617 (2025)
- State v. Heisser, 350 Or. 12, 20-26, 249 P.3d 113 (2011)
- State v. Minor, 297 Or. App. 461, 463-67, 443 P.3d 695 (2019)
- State v. Nosbisch, 298 Or. App. 1, 5, 445 P.3d 327 (2019)
- State v. Ardizzone, 270 Or. App. 666, 673, 349 P.3d 597, rev. denied, 358 Or. 145 (2015)
- State v. Parsons, 287 Or. App. 351, 357-59, 403 P.3d 497, adh'd to on recons., 288 Or. 449 (2017), rev. denied, 362 Or. 545 (2018)
- State v. Akerman, 278 Or. App. 486, 490, 380 P.3d 309 (2016)
- State v. Skotland, 372 Or. 319, 329, 549 P.3d 534 (2024)
- Ailes v. Portland Meadows, Inc., 312 Or. 376, 381-82 & n. 6, 823 P.2d 956 (1991)
- State v. Kirkland, 268 Or. App. 420, 424-25, 342 P.3d 163 (2015)
- State v. Lobue, 304 Or. App. 13, 15, 446 P.3d 83, rev. denied, 367 Or. 257 (2020)
- State v. Dorsey, 259 Or. App. 441, 442, 445-46, 314 P.3d 331 (2013)
- State v. Muhammad, 265 Or. App. 412, 414-15, 335 P.3d 1281 (2014)

