

FILED: December 24, 2014

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

EDWARD F. KREISS,
Defendant-Appellant.

Douglas County Circuit Court
11CR0202MI

A149314

Frances Elaine Burge, Judge.

Submitted on December 30, 2013.

Peter Gartlan, Chief Defender, and Laura E. Coffin, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Greg Rios, Assistant Attorney General, filed the brief for respondent.

Before Duncan, Presiding Judge, and Haselton, Chief Judge, and Schuman, Senior Judge.

HASELTON, C. J.

Affirmed.

DESIGNATION OF PREVAILING PARTY AND AWARD OF COSTS

Prevailing party: Respondent

- No costs allowed.
 Costs allowed, payable by
 Costs allowed, to abide the outcome on remand, payable by
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1 HASELTON, C. J.

2 Defendant appeals a judgment of conviction, contending that the trial court
3 erroneously awarded restitution under ORS 137.106 for amounts beyond what the victim
4 could have recovered in a civil action.¹ Having recently rejected that contention in *State*
5 *v. Ramos*, 267 Or App 164, ___ P3d ___ (2014), we affirm.

¹ ORS 137.106(1)(a) provides, in part:

"When a person is convicted of a crime * * * that has resulted in economic damages, the district attorney shall investigate and present to the court * * * evidence of the nature and amount of the damages. * * * If the court finds from the evidence presented that a victim suffered economic damages, in addition to any other sanction it may impose, the court shall enter a judgment or supplemental judgment requiring that the defendant pay the victim restitution in a specific amount that equals the full amount of the victim's economic damages as determined by the court."

For purposes of that statute, "economic damages" is defined to mean

"objectively verifiable monetary losses including but not limited to reasonable charges necessarily incurred for medical, hospital, nursing and rehabilitative services and other health care services, burial and memorial expenses, loss of income and past * * * impairment of earning capacity, reasonable and necessary expenses incurred for substitute domestic services, recurring loss to an estate, damage to reputation that is economically verifiable, reasonable and necessarily incurred costs due to loss of use of property and reasonable costs incurred for repair or for replacement of damaged property, whichever is less."

ORS 31.710(2)(a); *see* ORS 137.103 (providing that, for purposes of ORS 137.106, the term "economic damages" has "the meaning given that term in ORS 31.710, except that 'economic damages' does not include future impairment of earning capacity").

We note that ORS 137.106 was amended in 2013. Or Laws 2013, ch 388, § 1. Because defendant's sentencing occurred before the effective date of those amendments, they are inapplicable. Or Laws 2013, ch 388, § 2. Nevertheless, because the 2013 amendments are immaterial to our analysis, we refer to the current version of the statute for convenience.

1 The material facts are uncontroverted. Defendant's convictions arose from
2 an automobile accident that occurred while defendant was driving under the influence of
3 intoxicants. That accident damaged the vehicle of the other driver, Weeldreyer.
4 Weeldreyer's insurance company, State Farm, paid to repair the damage. Defendant's
5 insurer partially compensated State Farm for the money it had paid to repair the vehicle.
6 The state sought restitution for the difference between the amount State Farm and
7 Weeldreyer had paid for repairs and the amount defendant's insurer had paid to State
8 Farm--that is, \$2,333.18. At the restitution hearing, defendant posited that Weeldreyer
9 was partially responsible for the accident. Further, defendant contended that, because the
10 \$2,333.18 that the state sought reflected the fault attributable to Weeldreyer--which
11 would not have been recoverable in a civil action--the court could not award it as
12 restitution under ORS 137.106. The trial court disagreed. Defendant appeals the
13 resulting judgment.

14 On appeal, defendant contends that "[t]he trial court erroneously concluded
15 that State Farm could recover restitution for what it paid its insured, rather than what it
16 could recover in a civil action given the liability of its insured." The success of that
17 contention is necessarily predicated on the correctness of a subsidiary premise--viz., that,
18 for purposes of ORS 137.106, "economic damages" are limited to those recoverable in a
19 civil action.

20 We recently rejected that premise in *Ramos*. In *Ramos*, we held:

21 "To the extent that defendant contends that 'economic damages' are
22 limited to those that would be recoverable in a civil action, we reject that

1 argument. In 2005, the Legislative Assembly amended ORS 137.103 and
2 ORS 137.106 to expand the scope of restitution. Under the former version
3 of the statutes, a victim was entitled to restitution if the victim had suffered
4 'pecuniary damages' as a result of a defendant's criminal activities. ORS
5 137.106 (2003), *amended by* Or Laws 2005, ch 564, § 2. 'Pecuniary
6 damages,' in turn, was defined as 'all special damages, but not general
7 damages, which a person could recover against the defendant in a civil
8 action arising out of the facts or events constituting the defendant's criminal
9 activities [listing examples].' ORS 137.103 (2003), *amended by* Or Laws
10 2005, ch 564, § 1. After the amendments, a victim is entitled to restitution
11 of 'economic damages,' which term--as noted above--has the broad meaning
12 set out in ORS 31.170(2)(a): 'objectively verifiable monetary losses [listing
13 examples].' *See also* Tape Recording, House Committee on Judiciary, HB
14 2230, Jan 24, 2005, Tape 137, Side A (statement of Fred Boss, Chief
15 Counsel of the Oregon Department of Justice's Civil Enforcement Division;
16 introducing the bill on behalf of its sponsor, the Attorney General's
17 Restitution Reform Task Force, and explaining that the bill was intended to
18 replace the term 'pecuniary damages'--and specifically including the
19 requirement that the damages would have been recoverable in a civil
20 action--with the concept of 'economic damages')."

21 ___ Or App at ___ (brackets in *Ramos*) (slip op at 15-16).

22 Our holding in *Ramos* is dispositive of defendant's appellate contentions in
23 this case. Further, on appeal, defendant does not contend that the trial court's award of
24 restitution was otherwise erroneous. Accordingly, we affirm.

25 Affirmed.