

**FILED: November 5, 2014**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

CRAIG ALAN PUMPHREY,  
Defendant-Appellant.

Washington County Circuit Court  
D122773M

A153140

Rick Knapp, Judge.

Submitted on July 29, 2014.

Peter Gartlan, Chief Defender, and Sarah Laidlaw, 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 Sercombe, Presiding Judge, and Hadlock, Judge, and Tookey, Judge.

HADLOCK, J.

Affirmed.

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**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 HADLOCK, J.

2 Defendant pleaded guilty to two counts of violating a court's stalking  
3 protective order (SPO), ORS 163.750, and the trial court entered convictions on that plea.  
4 Defendant appeals from a supplemental judgment in which the trial court imposed  
5 restitution totaling \$2,674.76 for expenses incurred by the victim. On appeal, defendant  
6 contends that the state's evidence as to five items of restitution was insufficient to  
7 establish "economic damages," as defined in ORS 31.710(2), and therefore provided an  
8 inadequate basis for a restitution award under ORS 137.106. We affirm.

9 We are bound by the trial court's factual findings if they are supported by  
10 any evidence in the record, and we review the court's legal conclusions for errors of law.  
11 *State v. Jordan*, 249 Or App 93, 96, 274 P3d 289, *rev den*, 353 Or 103 (2012). If the trial  
12 court did not make express findings on a disputed point of fact, we presume that the court  
13 implicitly found the facts consistent with the judgment it entered. *See State v. Ehly*, 317  
14 Or 66, 75, 854 P2d 421 (1993) ("If findings of historical fact are not made on all pertinent  
15 issues and there is evidence from which such facts could be decided more than one way,  
16 we will presume that the facts were decided in a manner consistent with the court's  
17 ultimate conclusion."). Accordingly, we state the facts consistently with the trial court's  
18 explicit and implicit factual findings, which the record supports.

19 The victim obtained a permanent SPO against defendant, with whom she  
20 had no prior relationship, in 2010 after defendant "sought her out through her place of  
21 work and had waited for her outside of work." The SPO prohibited defendant from

1 having contact with the victim, including by coming into her visual or physical presence  
2 or by waiting outside her home, property, work, or school. On July 2, 2012, defendant  
3 returned to the victim's place of work, where he approached her and asked in a "deep tone  
4 of voice" if she "missed him." The victim reported the incident to police and reported  
5 that defendant also had come to her place of work on July 1, 2012.

6           The victim sought medical attention for "massive panic attacks" that began  
7 about a week after defendant's July 2012 SPO violations. She saw a physician nine times  
8 for treatment of those panic attacks and was prescribed medications as a result.

9 According to the victim, her doctor explained that her panic attacks were the result of her  
10 having reached "a breaking point" at which she "couldn't handle it anymore." The victim  
11 missed 18 days of work, several of which were to attend her doctor's appointments. The  
12 victim also obtained counseling and group therapy. Her counselor recommended, as part  
13 of treatment, that she collect police reports about defendant's conduct from another city.

14           The victim also missed one day of work to facilitate having her locks  
15 changed at home. She testified at the restitution hearing that defendant had "found out  
16 [her] home address and [she] needed to change [her] locks," explaining further that she  
17 needed to have dead bolts installed. The victim also testified that she had rented a  
18 temporary residence "until [she] could get [her] locks changed and make [her] home  
19 safe." She explained that she had been unable to stay with friends because "[t]hey were  
20 fearful of the situation as well."

21           The victim also changed her phone number. In explanation of that action,

1 she testified that she had received one phone call from defendant shortly after he visited  
2 her at work. On that call she could hear "heavy breathing" and defendant "kept trying to  
3 ask [her] if [she] was okay" and said that "he was sorry." She testified that "district  
4 attorneys, everybody had told me I might as well [change my phone number] because my  
5 personal information was let out." She also had received several "hang-up calls," which  
6 stopped once she changed her number.

7 Defendant was charged with four counts of violating a court's SPO and, as  
8 noted above, was convicted of two counts pursuant to a plea agreement. After hearing  
9 the victim testify to the facts described above and reviewing other evidence in the record,  
10 the trial court determined that the victim's expenses were the result of defendant's  
11 criminal activities and imposed \$2,674.76 in restitution in a supplemental judgment:<sup>1</sup>

12 "But [the time taken off of work] seems to be related to this particular case  
13 because but for [defendant's] contact [the victim] wouldn't be having to do  
14 all the things that she testified that she had to do.

15 "And it's not our place to say that getting police reports are not \* \* \*  
16 necessarily related to this case. But for [defendant's] conduct [the victim]  
17 felt she needed to get those police reports and do some things and put some  
18 things together for crime victim's comp and all those sorts of things that she  
19 did.

20 "So I'm certainly not going to second guess what she thought she  
21 needed to do. And I do find that it's related to the conduct of the defendant.  
22 So I would be granting those wages.

23 " \* \* \* \* "

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<sup>1</sup> The trial court imposed restitution for several additional items that defendant does not challenge. For purposes of this appeal, we focus our discussion on the challenged items.

1 "I am going to grant the \$100 to change her number over. \* \* \*

2 "But the actions of the defendant caused her to change phones and  
3 that's for certain, so I would be granting that \$100 there, but not the  
4 [monthly fee for the new phone]. \* \* \*

5 "\* \* \* \* \*

6 "But for defendant's conduct [the victim] wouldn't have thought that  
7 she needed to change her locks. \* \* \*

8 "\* \* \* \* \*

9 "\* \* \* So there was the \$400 to stay at a safe house during the court  
10 proceedings. Again, it's not the Court's job to decide whether or not it was--  
11 -I don't want to use the word proper, but if it was--well, I'll use it because I  
12 can't think of a better word right now--whether it was proper or not for her  
13 to stay at a safe house.

14 "The issue, I think, for the Court to decide is was her need to go to a  
15 safe house related to the defendant's conduct. We kind of take the victim as  
16 we find them as you might say, so I do find that it's related to defendant's  
17 conduct, [I] would order that.

18 "And the copies for the police reports, this \$37, that's--she felt that  
19 she needed the police reports for various reasons and that's appropriate and  
20 I'll order that."

21 The only issue before us on appeal is whether the trial court erred by  
22 awarding restitution for certain expenses the victim incurred after the SPO violations.  
23 We begin our analysis by setting out the relevant statutes. ORS 137.106(1) provides, in  
24 part:

25 "When a person is convicted of a crime \* \* \* that has resulted in  
26 economic damages, the district attorney shall investigate and present to the  
27 court, at the time of sentencing or within 90 days after entry of the  
28 judgment, evidence of the nature and amount of the damages. \* \* \* If the  
29 court finds from the evidence presented that a victim suffered economic  
30 damages, in addition to any other sanction it may impose, the court shall  
31 enter a judgment or supplemental judgment requiring that the defendant pay

1 the victim restitution in a specific amount that equals the full amount of the  
2 victim's economic damages as determined by the court."

3 For the purposes of that statute, "economic damages" is defined by ORS 31.710(2)(a):

4 "Economic damages" means objectively verifiable monetary losses  
5 including but not limited to reasonable charges necessarily incurred for  
6 medical, hospital, nursing and rehabilitative services and other health care  
7 services, burial and memorial expenses, loss of income and past \* \* \*  
8 impairment of earning capacity, reasonable and necessary expenses  
9 incurred for substitute domestic services, recurring loss to an estate,  
10 damage to reputation that is economically verifiable, reasonable and  
11 necessarily incurred costs due to loss of use of property and reasonable  
12 costs incurred for repair or for replacement of damaged property, whichever  
13 is less."<sup>2</sup>

14 In short, there are three prerequisites to an order of restitution: (1) criminal activities, (2)  
15 economic damages, and (3) a causal relationship between the two. *State v. Carson*, 238  
16 Or App 188, 192, 243 P3d 73 (2010) (citing *State v. Stephens*, 183 Or App 392, 395, 52  
17 P3d 1086 (2002)). "Criminal activities" means "any offense with respect to which the  
18 defendant is convicted or any other criminal conduct admitted by the defendant." ORS  
19 137.103(1).

20 On appeal, defendant objects to five specific items of restitution: (1) the  
21 cost of changing the victim's phone number; (2) the cost of changing locks on the victim's  
22 home; (3) the cost of the victim renting a temporary residence; (4) the victim's lost wages  
23 from one day's work when she facilitated changing her locks; and (5) the cost of  
24 obtaining police records from a different incident in a different city. Defendant makes

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<sup>2</sup> The statutory definition of "economic damages" also includes "future impairment of earning capacity." ORS 31.710(2)(a). However, that aspect of the definition does not apply to restitution awarded under ORS 137.106(1). ORS 137.103(2)(a).

1 two main arguments. First, he argues that the contested costs did not constitute  
2 "economic damages" within the meaning of the restitution statutes. Defendant contends  
3 that the contested costs "were made in order to provide security against *future* crimes, not  
4 the crimes for which defendant was convicted," and therefore were not "reasonably and  
5 necessarily incurred." (Emphasis added.) Second, defendant argues that there is no  
6 "causal connection" because "there is *no evidence* to connect the criminal acts at issue to  
7 the contested expenses." (Emphasis added.) As presented in this case, both of those  
8 arguments turn on one central question: whether defendant's criminal activity was a "but  
9 for" cause of the expenses the victim incurred. *See State v. Ceballos*, 235 Or App 208,  
10 215, 230 P3d 954, *rev den*, 348 Or 669 (2010) ("But for the defendant's criminally  
11 negligent homicide of the decedent, [the victim] would not have been subjected to those  
12 expenses. [The victim] therefore \* \* \* incurred economic damages."); *State v. Bullock*,  
13 135 Or App 303, 307, 899 P2d 709 (1995) ("For purposes of restitution, causation is met  
14 by applying a 'but for' standard.").

15           Although defendant's criminal activities must be a "but for" cause of the  
16 victim's economic damages, the damages need not be the *direct* result of defendant's  
17 criminal activity. *Stephens*, 183 Or App at 396; *see also Bullock*, 135 Or App at 307  
18 (concluding that contested expenses were not "too remote to be considered the results of  
19 defendant's crime" because "emotional and psychological problems that required the  
20 victim's removal from the home were a natural consequence of defendant's criminal  
21 activities"). For example, in *State v. Doty*, 60 Or App 297, 653 P2d 276 (1982), a

1 defendant was originally indicted for a burglary in which the victim claimed the loss of  
2 items that had a value of more than \$3,000. The defendant eventually pleaded guilty to  
3 theft of items that had a value of less than \$200, but the trial court imposed restitution of  
4 \$2,000, based on the value of all the items stolen from the house. Although the defendant  
5 had admitted to kicking in the victim's door and stealing several items, he claimed that  
6 someone else must have taken the rest. We upheld the restitution award, explaining that  
7 the entire loss resulted from the defendant's criminal activities:

8 "Defendant does not seriously dispute the loss of the missing items but  
9 denies having taken the jewelry himself. However, regardless of whether  
10 defendant actually stole the jewelry, the entire loss 'resulted' from his  
11 'criminal activities,' including the admitted kicking in of the victim's door,  
12 because it at least created free access to the home for the hypothetical  
13 subsequent theft."

14 *Id.* at 300.

15 Similarly, in this case, we conclude that the record includes some evidence  
16 from which the trial court could find that the disputed expenses resulted from defendant's  
17 criminal activities. Defendant argues that he "never admitted to and was not convicted of  
18 calling [the victim] on her phone or going to [the victim's] home. In fact, the state did not  
19 present any evidence that defendant knew where [the victim] lived." Accordingly,  
20 defendant concludes, "the expenses for changing [the victim's] phone number and her  
21 house locks, including the costs for renting a temporary residence and taking time off  
22 work to facilitate changing the locks, were unrelated." That argument fails for two  
23 reasons. First, it is premised on an inaccurate description of the record. In fact, the state  
24 did present evidence that defendant knew where the victim lived. The victim testified at



1 the restitution hearing that defendant "found out my home address" and that the "district  
2 attorneys" notified her that her "personal information was let out." Second, defendant  
3 frames the analysis too narrowly. The pertinent inquiry is not whether defendant was  
4 convicted of calling the victim or going to her home, but rather whether the victim's need  
5 to change her phone number and locks *resulted* from the criminal activities on which  
6 defendant's convictions were based. The record includes evidence supporting that causal  
7 connection. It is undisputed that defendant's violations of the SPO caused the victim to  
8 suffer severe panic attacks and fear of defendant, and the victim testified that she changed  
9 her locks *because* defendant had learned her home address. Moreover, the record also  
10 supports an inference that the safety measures the victim took helped her manage the  
11 psychological trauma caused by defendant's crimes. In sum, the record establishes that  
12 defendant's criminal activity was a "but for" cause of the expenses that the victim  
13 incurred. Accordingly, the trial court did not err in imposing restitution for the costs the  
14 victim incurred for changing her phone number and locks, including the costs of a  
15 temporary residence and lost time from work.

16           In arguing to the contrary, defendant relies in part on *State v. Steckler*, 236  
17 Or App 524, 237 P3d 882 (2010), suggesting that it holds that expenses associated with  
18 preventing future crimes are necessarily unrelated to the crimes for which a defendant  
19 already has been convicted. But the *Steckler* holding is not so broad. In that case, a  
20 defendant was convicted of robbing two Rite Aid pharmacies. Under federal law, the  
21 pharmacies were required to submit forms to the Drug Enforcement Agency (DEA)

1 describing the security measures that the pharmacies were taking to prevent future thefts.  
2 One of the pharmacies' managers indicated that Rite Aid planned to install a surveillance  
3 system in that pharmacy; based on his conversations with other Rite Aid personnel, the  
4 manager "believed that doing so would be the most cost-effective security measure that  
5 would satisfy the DEA." *Id.* at 526. The trial court ordered restitution that included the  
6 expense of installing a surveillance system in that pharmacy. *Id.* at 527. We reversed  
7 that aspect of the restitution award. However, we did not do so because security  
8 measures taken to prevent future crimes are *per se* unrecoverable. Indeed, *Steckler* does  
9 not address under what circumstances restitution awards may include expenses related to  
10 the implementation of security measures which, necessarily, relate at least in part to the  
11 prevention of future crimes. Rather, we reversed because the state had proved only that  
12 the DEA required Rite Aid to complete a form stating what safety measures it planned to  
13 take; the state did not prove that the DEA had required the pharmacy "to take any  
14 particular measures at all," much less install a surveillance system. *Id.* at 529.  
15 Accordingly, we rejected the state's argument that the pharmacy would not have  
16 purchased the system but for the defendant's crime. Thus, *Steckler* differs from this case  
17 on a critical point--here, the record does include evidence that the victim would not have  
18 taken security measures but for defendant's repeated criminal violations of the SPO.  
19           Defendant also contends that the cost to obtain a police report from a  
20 different city "did not result from the acts at issue" and therefore "was not causally  
21 connected to permit restitution for that expense." We disagree. The victim sought

1 treatment for panic attacks brought on by defendant's criminal activities. The victim's  
2 counselor recommended, as part of treatment for those panic attacks, that "it might be a  
3 good idea" to collect a police report about defendant's conduct in another city. The  
4 testimony about the counselor's recommendation may not be weighty, but it is "some  
5 evidence" from which the trial court could have found that the expense resulted from  
6 defendant's criminal activities, and that is sufficient for purposes of our review. *Cf.*  
7 *Jordan*, 249 Or App at 100 (affirming restitution award on the basis that "some evidence"  
8 in the record showed the necessity of naturopathic treatments and organic foods to treat a  
9 brain injury the victim suffered as a result of the defendant's criminal activity).

10 To summarize, because evidence in the record supports the trial court's  
11 determination that the victim's economic damages resulted from defendant's criminal  
12 activities, we conclude that the trial court did not err in imposing restitution in this case.

13 Affirmed.