

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0222

STATE OF MONTANA,

Plaintiff and Appellee,

v.

RYAN CODY LAMB,

Defendant and Appellant.

BRIEF OF APPELLEE (REDACTED)

On Appeal from the Montana Eleventh Judicial District Court,
Flathead County, The Honorable Robert B. Allison, Presiding

APPEARANCES:

AUSTIN KNUDSEN
Montana Attorney General
DAMON MARTIN
Assistant Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
damon.martin@mt.gov

TRAVIS AHNER
Flathead County Attorney
ALISON HOWARD
Deputy County Attorney
800 South Main Street
Kalispell, MT 59901

ATTORNEYS FOR PLAINTIFF
AND APPELLEE

CHAD WRIGHT
Appellate Defender
HALEY CONNELL JACKSON
Assistant Appellate Defender
Office of State Public Defender
Appellate Defender Division
P.O. Box 200147
Helena, MT 59620-0147

ATTORNEYS FOR DEFENDANT
AND APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE.....	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS	2
Sentencing Hearing	2
STANDARD OF REVIEW	6
SUMMARY OF THE ARGUMENT	6
ARGUMENT	8
I. The district court properly determined that, as a secondary victim, Nixon was entitled to restitution in the amount of \$6,796.80	8
II. The restitution statutes are unique to victims and controlling over the general witness statutes	11
CONCLUSION.....	15
CERTIFICATE OF COMPLIANCE.....	15

TABLE OF AUTHORITIES

Cases

<i>In re Kestl's Estate,</i>	
117 Mont. 377, 161 P.2d 641, (1945)	13
<i>Montanans for Justice v. State,</i>	
2006 MT 277, 334 Mont. 237, 146 P.3d 759	11
<i>State v. Allport,</i>	
2015 MT 349, 382 Mont. 29, 363 P.3d 441	11
<i>State v. Patterson,</i>	
2016 MT 289, 385 Mont. 334, 384 P.3d 92	6
<i>State v. Weik,</i>	
2018 MT 213, 392 Mont. 415	6
<i>Taylor v. Department of Fish, Wildlife, & Parks,</i>	
205 Mont. 85, 666 P.2d 1228 (1983)	14
<i>Witty v. Pluid</i>	
220 Mont. 272, 714 P.2d 169 (1986)	13

Other Authorities

Montana Code Annotated

§ 26-2-501	10
§ 26-2-506	3, 12
§ 45-5-104	1, 2
§ 46-18-101(1)(c)	12
§ 46-18-241	9
§ 46-18-243	3, 7, 9, 12
§ 46-18-243(1)	6, 8, 10, 11
§ 46-18-243(1)(d)	10
§ 46-18-243(2)(a).....	8

STATEMENT OF ISSUE

1. Did the district court correctly determine that the victim's father was entitled to \$6,795.80 in restitution for the negligent homicide of his son?

STATEMENT OF THE CASE

A trial was held for Deliberate Homicide charges against Ryan Lamb (Lamb) from June 3, 2019, until June 14, 2019. (D.C. Doc. 233.) That trial ended in a mistrial. (*Id.*) The State filed an amended information on August 1, 2019, adding an alternative charge of Negligent Homicide against Lamb. (D.C. Doc. 258.) On December 11, 2019, Lamb agreed to enter an *Alford* plea to Count II: Negligent Homicide, a felony, in violation of Mont. Code Ann. § 45-5-104. (D.C. Doc. 290.) The district court accepted the plea, finding that Lamb “had inflicted fatal wounds on the victim by use of a scissors, consisting of three stab wounds to the abdomen, one of which penetrated the victim’s sternum[.]” (D.C. Doc. 307 at 1.) Additionally, the district court found that Lamb “failed to take effective action to render aid to the victim by leaving the residence, going to a neighboring convenience store/gas-station, and calling his parents rather than first responders, thereby wasting critical time in rendering aid to the victim who was bleeding to death[.]” (*Id.* at 2)

A sentencing hearing was held on February 12, 2020, and on February 27, 2020, the district court issued a judgment and sentence. (D.C. Doc. 307.) The district court sentenced Lamb to the Montana State Prison for 10 years, and specifically found that restitution was owed to the Crime Victim Compensation Program in the amount of \$3,500, Randy Nixon (Randy) in the amount of \$6,795.80, and Amber Nixon Pederson (Pederson) in the amount of \$6,833.27. (D.C. Doc. 307.)

Lamb now appeals, claiming that the restitution award was improper.

STATEMENT OF THE FACTS

Sentencing Hearing

On December 11, 2019, Lamb pled guilty with an *Alford* Plea to an amended offense of Negligent Homicide, a felony, in violation of Mont. Code Ann. § 45-5-104. (D.C. Doc. 307.)

The district court accepted the plea and Lamb was found guilty. (*Id.*) The matter proceeded to sentencing and the district court received the PSI on January 30, 2020. (D.C. Doc. 297.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(*Id.*)¹

(*Id.* at 45.)

At the sentencing hearing there was substantial testimony regarding restitution. The State requested the restitution listed in the PSI and highlighted that under Mont. Code Ann. § 46-18-243 a victim is “a member of the immediate family of a homicide victim” and that the definition of pecuniary loss “specifically states loss of income and expenses reasonably incurred in attending court proceedings related to the commission of the offense.” (2/12/20 Tr. at 61.) Lamb responded that he didn’t contest “the \$3,150, which is to the crime victim compensation program . . . that was specifically for funeral costs.” (*Id.* at 67.) However, Lamb argued that the losses that Randy and Pederson requested were “not a direct result of this offense.” (*Id.*) Relying on Mont. Code Ann. § 26-2-506, Lamb argued that because Randy was subpoenaed by the County Attorney’s office, “it would be the responsibility of the County to pay that.” (*Id.* at 68.) Similarly, Lamb argued that Pederson’s expenses for attending the trial were not “something directly due to the actions of Mr. Lamb,” that they were “elective, and it was her choice to come up here to see the trial, and there is no law or statute authorizing recovery of those costs in terms of restitution.” (*Id.* at 69.)

¹ District Court document 297 is the Presentence Investigation Report (PSI). The confidential information from the PSI has been redacted.

In response, the State highlighted that Randy and Pederson “are victims under the statute, and they have incurred pecuniary loss,” and noted that the “statute specifically indicates they are entitled to restitution.” (2/12/20 Tr. at 70.) Further, the State argued that Randy and Pederson “traveled here, came here to attend the court proceedings relating to their family member being murdered by the Defendant” and asked that the court order restitution. (*Id.*)

Randy testified about how the murder of his son had affected them:

It’s [a]ffected us really bad. Ryan was my only son who I did things with, I did with Lamb when they were around. I don’t have that no more. He can’t even give me a grandchild.

It’s tore us apart, it’s caused issues. And if anybody would like to be in my shoes—or our shoes, you can have them. You don’t even got a clue, none of you got a clue what we go through.

And if this ever happens to any of you with [your] children I’m willing to talk to try to help you through it.

I don’t know myself actually how I really feel, but I know one thing, Ryan Lamb, we all tried to help you. And for me and my wife, Amy, and my best friend to go in that apartment and clean your mess up. None of your stuff was in there all over the walls or on the floors, it was my son’s.

I don’t understand you at all. To sit there with your attorneys and lie and make us go through this. But it’s all over and done with, and I’m gonna move on. And I will live to be a hundred.

That’s all I got to say.

(2/12/20 Tr. at 39-40.)

Similarly, Pederson testified to the loss of her brother:

Because of you I will never hear his voice again. I will never hear I love you, I will never hear ‘hey, sis’ when I pick up the phone. I will never hear how are the kids doing, tell them uncle Ryan loves them. I will never hear merry Christmas, I will never hear happy new year, I will never hear happy birthday, I will never see Ryan’s name across my phone again. I will never see his smile when I’m home in Montana or on Face Time. I will now be the baby of the family because you took our baby away from us.

(*Id.* at 35-36.)

At the end of the sentencing hearing the district court highlighted the sentencing policies, stating, that one goal is “to provide restitution, reparation and restoration to the victims of the offense.” (2/12/20 Tr. at 80.) The district court then ordered restitution, stating “I do believe that the costs incurred by Randy Nixon and Amber Nixon Pederson are reasonable, so I will direct restitution in the sum—or I will recommend that the Parole Board require restitution in the sum of \$3500 to Crime Victims Compensation, \$6795.80 to Randy Nixon, \$6,833.27 to Amber Nixon Pederson.” (*Id.* at 82.)

On February 27, 2020, the district court issued its judgment and sentence, providing in relevant part: “In consideration of the nature of the offense, testimony presented to the court, Defendant’s prior criminal history, his/her ability to maintain employment and make payments toward court-ordered financial obligations, the recommendations of the parties and the Pre-Sentence Investigation . . . it is the judgment of the court that: Defendant is sentenced to the Montana

State Prison for a term of ten (10) years.” (D.C. Doc. 307 at 2.) As a part of the conditions, the district court ordered restitution was owed to the “Crime Victim Compensation Program” in the amount of \$3,500, to Randy in the amount of \$6,795.80, and to Pederson in the amount of \$6,833.27. (*Id.*)

STANDARD OF REVIEW

Restitution creates mixed questions of fact and law. Upon appeal, the Court reviews these mixed questions de novo. *State v. Patterson*, 2016 MT 289, ¶ 9, 385 Mont. 334, 384 P.3d 92. What constitutes an appropriate measure of restitution is a question of law that the Court reviews to determine whether the district court’s interpretation of the law is correct. *State v. Weik*, 2018 MT 213, ¶ 11, 392 Mont. 415, 427 P.3d 52.

SUMMARY OF THE ARGUMENT

As identified by the State at sentencing, Mont. Code Ann. § 46-18-243(1) defines pecuniary loss as “loss of income” and also “expenses reasonably incurred in attending court proceedings related to the commission of the offense[.]” This is specifically what the victim’s father requested, which was detailed in the PSI and what the State asked for. The district court did not err in so ordering restitution.

Lamb's attempt to classify the restitution amount as a dispute over witness fees is misplaced. The sentencing proceedings covered restitution, not witness fees. The plain language of the restitution statute specifically covers the amount sought.

Further, Mont. Code Ann. § 46-18-243 is a special statute that deals with restitution within the context of lost wages and expenses related to attending and participating in court proceedings and prosecutions. These statutes are specific in nature in that they are uniquely applied to victims, whether or not they are subpoenaed as witnesses. These statutes are specifically related to victims and are controlling over the general witness fee statutes. Further, the court proceedings were a direct result of Lamb's actions and therefore properly recoverable under the restitution statutes. But for the murder of his son, Randy would not have incurred the expenses that he did when he attended the trial and sentencing proceedings. The restitution award was appropriate.

The restitution statutes are clear in both scope and purpose: The district court did not award restitution to cover the cost of witness fees. The district court's order was not issued to cover the State's witness fees, it was issued with the intent to return Randy and Pederson to the financial position they would have been in but for Lamb's negligent actions in causing Ryan Nixon's death.

The district court did not err in ordering restitution for Randy's lost income for attending and participating in the State's prosecution to ensure that justice was served.

ARGUMENT

I. The district court properly determined that, as a secondary victim, Randy was entitled to restitution in the amount of \$6,796.80.

Montana Code Annotated. § 46-18-243(2)(a) defines a victim as, in relevant part, "a member of the immediate family of a homicide victim." There is no dispute that Nixon meets that definition. Further, Mont. Code Ann. § 46-18-243(1) provides that pecuniary loss means: "all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including **without limitation out-of-pocket losses**, such as medical expenses, **loss of income**, expenses reasonably incurred in obtaining ordinary and necessary services that the victim would have performed if not injured, **expenses reasonably incurred in attending court proceedings related to the commission of the offense**, and reasonable expenses related to the funeral and burial or crematory services[.]" (Emphasis added.)

The plain language of the restitution statutes provides for the restitution amount ordered by the district court. Lamb's assertion that the State was responsible for restoring to Randy the lost income he incurred to attend the trial of his murdered son is misplaced. As stated above, Mont. Code Ann. § 46-18-243 clearly establishes that Randy is entitled to be compensated for the lost income he incurred in attending and participating in the trial and sentencing proceedings against Lamb.

Randy had to attend the trial. However, he also wanted justice for the loss of his son's life. Lamb's contention that he didn't have to be there or that the State is responsible goes directly against the intent of the restitution statutes purpose of providing "full restitution to any victim who has sustained pecuniary loss, including a person suffering an economic loss." Mont. Code Ann. § 46-18-241. The restitution order was appropriate under Montana law and the attempt to classify it as being for witness fees is a misplaced attempt to avoid statutorily authorized accountability.

A victim shouldn't avoid a trial because they're afraid of what it may cost to attend the proceedings of the trial for the accused murderer of their family member. The definition of "pecuniary loss" specifically includes "all special damages . . . including **without limitation** out-of-pocket losses, such as medical expenses, loss of income," as well as "expenses reasonably incurred in attending

court proceedings related to the commission of the offense[.]” Mont. Code Ann. § 46-18-243(1) (emphasis added). This statute is not exclusive in nature, it doesn’t limit the amount recoverable, except as listed therein. Lamb’s position would limit the amount received by the secondary victim here due strictly to the fact that he was subpoenaed—something that was out of his control. However, by all indications, Randy would have attended the proceedings anyway to see if justice would be levied against the person accused of taking his son’s life.

Lamb’s position that because Randy had to testify, that precludes him from recovering the amount requested is undermined by the fact that witness fees would be capped at \$10 daily, and clearly insufficient to recoup the lost wages Randy incurred in order to attend and participate in the trial and sentencing hearings. There is a clear distinction between attempting to compensate someone for the loss of their son and the financial impact that had, and providing someone compensation for being a witness at a rate of \$10.00 per day. Mont. Code Ann. § 26-2-501. The legislature specifically addressed the issue at hand by codifying Mont. Code Ann. § 46-18-243(1) to include “expenses reasonably incurred in attending court proceedings related to the commission of the offense.” Further, Mont. Code Ann. § 46-18-243(1)(d) covers situations where there were “reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation **and prosecution** of the offense.” The specific and

plain language of Mont. Code Ann. § 46-18-243(1) covers “loss of income,” “expenses reasonably incurred in attending court proceedings related to the commission of the offense,” and “reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.” There was no need to go beyond the restitution statutes.

The intent of the legislature is readily discernable, and clearly accounted for expenses victims incur in attending court proceedings. (*See State v. Allport*, 2015 MT 349, 382 Mont. 29, 363 P.3d 441, “When interpreting a statute, we seek to implement the objectives the Legislature sought to achieve, and if the legislative intent can be determined,” citing *Montanans for Justice v. State*, 2006 MT 277, ¶ 60, 334 Mont. 237, 146 P.3d 759.)

II. The restitution statutes are unique to victims and controlling over the general witness statutes.

Lamb asserts that “the expenses Randy incurred” were “more specifically, expenses incurred by ‘a witness [] subpoenaed on behalf of the attorney general or a county attorney.’” (Appellant Br. at 8-9.) Lamb’s position is that the witness fee statute is more specific and therefore controlling. (*Id.*) However, the State asserts that the restitution statutes are specific and unique to victims and are controlling. Here, the special statute is the restitution statute, as it carves out an exception to the

general witness fee assignment statute in order to “provide restitution, reparation, and restoration to the victim of the offense.” Mont. Code Ann. § 46-18-101 (1) (c).

Montana Code Annotated § 46-18-243 is also a special statute affecting only victims, whereas the witness fee statute, Mont. Code Ann. § 26-2-506, deals with witnesses in general. Montana Code Annotated § 46-18-243 specifically carves out an exception to the general witness fee statute when it details that “reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.”

There is no need to go beyond the restitution statutes, but, if necessary, the restitution statutes are a special statutory enactment, specifically and uniquely designated for the victims so that they can recoup “pecuniary loss,” such as that suffered as result of Lamb’s criminal actions. The meaning is clear under the plain language provided within the statute: that Randy can request compensation for expenses and lost wages if those amounts were requested and proper under a civil action. Lamb makes no argument that the amount requested was not recoverable under a civil action, such as in a wrongful death suit.

Finally, the losses incurred by Randy qualify as losses especially attributable to Lamb because they would not have been incurred had Lamb not negligently murdered his son. It should be entirely reasonable for the parent of a murder victim to attend the trial and other proceedings to gain some closure and a sense of justice.

The resultant trial is directly attributable to Lamb and the restitution statutes control in those situations.

Further, Lamb's reliance on *Witty v. Pluid*, 220 Mont. 272, 714 P.2d 169 (1986), is largely distinguishable as in *Witty* there was no victim testimony, instead there was a dispute between the parties regarding responsibility for expert witness fees. This case deals with a victim witness, who was specifically entitled to recover loss of wages and expenses incurred from the trial. The legislature provided a unique set of statutes to govern these situations and they are clear in their application.

In *In re Kestl's Estate*, 117 Mont. 377, 385, 161 P.2d 641, 645 (1945), it was established that "[a] special statute covering a particular subject-matter must be read as an exception to the statute covering the same and other subjects in general terms." In that matter the Court wrestled with two statutes. First, the Court determined that "[i]n the matters here involved, relating to a will contest after probate, the special statute . . . is applicable and controls over the general statute[.]" *Id.* at 384-85. The Court determined that one of the statutes is "special" in that it is "applied only when a will is contested after it has been admitted to probate." *Id.* at 384. The other statute was classified as "a general statute," which "provides for the necessary expenses in the care, management, and settlement of the estate only[.]" *Id.*

The Court in *Taylor v. Dep't of Fish, Wildlife & Parks*, 205 Mont. 85, 92, 666 P.2d 1228, 123 (1983), distinguished between Title 49, which is “a general legislative enactment that deals with employment,” and a “game warden retirement statute” which was classified as “a special statute affecting only game wardens.” Similarly, here, the restitution statutes deal specifically with the victims and their ability to recoup losses incurred as a result of the defendant’s actions, whereas the witness fee statutes deal with witness fees in general. Any conflict between the two statutes should be resolved in favor of the victim here as it is specific and unique to recoup losses attributable to the defendant.

Here we have a general statute covering witness fees, and then a statute that is applicable only to victims requesting restitution. The unique nature of the restitution statutes therefore represents the controlling section to this specific issue. Here, the court dealt with the issue of restitution for Randy’s lost wages and expenses associated with attending and participating in the court proceedings. The witness fees are insufficient to cover the expenses incurred by Randy and the statutes specifically dealing with restitution account for this insufficiency. The State asserts that the losses incurred were properly ordered and classified as restitution.

CONCLUSION

The State respectfully requests this Court affirm the district court's restitution order.

Respectfully submitted this 2nd day of August, 2021.

AUSTIN KNUDSEN
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

By: /s/ *Damon Martin*
DAMON MARTIN
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3,304 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, and any appendices.

/s/ *Damon Martin*
DAMON MARTIN

CERTIFICATE OF SERVICE

I, W. R. Damon Martin, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 08-02-2021:

Travis R. Ahner (Govt Attorney)
820 South Main Street
Kalispell MT 59901
Representing: State of Montana
Service Method: eService

Haley Connell Jackson (Attorney)
Office of the Appellate Defender
555 Fuller Avenue
Helena MT 59620
Representing: Ryan Cody Lamb
Service Method: eService

Electronically signed by Janet Sanderson on behalf of W. R. Damon Martin
Dated: 08-02-2021