

STATE OF MONTANA,

Plaintiff and Appellee,

v.

RYAN CODY LAMB,

Defendant and Appellant.

REPLY BRIEF OF APPELLANT

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

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I. Mr. Lamb’s argument on appeal is not that Randy should not be compensated for his losses; his argument is that the county must pay its share per Montana law.

This appeal is about *who* is responsible for Randy Nixon’s witness fees, not whether Randy should be compensated for his losses. The State incorrectly frames Mr. Lamb’s argument as follows: “because Randy had to testify, that precludes him from recovering the amount requested.” (Appellee’s Br. at 10; *see also* Appellee’s Br. at 10 (“Lamb’s position would limit the amount received by the secondary victim here due strictly to the fact that he was subpoenaed”).) The State emphasizes Randy’s testimony regarding the impact his son’s death had on him and suggests that if the Court agrees with Mr. Lamb, Randy will not be compensated for his loss. (Appellee’s Br. at 4-5, 9-10.) The State’s claims are unconvincing because they are premised on an incorrect interpretation of Mr. Lamb’s argument.

Mr. Lamb’s argument is that the county—not Mr. Lamb—is required to pay Randy’s witness fees incurred while Randy was a subpoenaed trial witness pursuant to Mont. Code Ann. §§ 26-2-501, 26-2-506, and 46-15-116. (Appellant’s Br. at 5-6.) Mr. Lamb pointed out in his opening brief that the witness fees constituted “a portion of the

\$6,795.80.” (Appellant’s Br. at 4.) Just because the county must pay the witness fees does not mean the victim cannot receive restitution for any remaining pecuniary loss. As Mr. Lamb stated in his opening brief, “[i]f, upon remand, the district court determines that the amount of witness fees the county must pay Randy per the witness fee statutes does not cover all of Randy’s losses, Mr. Lamb does not dispute that the county could request restitution for the remaining losses if it proves they would be recoverable in a civil action against Mr. Lamb.” (Appellant’s Br. at 10.) Mr. Lamb is not trying to limit Randy’s reimbursement for his losses; he is trying to ensure the county does not dodge its responsibility to pay witness fees for its subpoenaed witness as mandated by Montana law.

Per Mont. Code Ann. §§ 26-2-506(2)(b) and 46-15-116(4), the county, not Mr. Lamb, must pay Randy’s witness fees incurred while Randy was a subpoenaed trial witness. In Mr. Lamb’s opening brief, he requested the Court remand to the district court to determine the exact witness fees attributable to the county. (Appellant’s Br. at 9-10.) Contrary to the State’s position (*see* Appellee’s Br. at 10), this amount is more than \$10 per day. Montana Code Annotated § 26-2-501(1)(b) explicitly states that the witness fees the county is responsible for include the subpoenaed

witness's mileage fees in traveling to trial. Mont. Code Ann. § 26-2-501(1). [REDACTED]

[REDACTED] [REDACTED] Because the district court did not determine the number of miles that Randy traveled to attend trial or the applicable mileage fee rate, *see* Mont. Code Ann. § 2-18-503(1), (3), remand for further fact-finding is necessary.

As Mr. Lamb stated in his opening brief, once the district court determines the witness fees that must be paid by the county, Randy is not precluded from seeking compensation for his remaining losses under the restitution statutes. (Appellant's Br. at 10.) Mr. Lamb simply wants to ensure the county pays its portion of losses required by Montana law.

II. The plain meaning and purpose of the witness fees and restitution statutes support Mr. Lamb's argument that the county must pay Randy's witness fees.

The State maintains the restitution statute is a specific statute that controls over the general witness fee statutes. (Appellee's Br. at 11-14.)

¹ District court document 297 is the Presentence Investigation Report ("PSI"). The PSI is a confidential document that is not accessible to the public. Mont. Code Ann. § 46-18-113(1). Pursuant to Mont. R. App. P. 10(7), Mr. Lamb has redacted from this publicly filed version of this brief information cited solely from the PSI.

The State argues the restitution statute “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.” (Appellee’s Br. at 11-12.) The State ignores the plain meaning and purpose of the witness fee statutes and inserts language that the Legislature omitted.

This Court’s function is to interpret statutes in accordance with their plain meaning. *State v. Running Wolf*, 2020 MT 24, ¶ 19, 398 Mont. 403, 457 P.3d 218. If the meaning of statutes can be determined from the language used, the Court “is not at liberty to add or detract language” from the statutes. *Nice v. State*, 161 Mont. 448, 450-51, 507 P.2d 527, 529 (1973). The Court thus reads and construes each statute as a whole, “both to give effect to the purpose of the statute and to avoid an absurd result.” *City of Missoula v. Pope*, 2021 MT 4, ¶ 10, 402 Mont. 416, 478 P.3d 815.

Mr. Lamb’s interpretation of the statutes gives effect to the purpose behind the witness fee statutes *and* the restitution statutes and avoids an absurd result. The restitution statutes are intended to make a victim whole by compensating him for loss caused by a defendant’s criminal conduct. This loss includes “expenses reasonably incurred in attending

court proceedings related to the commission of the offense.” Mont. Code Ann. § 46-18-243(1). The witness fee statutes are intended to ensure specific parties are responsible for fees associated with their subpoenaed witnesses regardless of whether the witness is a victim. Mont. Code Ann. §§ 26-2-501, 26-2-506 (“fees and compensation of a witness in all criminal and civil actions must be paid by the party who caused the witness to be subpoenaed”), 46-15-116.

The purposes behind these statutes are met when the county pays witness fees for its subpoenaed witnesses. The victim remains compensated and made whole for his loss—specifically, the victim is paid the witness fees incurred in attending court proceedings. And, the county is on the hook for paying such fees because it chose to subpoena the witness—just as the Office of Public Defender is on the hook for fees incurred by its subpoenaed witnesses. When read together, the statutes provide that when this specific type of loss occurs—witness fees incurred *as a subpoenaed witness*—the statutes that specifically address the payment of witness fees are triggered and control. The restitution statutes continue to apply to any remaining losses the victim suffered that are not “witness fees” per the witness fees statutes. This ensures

the victim is made whole. As such, Mr. Lamb again reiterates that Randy is not precluded from requesting under the restitution statutes any remaining losses not covered by the witness fee statutes.

The State's interpretation of the statutes inserts language into the witness fee statutes, does not give effect to the purpose of the witness fee statutes, and leads to an absurd result. The witness fee statutes explicitly require "the county" to pay witness fees and expenses for its subpoenaed witnesses. Mont. Code Ann. §§ 26-2-506(2)(b), 46-15-116(4). The State suggests that there is an exception to this requirement when the witness is a victim. (Appellee's Br. at 9-14.) But the statutes do not say that. The statutes do not include an exception to the requirement that the county pay witness fees for its subpoenaed witnesses when the witness is a victim; interpreting the statutes as such requires adding language the Legislature omitted.

Moreover, the State's interpretation completely ignores the purpose of the witness fee statutes—that when a party chooses to subpoena a witness that party must bear the costs associated with such subpoena. There is no reason this purpose should not be served when the witness is also a victim—the party still chose to require his attendance at trial.

Moreover, it is absurd to require a defendant to pay the fees for the witnesses the county used to convict him. It is reasonable that when a victim chooses to attend a trial, the defendant bears responsibility for the costs associated with such attendance. It is unreasonable that when the county subpoenas a witness to testify against the defendant the defendant must pay his witness fees.

The State argues there “was no need to go beyond the restitution statutes.” (Appellee’s Br. at 11.) Contrary to the State’s claim, there was a reason: two specific statutes explicitly requiring the county, not Mr. Lamb, pay Randy’s witness fees. Ignoring these statutes ignored the intent of the Legislature and improperly relieved the county of its statutorily mandated obligation to pay witness fees for its subpoenaed witnesses.

Respectfully submitted this 13th day of September, 2021.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this reply brief is printed with a proportionately spaced Century Schoolbook 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 1480, excluding Table of Contents, Table of Authorities, Certificate of Service, Certificate of Compliance, and Appendices.

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CERTIFICATE OF SERVICE

I, Haley Connell Jackson, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 09-13-2021:

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