SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2004-000493-001 DT 03/01/2005

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED:_____

STATE OF ARIZONA
Appellant

ROGER KEVIN HAYS

v.

PEDRO O IBARRA (001)
Appellee

TAIT D ELKIE

MESA CITY COURT
REMAND DESK-LCA-CCC
HONORABLE J MATIAS TAFOYA
PRESIDING JUDGE
MESA CITY COURT
245 W 2ND STREET
MESA AZ 85201
PAUL THOMAS
MESA CITY COURT
COURT ADMINISTRATOR
245 W 2ND STREET
MESA AZ 85201

RECORD APPEAL RULE / REMAND

MESA CITY COURT

Cit. No. / Lwr. Crt. No.: #2003045544

Charge:
1) LEAVE ACCIDENT/DAMAGE ATTEND VEHICLE
2) FAIL TO GIVE INFO/AID-ACCIDENT
3) FAIL TO STOP FOR RED LIGHT

DOB: UNK DOC: 05/03/03

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Sections 12-124(A) and 13- 4032.

This matter has been under advisement since February 23, 2005 and the Court has considered and reviewed the record of the proceedings from the Mesa City Court and the memoranda submitted.

This case involves an appeal by the State of a restitution order after the conviction of Appellee for the crime of leaving the scene of a motor vehicle accident in violation of A.R.S. Section 28-662(A)(1), failure to give information and render aid in violation A.R.S. Section 28-663(A) and a civil violation of A.R.S Section 28-645(A)(3)(a), failure to stop for a red light. At the time of sentencing on February 27, 2004, the accident victim, Mr. Codier asked for compensation for airfare for having to travel from Michigan to Arizona on two occasions to attend court proceedings in Arizona. The trial judge declined to require the Appellee to pay the victim's travel expenses as restitution. The trial court did, however, grant the State's motion to designate the $601.00 fine imposed by the court as partial restitution to Mr. Codier. The State subsequently appealed from that portion of the trial court's sentence denying full restitution to the victim. On appeal, this Court will uphold the restitution award if it bears a reasonable relationship to the victim's loss.[1]

The law concerning this issue is clear. Restitution of a victim's full economic loss is mandatory under A.R.S. § 13-603(C).[2] A.R.S Section 13-603(C) provides in part:

> If a person is convicted of an offense, the Court shall require the convicted person to make restitution to the person who is the victim of the crime or to the immediate family of the victim if the victim has died, in the full amount of the economic loss as determined by the Court and in the manner as determined by the Court or the Court's designee pursuant to Chapter 8 of this Title (emphasis added).

Recoverable economic losses are those that flow directly from or are a direct result of the crime committed.[3] To provide the basis for restitution a loss must: 1) be economic; 2) be one that the victim would not have incurred but for defendant's criminal offense; and 3) directly result from the defendant's criminal conduct.[4] In State v. Lindsley, the Court stated:

---

[1] *State v. Wilson*, 185 Ariz. 254, 260, 914 P.2d 1346, 1352 (App. 1995); *State v. Howard*, 168 Ariz. 458, 460, 815 P.2d 5, 7 (App. 1991).
[2] *State v. Lindsley*, 191 Ariz. 195, 197, 953 P.2d 1248, 1250 (App. 1998).
[3] *State v. Morris*, 173 Ariz. 14, 17, 839 P.2d 434, 437 (App. 1992).
[4] *State v. Wilkinson*, 202 Ariz. 27 (2002); *In re Stephanie B.*, 204 Ariz. 466, 468, 65 P.3d 114, 116 (App. 2003).

> The legislature identified lost earnings as among the losses for which the court may order restitution. We conclude that this encompasses not only wages lost due to an injury caused by the criminal conduct, and wages lost because of a trial appearance made mandatory by subpoena, but also the victim's voluntary attendance.[5]
>
> The fact that the victim was in court at all was a direct result of defendant's crime . . . . But for defendant's criminal actions, the victim certainly would not have been present at the proceedings. It is a direct result of a crime that the victim attends the hearings and thus suffers wage loss . . . it makes no difference whether the victim attended pursuant to subpoena or not (emphasis added).[6]

In In re Ryan A,[7] the Court specifically noted that:

> The restitution award, however, may be based on other economic losses, such as losses due to attendance at court proceedings, whether voluntary or mandatory(emphasis added).[8]

Recently, in State v. Madrid,[9] the Court affirmatively adopted the Lindsley analysis and applied it to the context of travel expenses. In doing so, the Madrid Court held that:

> The concept of "economic loss" as defined in § 13-105(14) covers reasonable travel-related expenses incurred by a victim who voluntarily attends trial(emphasis added).[10]

These cases make clear that a crime victim is entitled to recover expenses for court appearances whether voluntary or compelled. Mr. Codier's airfare was a legitimate travel expense for the purposes of attending and testifying at Appellee's trial. Clearly, but for the Appellee's criminal actions, the victim would not have needed to have been present at the proceedings. Accordingly, I find that the trial court erred in ordering partial restitution by designating the fine totaling $601.00 as restitution to Mr. Codier. This Court concludes that the airfare expenses relating to Mr. Codifier's attendance at Appellee's trial constitute an economic loss for which he is entitled restitution for the full amount of $1,256.00.

---

[5] *Lindsley*, 191 Ariz. at 198.
[6] *Id.* at 199.
[7] 202 Ariz. 19, 39 P.3d 543 (App. 2002).
[8] *Id*. at 25.
[9] 207 Ariz. 296, 85 P.3d 1054 (App. 2004).
[10] *Id.* at 300.

IT IS THEREFORE ORDERED reversing the restitution order of the trial court and remanding this matter back for entry of a new restitution order requiring that the restitution be payable in full to Sean Codier.

IT IS FURTHER ORDERED remanding this case back to the Mesa City Court for proceedings consistent with this opinion.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT