

ARIZONA SUPREME COURT

STATE OF ARIZONA,

Appellee,

v.

RICHARD ALLEN REED,

Appellant.

CR– CR–20–0385–PR

Court of Appeals
No. 1 CA–CR 17–0620

Maricopa County Superior Court
No. CR 2015–117844–001

STATE OF ARIZONA’S SUPPLEMENTAL BRIEF

Mark Brnovich
Attorney General
(Firm State Bar No. 14000)

Linley Wilson
Deputy Solicitor General /
Section Chief of Criminal Appeals

Jillian B. Francis
Assistant Attorney General
Criminal Appeals Section
2005 N. Central Ave.
Phoenix, Arizona 85004
Telephone: (602) 542–4686
cadocket@azag.gov
(State Bar Number 030117)
Attorneys for Appellee

ISSUE PRESENTED FOR REVIEW

Are a victim's private attorney fees recoverable as restitution, particularly considering A.R.S. § 13-4437(A), and if so, to what extent?

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INTRODUCTION

In April 2015, the State indicted Appellant Reed for one count of voyeurism after he “used a mirror to look under a closed bathroom door while his subordinate, C.C., was inside the bathroom urinating.” R.O.A. 5; [State v. Reed, No. 1 CA–CR 16–0269, 2017 WL 1325647, *1, ¶¶ 1–2 \(Ariz. App. Apr. 11, 2017\)](#) (mem. decision). Early on in the criminal proceedings, Reed revealed his intent to malign C.C.’s character at trial through inadmissible evidence—for example, C.C.’s alleged “affair with a married male customer,” C.C.’s past sexual history, and her alleged “proclivity for sexual relationships with men.” R.O.A. 16 (defense disclosure statement).

Around the same time, about 3½ months before trial, the victim retained private counsel, Craig Keller, to invoke her constitutional rights guaranteed under the Victims’ Bill of Rights (“VBR”). *See* R.O.A. 74, at Exh. G; [Ariz. Const. art. II, § 2.1](#) (crime victim’s rights include, *inter alia*, the right “[t]o be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal justice process”). Mr. Keller represented C.C. throughout Reed’s trial, at which a jury convicted Reed as charged, and he represented C.C. at a contested restitution hearing. R.T. 7/21/17 at 2–3.

In total, after the law firm reduced charges for various services and waived charges for others, C.C. incurred \$17,909.50 in attorney’s fees over a five-month

period—November 2, 2015, through March 31, 2016—which reflected about 38 hours of attorney time and 19 hours of paralegal time. R.O.A. 74, at Exh. G; *State v. Reed*, 250 Ariz. 599, ¶ 3 (App. 2020) (“Opinion”). At the restitution hearing, Reed did not make specific objections to Mr. Keller’s itemized time entries; instead, he alleged generally that Mr. Keller’s fees were “exorbitant”, asserted that the time Mr. Keller took to conduct the tasks was unreasonable, and asked the trial court to “deny 90 percent of the attorney fees.” R.T. 7/21/17 at 45–48. Failing to take issue with any specific itemized entries, Reed nonetheless asked the trial court “to scrutinize Mr. Keller’s summaries of his charges” to find the charges unreasonable. *Id.* at 47. In response, Mr. Keller argued that the time he spent to research, review the law, and draft motions is what was ethically necessary under the circumstances. *Id.* at 49–50. Mr. Keller countered that Reed’s argument was a “broad brushstroke” claim that Mr. Keller overcharged, but Mr. Keller was compliant with the ethical rules, and the requested restitution was fair and reasonable. *Id.* at 50. The trial court took the matter under advisement and ordered Reed to pay the full amount of C.C.’s attorney fees. R.O.A. 129.

On appeal, Reed made belated objections to Mr. Keller’s fees that Reed had not preserved in the trial court. *See* P.F.R.; R.O.A. 93. The court of appeals declined to consider those new objections and affirmed the restitution award. *See Opinion* at ¶ 26; *see also Ruck Corp. v. Woudenburg*, 125 Ariz. 519, 522–33 (App.

1980) (declining to consider merits of objection to attorneys’ fees award when objection was made for the first time in a motion for new trial).

ARGUMENT

This Court granted review to determine whether a victim’s private attorney fees are recoverable as restitution and to interpret the scope of [A.R.S. § 13–4437\(A\)](#)—a statute that the Legislature enacted to implement crime victims’ state constitutional rights under the Victims’ Bill of Rights (“VBR”). *See* [A.R.S. § 13–4402\(A\)](#) (stating “the rights and duties that are established by this chapter arise on the arrest or formal charging of the person or persons who are alleged to be responsible for a criminal offense against a victim”). This Court must construe [§ 13–4437\(A\)](#) in the context of its statutory scheme and in light of the Legislature’s authority to enact laws “to define, implement, preserve and protect the rights guaranteed to victims” under the VBR. [Ariz. Const. art. II, § 2.1\(D\)](#). As discussed below, [§ 13–4437\(A\)](#) states that a crime victim may retain counsel at his/her own expense to invoke a right guaranteed under the VBR. But doing so does not mean that the victim loses his/her ability to recover reasonable attorney fees that flow directly from the defendant’s criminal conduct. Instead, this provision, when read in light of the VBR and other statutes, is more reasonably read to mean that crime victims are not entitled to court-appointed counsel to invoke a right under the VBR.

Whether a victim is entitled to restitution for attorney fees is instead governed by A.R.S. §§ 13–603(C) and –804, which require a trial court’s finding that a defendant’s conviction caused the economic loss. Arizona courts have recognized that “economic loss” for restitution purposes is construed “as broadly as the term permits.” *State v. Lapan*, 249 Ariz. 540, 550, ¶ 34 (App. 2020). This Court should hold that a victim is entitled to restitution for reasonable attorney fees when the record shows that such fees represent a victim’s economic loss.

I. Viewed in Context of the Statutory Scheme, A.R.S. § 13–4437(A) Does Not Govern Restitution

It is well-established that courts interpret laws according to their plain language and in context of the statutory scheme. *See Stambaugh v. Killian*, 242 Ariz. 501, 511, ¶ 17 (2017) (interpreting statute’s plain language “as a whole and its context within the statutory scheme”). Accordingly, the Court should read A.R.S. § 13–4437(A) not in isolation, but instead in harmony with the VBR and Arizona’s restitution statutes.

A. Section 13–4437(A) provides crime victims with standing to invoke constitutional rights in a criminal proceeding

In construing A.R.S. §13–4437(A), this Court must determine whether the Legislature intended the language “at the victim’s expense” to preclude recovery of restitution for a victim’s attorney fees. Given the statute as a whole, and in context

with other statutes governing restitution, it is evident that the Legislature did not intend (and would not have authority) to do so.

The primary goal of statutory interpretation is to determine and give effect to legislative intent. *State v. Morris*, 215 Ariz. 324, 340, ¶ 74 (2007). The plain language of a statute is the most reliable evidence of intent. *Mejak v. Granville*, 212 Ariz. 555, 557, ¶ 8 (2006). “When the text is clear and unambiguous, we apply the plain meaning and our inquiry ends.” *State v. Burbey*, 243 Ariz. 145, 147, ¶ 7 (2017). But “[w]here the statutory language yields different reasonable meanings, we consider secondary interpretation methods, including consideration of the statute’s subject matter, its historical background, its effect and consequences, and its spirit and purpose.” *Id.* (citation and internal quotation marks omitted).

“Arizona courts must follow and apply the plain language of [the VBR].” *Knapp v. Martone*, 170 Ariz. 237, 239 (1992). Under the VBR, Arizona crime victims have enumerated rights, including the right to “receive prompt restitution” from the convicted defendant. Ariz. Const. art. II, §2.1(A)(8). The language of A.R.S. § 13–4437(A) must not be read in isolation—the VBR and statutory canons of construction mandate a construction of the statute that gives full effect to all victims’ rights. See Ariz. Const. art. II, § 2.1(E) (the constitutional rights provided

to victims “shall not be construed to deny or disparage others granted by the Legislature or retained by victims”).

Section 13–4437(A) provides several rights to crime victims, including standing to seek orders, bring a special action, and appear in appellate proceedings. It also provides, “In asserting any right, the victim has *the right to be represented by personal counsel at the victim’s expense*[.]” A.R.S. § 13–4437(A) (emphasis added). Subsection A makes no reference to restitution, which does not arise in a criminal proceeding until the defendant’s guilt has been determined. See *State ex rel. Montgomery v. Padilla*, 238 Ariz. 560, 565 (App. 2015) (restitution is not implicated until “the issue of guilt in the criminal case” has been resolved). However, subsection E refers to restitution; it provides victims with the right to present evidence and argument to the court, personally or through counsel, at a restitution proceeding pursuant to A.R.S. § 13–804. A.R.S. § 13–4437(E).

Thus, the plain language of A.R.S. § 13–4437(A) does not state that restitution is precluded for attorney fees. Moreover, the language, “in asserting any right, the victim has the right to be represented by personal counsel *at the victim’s expense*,” does not expressly authorize a categorical bar to restitution claims for such expenses. Because the plain language does not resolve the issue, this Court may consider “the statute’s subject matter, its historical background, its

effects and consequences, and its spirit and purpose.” *Burbey*, 243 Ariz. at 147, ¶ 7.

At the time the Legislature passed A.R.S. § 13–4437, victims were already entitled to full restitution. See *Ariz. Const. art. II, § 2.1(A)(8)*; A.R.S. § 13–804 (West 1991) (“In ordering restitution for economic loss pursuant to section 13–603[], the court shall consider all losses caused by the criminal offense[s] for which the defendant has been convicted.”); A.R.S. § 13–603(C) (1986) (“If a person is convicted of an offense, the court shall require the convicted person to make restitution ... in the full amount of the economic loss as determined by the court[.]”). This Court presumes that the Legislature was aware of the existing law when it passed A.R.S. § 13–4437 in 1991. See *State v. Patel*, 251 Ariz. 131, ¶ 15 (2021). Accordingly, the scope of restitution afforded to victims was known at the time A.R.S. § 13–4437 was passed, and if the Legislature had intended to categorically bar recovery of attorney fees, it would have expressly done so. See *Pima Cty. v. Maya Constr. Co.*, 158 Ariz. 151, 155 (1988) (“Unless a statute, from its language or effect, clearly requires the conclusion that the legislature must have intended it to supersede or impliedly repeal an earlier statute, courts will not presume such an intent.”).

As discussed, restitution is governed by A.R.S. § 13–603(C) and § 13–804. Section 13–804(B) provides that, in ordering restitution, a trial court is required to

consider “all losses caused by the criminal offense or offenses for which the defendant has been convicted.” Notably, [A.R.S. § 13–4437\(E\)](#) cross-references [§ 13–804](#), and provides victims with the right to present evidence and argument in regard to restitution. This cross-reference to the restitution statute demonstrates that restitution requests, including requests for victims’ attorney fees, remain subject to the rules of restitution and judicial determination at a restitution hearing.

A reading that [A.R.S. § 13–4437\(A\)](#) would categorically preclude restitution for victims’ attorney fees is contrary to the requirement that statutes implementing the VBR be “liberally construed to preserve and protect the rights to which victims are entitled.” [A.R.S. § 13–4418](#); *see also Goulder v. Ariz. Dep’t of Transp.*, 177 Ariz. 414, 416 (App. 1993) (reading a section of a statute in reference to the context of the entire act). And, such a reading would eliminate the guarantee of full victim restitution. *See Patel*, 251 Ariz. at ¶ 17 (finding implausible that the electorate intended to only guarantee a victim partial restitution).

Instead, the more reasonable reading is the Legislature intended the phrase “the victim has the right to be represented by personal counsel *at the victim’s expense*,” to mean that if a victim desired counsel, the victim would be responsible for the initial cost of such counsel and the court would not appoint counsel free-of-charge to indigent victims, as it does to indigent defendants. *Compare A.R.S. § 13–4437(A)*, *with Ariz. Const. art. II, § 24* (“In criminal prosecutions, the accused

shall have the right to appear and defend in person, and by counsel, [listing several rights of the defendant]...”); [Ariz. R. Crim. P. 6.1\(b\)\(1\)](#).

Moreover, even if [A.R.S. § 13–4437\(A\)](#) somehow suggested that recovery of attorney fees were precluded as restitution, [A.R.S. § 13–4437\(A\)](#) should be read in harmony with §§ [13–603\(C\)](#) and [–804](#) in order to award restitution consistent with the VBR. *See Patel, 251 Ariz. at ¶ 24* (reading § 13–809(B) (which provides that § 13–804 applies to enumerated traffic offenses) in harmony with §§ [13–603\(C\)](#) and [–804](#)).

This Court should not interpret [A.R.S. § 13–4437\(A\)](#) as foreclosing restitution for attorney’s fees because if the fees qualify as economic losses, a victim is entitled to full restitution. Precluding restitution for attorneys’ fees would frustrate a victim’s right to full restitution, and the Legislature would be without authority to eliminate this form of restitution. *See Patel, 251 Ariz. at ¶¶ 2, 26* (holding Legislature lacked authority to cap restitution in [A.R.S. § 28–672\(G\)](#) because the VBR guarantees victims the right to receive restitution for the full amount of economic loss).

B. Upon conviction, A.R.S. §§ 13–603(C) and –804 require restitution to fully compensate a crime victim for economic loss, which may include attorneys’ fees.

When a person “is convicted of an offense, [a] court shall require the convicted person to make restitution” to the crime victim “in the full amount of the

economic loss as determined by the court and in the manner as determined by the court[.]” [A.R.S. § 13–603\(C\)](#); *see also Patel*, [251 Ariz. at ¶ 14](#) (“The right to restitution is thus a right to the full amount required to restore victims to the position they were in before the loss or injury caused by the criminal conduct.”). “Economic loss” is broadly defined in Arizona as “any loss incurred by a person as a result of the commission of an offense,” including “losses that would not have been incurred but for the offense.” [A.R.S. § 13–105\(16\)](#). Consequential damages do not qualify as economic loss. *Id.*

Arizona courts have found a wide variety of expenses, such as a victim’s lost wages due to voluntary attendance at trial, the cost of psychological counseling, moving expenses, taxi fares and rental car costs, and attorneys’ fees incurred during probate proceedings, to have been directly caused by the defendant’s criminal conduct and subject to restitution. *See, e.g., State v. Spears*, [184 Ariz. 277, 291–92 \(1996\)](#) (upholding restitution award to murder victim’s family for attorneys’ fees incurred in probate proceedings); *State v. Lindsley*, [191 Ariz. 195, 198 \(App. 1997\)](#) (holding lost wages due to voluntary attendance at trial were recoverable economic losses subject to restitution); *State v. Baltzell*, [175 Ariz. 437, 439 \(App. 1992\)](#) (ordering reimbursement for attorneys’ fees after noting that courts have defined economic loss for purposes of restitution “quite broad[ly]” and allowed restitution for a “wide variety of expenses caused by the conduct of

persons convicted of crimes”); *State v. Morris*, 173 Ariz. 14, 18–19 (App. 1992) (holding trial court properly awarded victim restitution for taxi fares and car rental costs resulting from defendant’s damage to victim’s car); *State v. Brady*, 169 Ariz. 447, 448 (App. 1991) (affirming that “moving expenses incurred in an effort to restore the victim’s equanimity” were recoverable expenses “directly attributable to the crime”). Although this Court has not yet affirmatively settled the issue, when a victim’s attorney fees are shown to be economic losses directly caused by the defendant’s conduct, such fees qualify as a reimbursable economic loss subject to restitution. See *State v. Leteve*, 237 Ariz. 516, ¶ 58 (2015) (“assum[ing], without deciding, that attorney fees incurred to enforce victims’ rights may be compensable in restitution” and concluding trial court did not abuse its discretion in ordering defendant “to pay restitution for victims’ out-of-pocket expenses to attend trial and attorney fees incurred to enforce victims’ rights”).

Here, the court of appeals correctly concluded that C.C. would not have incurred attorney fees “but for” Reed’s criminal conduct resulting in C.C.’s involvement in a contentious trial. As discussed in the State’s Response to Petition for Review, Reed’s defense and trial strategy involved attacking the victim’s character by making her out to be a drug-user, dishonest, and promiscuous. R.P.F.R., at 9–11 (citing R.O.A. 16, 41; R.T. 2/17/16, at 28–33 (opening statement)). Reed also contacted the victim after court proceedings began and

fiercely contested most of the victim's restitution claims. *Id.* (citing R.T. 4/15/16, at 17; R.O.A. 74, at Exhibits A, C, D, E; R.T. 7/21/17). In sum, Reed's conduct directly caused the victim to retain counsel to assert her rights under the VBR. *See Opinion* at ¶ 12 ("The fees awarded as restitution here were incurred because of Reed's crime[.] Accordingly, they had a nexus to the crime, and followed and flowed factually and temporally from Reed's crime.").

Whether a trial court will approve restitution requests for attorneys' fees in a given case is within the trial court's discretion, and subject to proof that the attorney fees at issue are true economic losses. *See State v. Dixon*, 216 Ariz. 18, 21, ¶ 11 (App. 2007) (trial court has "wide discretion in setting restitution based on the facts of each case"). In some cases, attorney fees may not be appropriate. In *State v. Slover*, for example, the court of appeals reasoned that a victim's attorney essentially acted as an "adjunct prosecutor" when his fees consisted of time spent "prodding" the State to pursue the case and in assisting it with the prosecution. 220 Ariz. 239, 243, ¶¶ 7–8 (App. 2009). When the defendant challenged the restitution award on the basis that the fees resulted from the victim's unnecessary decision to hire counsel to assist the prosecutor, the court of appeals agreed with the defendant's characterization of counsel's role. *Id.* The court of appeals concluded that counsel had billed for actions he took to have the case pursued by

the County Attorney's Office, to encourage the State to file charges, and to assist in locating the defendant out-of-state. *Id.*¹

Because counsel's role in *Slover* was one of assisting the prosecutor, the appellate court found that the attorney fees "did not flow directly from the defendant's criminal conduct" but arose from an additional cause independent of the defendant's criminal conduct. *Id.* at ¶ 8. Therefore, the fees were consequential damages and were not recoverable as restitution. *Id.* Importantly, however, the court of appeals expressly left open the question "whether such fees would be proper restitution items under other factual circumstances, such as when the victim hires an attorney to assert a concrete right under the [VBR]." *Id.* at ¶ 9.

Here, unlike the attorney fees at issue in *Slover*, Mr. Keller's fees² flowed factually and temporally from Reed's conduct and were therefore economic losses subject to restitution. *Opinion*, at ¶ 12. Victims are entitled to full restitution,

¹ The defendant in *Slover* was also ordered to pay restitution for the attorneys' fees incurred to settle the victim's estate, which he did not contest. *Id.* at ¶ 7, n. 4.

² This Court did not grant review on the question whether Mr. Keller acted as a private prosecutor. In any event, the court of appeals correctly concluded that the record does not support the argument that Mr. Keller impermissibly acted as a private prosecutor. *Opinion*, at ¶ 21. Furthermore, Reed did not raise this issue in his direct appeal from his conviction for voyeurism. *See Reed, No. 1 CA-CR 16-0269, 2017 WL 1325647 (Ariz. App. Apr. 11, 2017)* (mem. decision).

which may include attorney fees, when, as in this case, such fees are economic losses based on the facts and any evidence presented at the restitution hearing.

II. Section 13–4437(A) Does Not Prohibit Trial Courts from Ordering a Convicted Defendant to Pay a Victim’s Attorney Fees as Restitution in Appropriate Cases

Because [A.R.S. § 13–4437\(A\)](#) does not govern restitution awards, courts must order restitution pursuant to [A.R.S. §§ 13–603\(C\)](#), [–804](#), and [Ariz. Const., art. II, § 2.1](#), consistent with the following limitations.

A. Like any other attorneys’ fees, the fees charged must be reasonable.

A victim’s attorney fees request must be reasonable, and a criminal defendant has an opportunity to challenge the reasonableness of an attorney’s fee request at a restitution hearing, as Reed did here. Trial courts have broad discretion in determining the reasonableness of a fee request. *See Tucson Estates Prop. Owners Ass’n v. Jenkins*, 247 Ariz. 475, 479, ¶ 14 (App. 2019). Once the party requesting attorneys’ fees establishes entitlement to fees and meets the minimum requirements in an application and affidavit, the burden then shifts to the opposing party to show the impropriety or unreasonableness of the fees. *See City of Tempe v. State*, 237 Ariz. 360, 368, ¶ 32 (App. 2015); *Schweiger v. China Doll Rest., Inc.*, 138 Ariz. 183, 188 (App. 1983) (affidavit and application should include “the type of legal services provided, the date the service was provided, the attorney providing the service ... and the time spent in providing the service”).

The opposing party must present more than a general objection to the fee request. *See Nolan v. Starlight Pines Homeowner's Ass'n*, 216 Ariz. 482, 490–491, ¶¶ 38–39 (App. 2007) (party opposing fee application must “present specific objections to the reasonableness of the fees requested”; general objections, such as a claim the hours billed are excessive and the rates too high, are insufficient); *see also State ex rel. Corbin v. Tocco*, 173 Ariz. 587, 594 (App. 1992) (opposing party has the “obligation to demonstrate why any of the billing entries were immaterial, irrelevant or otherwise unreasonable”).

Here, Mr. Keller’s application and affidavit contained the required information in sufficient detail. *See* R.O.A. 74, Exh. G. Reed’s response and objection presented nothing more than general objections to Mr. Keller’s fees. R.O.A. 93. Reed merely asserted that C.C. did not need to hire an attorney and that “[s]crutiny of Mr. Keller’s firm[’]s bills was warranted and just.” *Id.* Accordingly, by making such general objections instead of specific points of contention with Mr. Keller’s fees, Reed did not meet his burden of showing the requested fees were unreasonable on any basis.

B. The attorney’s fees must be causally connected to the defendant’s crime or conduct in the case.

Arizona law requires trial courts to order convicted defendants “to make restitution to [the victim of the crime] in the full amount of the economic loss as

determined by the court” [A.R.S. § 13–603\(C\)](#). “Economic loss” is defined in [A.R.S. § 13–105\(16\)](#) and provides:

“Economic loss” means any loss incurred by a person as a result of the commission of an offense. Economic loss includes lost interest, lost earnings and other losses that would not have been incurred but for the offense. Economic loss does not include losses incurred by the convicted person, damages for pain and suffering, punitive damages or consequential damages.

Economic losses “flow directly from the defendant’s criminal conduct, without the intervention of additional causative factors.” [State v. Wilkinson, 202 Ariz. 27, 29, ¶ 7 \(2002\)](#). As noted, the Legislature intended “economic loss” as defined in [A.R.S. § 13–105\(16\)](#) to be construed “as broadly as the term permits.” [Lapan, 249 Ariz. at 550, ¶ 34](#).

A victim’s loss is recoverable through restitution if: (1) the loss is economic; (2) the loss is one that the victim would not have incurred but for the defendant’s criminal conduct; and (3) the defendant’s criminal conduct directly caused the economic loss.” [State v. Madrid, 207 Ariz. 296, 298, ¶ 5 \(App. 2004\)](#) (citing [Wilkinson, 202 Ariz. at 29, ¶ 7](#)). Direct causation is satisfied when the causal nexus between the conduct and the loss is not too attenuated factually or temporally. *See* [State v. Guilliams, 208 Ariz. 48, 53, ¶ 18 \(App. 2004\)](#). If the loss is due to a causal event other than the defendant’s conduct, then it is consequential and not recoverable. [Wilkinson, 202 Ariz. at 29, ¶ 7](#).

C. Criminal defendants may contest restitution at a hearing where the State bears the burden of proving the amount of restitution by a preponderance of the evidence.

At a restitution hearing, the party seeking restitution “has the burden to prove a restitution claim by a preponderance of the evidence.” *Patel*, 251 Ariz. at ¶ 19 (quoting *State v. Quijada*, 246 Ariz. 356, 364, ¶¶ 22, 24 (App. 2019)). The “purpose of restitution is not to punish, but to make the victim whole” and courts therefore must “not compensate victims for more than their actual loss[.]” *Quijada*, 246 Ariz. at 363–64, ¶ 22 (internal quotations omitted). Criminal defendants are entitled to due process during restitution proceedings, including “the opportunity to contest the information on which the restitution award is based, to present relevant evidence, and to be heard.” *Id.* at 364, ¶ 24 (quoting *State v. Fancher*, 169 Ariz. 266, 268 (App. 1991)); see also *State v. Lewus*, 170 Ariz. 412, 414 (App. 1992) (court violated defendant’s due process rights by issuing restitution award before defendant could challenge the amount of restitution).

Accordingly, defendants are adequately protected by due process and can always contest the victim’s restitution request, including a request for a victim’s attorney fees, before restitution is ordered.

III. Consistent with the Limitations Above, Other States Have Held That Restitution May Include Reimbursement of a Crime Victim’s Attorney Fees.

Notably, numerous other states have found, while interpreting their own victim’s rights laws, that a victim’s attorney fees are recoverable as restitution when the fees are causally related to the defendant’s conduct. These decisions bolster the conclusion that victims’ attorneys’ fees are likewise encompassed within the meaning of “economic loss” for restitution purposes in Arizona.

For example, as a matter of first impression in *State v. Hunziker*, the Kansas Court of Appeals addressed whether a victim’s attorney fees could be ordered as restitution that reimburses the victim for actual loss caused by the defendant’s crime. [41 P.3d 880, 884 \(Kan. Ct. App. 2002\)](#). Similar to Arizona law, Kansas law requires a causal link between the victim’s damages and the defendant’s conduct. *Id.* In addressing the issue, the court noted other states have determined that a victim’s attorneys’ fees are damages that can be ordered as restitution. *Id.* [at 885](#) (collecting cases).

The victim in *Hunziker* sought legal advice “on what he could recover as damages and how he could recover those damages.” *Id.* The Kansas Court of Appeals reasoned that the victim’s “retaining of an attorney to determine and to document [the victim]’s damages was a reasonable and logical result of [the defendant]’s criminal conduct” and thus, “the trial court properly ordered” the

defendant to pay the victim’s “attorney fees as restitution in the criminal proceeding.” *Id.* Kansas courts, like Arizona courts interpreting A.R.S. §§ 13–603(C) and –804, broadly interpret Kansas law governing restitution orders. *Id.* at 284 (“[T]he Legislature intended the courts to broadly interpret [state statute] regarding restitution orders.”).

Additionally, courts in Oregon, Washington, Wisconsin, and California, among others, have permitted victims’ attorney fees in restitution awards when such fees are the result of the defendant’s conduct. *See State v. Herfurth*, 388 P.3d 1104, 1108 (Or. Ct. App. 2016) (rejecting argument that victim’s attorney’s fees do not qualify as economic loss, and holding that victim’s attorney’s fees are recoverable when they are “reasonable in amount and necessarily incurred”); *State v. Kinneman*, 95 P.3d 1277, 1288 (Wash. Ct. App. 2004) (where victims “submitted detailed statements of their [attorney] fees and costs,” which were “direct results of [the defendant]’s thefts,” “those fees and costs are properly considered by the court in ordering restitution”); *People v. Fulton*, 109 Cal. App.4th 876, 884–85 (Cal. Ct. App. 2003) (affirming restitution award of \$25,000 for victim’s attorney’s fees and holding that “actual and reasonable attorney fees incurred by a victim as a result of the defendant’s criminal conduct are recoverable

as restitution”³; *State v. Anderson*, 573 N.W.2d 872, 875 (Wis. Ct. App. 1997) (affirming restitution award of \$28,313.66 in victim’s attorney’s fees and interpreting Wisconsin’s restitution statute “broadly and liberally”).

This Court should likewise interpret A.R.S. §§ 13–4437(A), –603(C), and –804 broadly and liberally, in harmony with the VBR, to authorize restitution for a victim’s reasonable attorney fees incurred as a result of a defendant’s criminal conduct.

CONCLUSION

Based on the foregoing authorities and arguments, the State respectfully requests that this Court affirm the restitution award.

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³ California law expressly includes attorney’s fees as one form of economic loss. Cal. Penal Code § 1202.4(f)(3)(H). But the Arizona Legislature is not required to enumerate every conceivable example of what may qualify as “economic loss”—particularly when Arizona courts have made such determinations on a case-by-case basis.

Respectfully submitted,

Mark Brnovich
Attorney General

Linley Wilson
Deputy Solicitor General /
Section Chief of Criminal Appeals

/s/

Jillian B. Francis
Assistant Attorney General

Attorneys for Appellee