



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



***E.H. v. Hon. Slayton et al.,
CR-24-0245-PR***

PARTIES:

Petitioner: E.H.

Respondents/Real Parties in Interest: Lillian Hester, Jason Conlee, Lenda Hester

Amici: Arizona Attorneys for Criminal Justice
Parents of Murdered Children and the Arizona
Crime Victim Rights Law Group

FACTS:

When J.H. was born in 2009, his aunt, Lillian Hester, obtained custody of him. In 2015, J.H. was transported to the hospital where he died. An autopsy showed evidence of neglect and injuries. A pathologist determined J.H.'s death was caused by battered-child syndrome.

A jury convicted Lillian Hester of first-degree murder and she was sentenced to seventeen years' imprisonment. J.H.'s grandmother, Lenda Hester, and Lillian's boyfriend, Jason Conlee, were also charged with J.H.'s death; they ultimately pled guilty to lesser charges of child endangerment.

E.H. is J.H.'s sibling and is a "victim" in this case for purposes of Arizona's Victims' Bill of Rights under article 2, section 2.1(C) of the Arizona Constitution and A.R.S. § 13-4401(19). In the trial court, E.H. filed a claim as a victim seeking restitution for both her own costs incurred during the case and in payment for J.H.'s future lost wages.

The trial court determined that E.H. could recover costs that she incurred in the case—including costs for missing school and hiring a tutor—as an "economic loss" under A.R.S. § 13-105(16). However, the trial court ruled that E.H. could not claim J.H.'s lost potential future earnings as "economic losses" under § 13-105(16), because those losses were "consequential damages" that could not be recovered in a criminal case.

The court of appeals agreed with the trial court. The appellate court stated that a loss that can be compensated through criminal restitution "must also be directly caused by the criminal conduct," and that if the "loss results from the concurrence of some causal event other than the defendant's criminal conduct, the loss is indirect and consequential and cannot qualify for restitution." *E.H. v. Hon. Slayton*, No. 1 CA-SA 24-0034, 2024 WL 3722835, at *3 ¶ 11 (Ariz. App. Aug. 8, 2024) (mem. decision) (citation omitted). The court stated that the "'causal nexus' between the conduct and the loss cannot be 'too attenuated (either factually or temporally).'" *Id.* (quoting *State v. Guilliams*, 208 Ariz. 48, 53 ¶ 18 (App. 2004)).

The appellate court noted that in this case there was expert testimony about J.H. and “the earning expectations of a six-year-old over his lifetime under various educational achievement scenarios.” *Id.* ¶ 12. However, the court ruled that “these earning amounts were speculative, given the myriad causal factors that would determine J.H.’s lifetime earnings.” *Id.* The court stated that it was unknowable how much education J.H. ultimately would have obtained or where or how long he would have lived. The court concluded that the “causal nexus between the defendants’ criminal conduct and J.H.’s future lost wages is simply too attenuated, both factually and temporally.” *Id.* The court of appeals thus affirmed the trial court’s ruling that J.H.’s lost future wages could not be recovered by E.H. as an “economic loss” under A.R.S. § 13-105(16).

E.H. petitioned this Court for review of the court of appeals’ ruling. This Court granted review of the following issue.

ISSUE:

Whether the future lost wages of a murdered child are an economic loss as defined by A.R.S. § 13-105(16)?

DEFINITIONS and STATUTES:

A.R.S. § 13-105(16) provides:

16. “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.

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