SUPREME COURT, STATE OF COLORADO Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, CO 80203 Certiorari to the Colorado Court of Appeals Case Number 2020CA1746	DATE FILED February 11, 2025 2:43 PM
Petitioner THE PEOPLE OF THE STATE OF COLORADO v. Respondent NATHAN CRAWFORD HOLLIS	
Megan A. Ring Colorado State Public Defender LISA WEISZ 1300 Broadway, Suite 300 Denver, CO 80203 Phone Number: (303) 764-1400 Fax Number: (303) 764-1479 Email: PDApp.Service@coloradodefenders.us Atty. Reg. #27553	Case Number: 2023SC834

AMENDED ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules.

Specifically, the undersigned certifies that this petition complies with the applicable word limit and formatting requirements set forth in 28(g).

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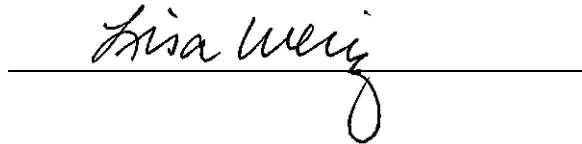

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ISSUE

Whether a law enforcement agency is entitled to restitution for unrecovered "buy money" under section 18-1.3-602(3)(a) and (b), C.R.S.

INTRODUCTION

A drug task force that regularly conducts five to ten undercover narcotics purchases per month using funds from its specific budget for such transactions, is simply fulfilling its routine and public function and therefore not entitled to restitution for such expenditures. It is not an "aggrieved victim" entitled to reimbursement. "Buy money" is neither "money advanced by law enforcement agencies" for a victim's pecuniary loss nor an "extraordinary direct" public investigative cost.

STATEMENT OF THE CASE

Nathan Hollis pled guilty to distributing a controlled substance weighing over 112 grams (DF1), § 18-18-405(1), (2)(a)(I)(B), C.R.S., in 19CR2108, and another count of the same in 19CR2109. CF 2108, p 38; CF 2109, p 40.

FACTS

Hollis was a drug addict who sold small amounts to friends to feed his addiction. TR 3/5/2020, p 17:5-7. The prosecutor acknowledged Hollis had not been "in really any kind of trouble" until 2019, when police found drugs in his car during a traffic stop. *Id.* at 11-13. After that, agents with the Weld County Drug

Task Force ("Task Force") repeatedly texted him asking him to get them incrementally larger amounts of drugs, and eventually one sale crossed the 112-gram threshold to qualify as a DF1. *Id.* at 16-17.

The Task Force is comprised of investigators from law enforcement agencies in Weld County. TR 8/26/2020, p 11:14-17. It investigates narcotic-related offenses. *Id*. at 4:22-25. As a part of its investigations, the Task Force conducts five to ten controlled drug buys per month. *Id*. at 9:9-15. It has a specific budget for "buy money," which is the money that the Task Force's undercover agents use to purchase narcotics from suspects. *Id*. at 6:14-18, 11:10-13.

The Task Force conducts its controlled drug buys consistently for the most part, as there are formal policies and procedures for such in place. *Id*. at 10:10-20. First, a case agent submits a "buy money sheet" to a supervisor, who has access to a safe where the "buy money" is stored. Next, the supervisor removes cash from the safe and places it into a machine that counts the bills and records the serial numbers. Then, the supervisor gives the money to the case agent, who provides it to an undercover officer for use in the sale. *Id*. at 5-8, 11:3-9.

This appeal arose from two controlled buys conducted by the Task Force with Hollis. On June 25, 2019, an undercover officer text messaged Hollis about purchasing methamphetamine. The officer provided $300 in "buy money" to Hollis,

and Hollis gave the officer methamphetamine. CF 2109, pp 1-2; TR 8/26/2020, pp 5:17-22, 7:2-8. They didn't arrest him immediately but let him walk away with the money. This was case number 19CR2109.

A few weeks later, on July 18, 2019, the officer asked to buy more drugs. The officer provided $1,340 in "buy money" to Hollis, and Hollis gave the officer cocaine and methamphetamine. CF 2108, pp 1-2; CF 2109, pp 1-2; TR 8/26/2020, pp 5:20-22, 7:9-19. Again, they didn't arrest him immediately but let him walk away with the money. This was case number 19CR2108.

On August 7, 2019, another exchange occurred where Hollis wasn't arrested but was allowed to walk away with the money. This was case number 19CR2110, which was eventually dismissed as part of the plea bargain. CF 2108, p 21; CF 2109, p 21; TR 3/5/20, pp 3-6.

Eventually, an arrest warrant issued on August 22, 2019, and Hollis was arrested the next day. CF 2108, pp 2, 116; CF 2109, pp 2, 122. The Task Force searched Hollis's residence but didn't locate the "buy money" they'd lost months earlier. TR 8/26/2020, p 8:12-21.

Although only one transaction involved a sufficient quantity of drugs to qualify as a DF1, the prosecutor had Hollis plead guilty to *two* DF1s in exchange for

dismissal of the remaining charges.[1] TR 3/5/2020, pp 6:13-15, 16:10-13; CF 2108, p 3; CF 2109, p 3.

On March 5, 2020, Hollis was sentenced to prison. The plea agreement stated that the prosecutor would reserve restitution, which "will be as ordered by the Court." The judge granted the prosecutor 91 days to request restitution. TR 3/5/2020, pp 23-25; CF 2108, p 48; CF 2109, p 54.

The prosecution requested $1,640 in restitution for the "buy money." CF 2108, pp 52-55; CF 2109, pp 59-60. The prosecutor theorized that the "buy money" qualified as "money advanced by law enforcement" under section 18-1.3-602(3)(a), C.R.S., because the Task Force supervisor "advanced" money to the Task Force undercover agent. Alternatively, the prosecutor theorized that "buy money" was an "extraordinary direct" public investigative cost under section 18-1.3-602(3)(c),

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[1] This practice of "walking up" drug amounts is a common strategy employed by police, often in consultation with prosecutors:

> [L]aw enforcement . . . ran stings designed to cross mandatory minimum thresholds for given drugs. One attorney referred to this as "walking up" drug amounts…. The mandatories not only introduced a floor on sentences available to the judge, they also put pressure on the defendant to comply with the prosecutors' demands in plea negotiations.

Monica Lynch, *Booker Circumvention? Adjudication Strategies in the Advisory Sentencing Guidelines Era*, 43 N.Y.U. Rev. L. & Soc. Change 59, 85 (2019).

C.R.S., because money was surrendered to the defendant. CF 2108, pp 72-75; CF 2109, pp 78-81; TR 8/26/2020, pp 19-20.

The defense objected that the movement of money within a governmental organization doesn't constitute an "advance," and that "buy money" isn't an "extraordinary direct" public investigative cost. CF 2108, pp 56-59; CF 2109, pp 62-65; TR 8/26/2020, pp 16-19. The judge ruled that "buy money" was extraordinary and ordered restitution. TR 8/26/2020, pp 21-23; CF 2108, p 88; CF 2109, p 94.

Hollis was also ordered to pay $867 in costs and fees to various government agencies including the "Victims and Witnesses Assistance and Law Enforcement Fund." CF 2108, p 116; CF 2109, p 122.

A division of the Court of Appeals reversed, reasoning that the Task Force isn't an aggrieved victim entitled to restitution for "buy money," which is neither "money advanced by law enforcement agencies" for a victim's pecuniary loss nor an "extraordinary direct" public investigative cost. *People v. Hollis*, 2023 COA 91.

SUMMARY OF THE ARGUMENT

Colorado's restitution statute allows law enforcement agencies to obtain restitution for losses proximately caused by a crime if the prosecution establishes that either: (1) the elements of the crime define law enforcement as the victim

aggrieved by the offender's criminal conduct, for example, when the defendant is convicted of the crime of vehicular eluding, the elements of which define law enforcement as the victim; or (2) the claimed loss is specifically covered by the restitution statutes, for example, when law enforcement seeks restitution for its expenses in remediating premises used to manufacture methamphetamine, pursuant to the specific statutory authorization for such.

Here, the crime of drug distribution doesn't define law enforcement as the victim, and the restitution statutes contain no mention of "buy money," so restitution isn't permitted.

The State argues that "buy money" qualifies for restitution because it is "money advanced by law enforcement agencies." However, there was no "advance." An "advance" occurs when money is furnished before any consideration is received in return. The "buy money" was furnished in exchange for narcotics in what amounts to a purchase, not an advance. The State asserts that the mere movement of money from a supervisor to an undercover officer within the Task Force constitutes an "advance," but such movement did not cause any financial loss. Even if the agent's transfer of money to Hollis constitutes an "advance," such an advance only satisfies the definition of "restitution" if it relates to a "pecuniary loss suffered by a victim." Under this Court's precedent, a governmental agency's

expenditure of funds allocated to them to fulfill their public function doesn't transform them into a "victim" for restitution purposes. In the crime of drug distribution, the victim is the public at large and not the Task Force, whose ordinary investigative expenses are not recoverable in restitution.

The State also argues that the restitution statute allows law enforcement to recover "extraordinary" public investigative costs, but there is nothing "extraordinary" about an undercover agent using "buy money" to purchase illegal narcotics. It is so customary that the Task Force has a budget for "buy money," official policies and procedures for its use, a safe for its storage, and a machine for counting and recording it. It is also a common police strategy to surrender money to a petty drug dealer and delay the arrest as a tactic to gain his trust and future cooperation in selling them larger amounts that will ensure a prison sentence. None of this is extraordinary.

Because restitution is a creature of statute, and the restitution sought in this case wasn't authorized by statute, the court of appeals correctly vacated it.

ARGUMENT

I. "Buy money" is not recoverable as restitution.

A. Standard of review.

The defense agrees this claim is preserved and reviewed de novo.

B. Law.

1. Principles of statutory construction.

Restitution is a creature of statute. *Sanoff v. People*, 187 P.3d 576, 577, 579 (Colo. 2008) (legislative prerogative to define crimes and prescribe sentences includes restitution).

When construing a statute, courts should determine and effectuate legislative intent. *Dubois v. People*, 211 P.3d 41, 43 (Colo. 2009). Courts should give words and phrases their plain and ordinary meanings, reading them in context and in accordance with common usage and grammar. *Thompson v. People*, 471 P.3d 1045, 1051 (Colo. 2020); § 2-4-101, C.R.S. Statutes should be read "as a whole, giving consistent, harmonious, and sensible effect to all of its parts," while avoiding "constructions that would render any words or phrases superfluous or lead to illogical or absurd results." *Thompson*, 471 P.3d at 1051. Courts may not read nonexistent language into a statute. *People v. Manaois*, 2021 CO 49, ¶ 58 (legislative silence "speaks volumes about its intent, and we are required to honor that intent").

When the plain language of a statue is clear, there is no need to rely on tools of statutory construction. *Dubois*, 211 P.3d at 43. If a statute is ambiguous – meaning that it is reasonably susceptible of multiple interpretations – courts may

rely on extrinsic aids. *People v. Weeks*, 2021 CO 75, ¶ 27. For example, courts may "look to other statutes where the legislature has defined the term at issue, particularly when those statutes should be read in pari materia." *People v. Jones*, 2020 CO 45, ¶ 59 (*in pari materia* means statutes relating to the same subject matter should be construed together to glean legislative intent from the whole). If legislative intent remains unclear, "ambiguity in the meaning of a criminal statute must be interpreted in favor of the defendant." *Jones*, ¶ 70.

2. Colorado's restitution statutes.

Section 18-1.3-603(1), C.R.S., provides, "Every order of conviction of a felony...shall include consideration of restitution." "Restitution" is defined—both currently, and at all times relevant to this offense—in section 18-1.3-602(3), C.R.S., which provides in pertinent part:

> (3)(a) **"Restitution" means any pecuniary loss suffered by a victim and includes** but is not limited to all out-of-pocket expenses, interest, loss of use of money, anticipated future expenses, rewards paid by victims, **money advanced by law enforcement agencies, money advanced by a governmental agency for a service animal,** adjustment expenses, and other losses or injuries proximately caused by an offender's conduct and that can be reasonably calculated and recompensed in money. "Restitution" does not include damages for physical or mental pain and suffering, loss of consortium, loss of enjoyment of life, loss of future earnings, or punitive damages.
>
> (a.5) "Restitution" includes, for a person convicted of assault in the first, second, or third degree...all or any portion of the financial obligations of medical tests performed on and treatment prescribed for

> a victim, peace officer, firefighter, emergency medical care provider, or emergency medical service provider.
>
> **(b) "Restitution" may include extraordinary direct public and all private investigative costs.**
>
> (c)(I) "Restitution" shall also include all costs incurred by a government agency or private entity to:
>
> > (A) Remove, clean up, or remediate a place used to manufacture or attempt to manufacture a controlled substance or which contains a controlled substance or which contains chemicals, supplies, or equipment used or intended to be used in the manufacturing of a controlled substance;
> >
> > (B) Store, preserve, or test evidence of a controlled substance violation; or
> >
> > (C) Sell and provide for the care of and provision for an animal disposed of under the animal cruelty laws...
>
> (d) "Restitution" shall also include costs incurred by a governmental agency or insurer that provides medical benefits, health benefits, or nonmedical support services directly related to a medical or health condition to a victim for losses or injuries proximately caused by an offender's conduct, including but not limited to costs incurred by Medicaid and other care programs for indigent persons.

(Emphases added.)

"Money advanced by law enforcement agencies" isn't defined. However, "money advanced by a governmental agency for a service animal" is defined as follows:

> “Money advanced by a governmental agency for a service animal” means costs incurred by a peace officer, law enforcement agency, fire department, fire protection district, or governmental search and rescue agency for the veterinary treatment and disposal of a service animal that was harmed while aiding in the official duties and for the training of an animal to become a service animal to replace a service animal that was harmed while aiding in official duties, as applicable....“Service animal” means any animal, the services of which are used to aid the performance of official duties by a peace officer, law enforcement agency, fire department, fire protection district, or governmental search and rescue agency.

§ 18-1.3-602(2.3), (3.5), C.R.S.

“Victim” is defined—both currently, and at all times relevant to this offense—in section 18-1.3-602(4)(a), C.R.S., which provides in pertinent part:

> (4)(a) “Victim” means any person aggrieved by the conduct of an offender and includes but is not limited to the following:
>
> > (I) Any person against whom any felony...offense has been perpetrated or attempted;
> >
> > (II) Any person harmed by an offender’s criminal conduct in the course of a scheme, conspiracy, or pattern of criminal activity;
> >
> > (III) Any person who has suffered losses because of a contractual relationship with, including but not limited to, an insurer....
> >
> > (IV) Any victim compensation board that has paid a victim compensation claim;
> >
> > (V) [Victim’s family or representative, if victim is incapacitated or deceased];

> (VI) Any person who had to expend resources for the purposes described in paragraphs (b), (c), and (d) of subsection (3) of this section [i.e., extraordinary direct public and private investigative costs, premises remediation, storing controlled substances, abused animal care, and Medicaid benefits].

See generally Dubois, 211 P.3d at 47 (stating that the 2005 addition of (VI) above was consistent with, and did not impact, its discussion of "victim," discussed below).

3. *Dubois* - ordinary expenses do not victimize police.

In *Dubois v. People*, 211 P.3d at 46, this Court held that the police generally cannot obtain restitution for the "ordinary expenses of law enforcement," but they can obtain restitution for losses that were proximately caused by a crime that defines law enforcement as the victim.

The defendant in *Dubois* was convicted of vehicular eluding. This crime, defined in section 18-9-116.5, C.R.S., occurs when a defendant drives recklessly trying to elude police. The defendant in *Dubois* was eluding a police officer, when a second officer trying to catch up damaged her patrol car.[2] The officer and her

[2] Although the first officer was the "primary victim" named in the charging document, the second officer and employer could recover restitution because the *elements* of the crime of vehicular eluding identified the victim as law enforcement generally. Previous versions of the restitution statutes had defined "victim" as one who was "immediately and directly aggrieved," but the legislature's expansion of this definition to those who are simply "aggrieved" extended coverage to the second officer and employer. *Dubois*, 211 P.3d at 46-47. The district court found proximate causation, which was not before this Court on certiorari. *Id.* at 42 n.1.

employer police department were entitled to restitution because the crime of vehicular eluding defined law enforcement as the victim. *Dubois*, 211 P.3d at 46.

In reaching this conclusion, *Dubois* noted that the restitution statutes are silent as to whether police officers can be "victims." *Id.* "Victims" must be "persons," and "persons" are defined to include governmental entities. § 2-4-401, C.R.S. Therefore, police officers were "not explicitly excluded as recipients of a restitution award," but on the other hand, there was also "no indication in the restitution statute or its legislative history that the legislature intended to usually include police officers as 'victims.'" *Dubois*, 211 P.3d at 45.

With "no direct guidance," the Court turned to the definition of "victim" as someone "aggrieved by the conduct of an offender" and held that this phrase "**was not intended to include the ordinary expenses of law enforcement**." *Id.* at 46 (emphasis added). "In most cases, a peace officer or sheriff's department will not fall within the meaning of 'victim' for purposes of restitution." *Id.* at 47. Indeed, police officers injured when responding to a call for assistance "generally are not" entitled to restitution. *Id.* at 46. Instead, "we...conclude peace officers are generally entitled to restitution **only** when the underlying crime defines a peace officer as a victim, as vehicular eluding necessarily does, or have been specifically included by the legislature." *Dubois*, 211 P.3d at 46 (emphasis added).

For example, the restitution statute specifically allows government agencies to obtain restitution for their cost to store evidence of drug violations, or to clean premises used for drug manufacturing. § 18-1.3-602(3)(c)(I)(A) and (B), C.R.S. However, in those situations the "government agency is not 'aggrieved by' the production of a controlled substance or by having to clean it up." *Dubois*, 211 P.3d at 47. The costs incurred by the agency "are not suffered as a 'victim' in the sense that [the officer and employer] were 'victims' in" the *Dubois* case. *Id.*

Instead, the governmental entity simply performed a task for "the real class of 'victims' of such an activity, namely the public at large." *Id.* at 47. Since the victim of the crime was the general public, "an express legislative pronouncement that such costs are to be included for purposes of restitution was necessary." *Id.*

This view – that governmental entities generally are not "victims" of a crime committed against the public at large – was corroborated by the fact that the premises remediation provision appeared in the description of "restitution" instead of "victim." *Id.* Although the term "victim" also included "any person who had to expend resources" to remediate a drug manufacturing site, that provision existed simply to make "the entire scheme cohesive to avoid any potential loopholes." *Id.*

Dubois emphasized that its holding "does not mean that any law enforcement agency that incurs costs incident to its duties is entitled to restitution." *Id.* at 46.

Otherwise, the restitution statute's inclusion of costs associated with remediating a controlled substance site would "create a legislative redundancy." *Id.*

Dubois concluded that "typically the legislature must specifically include law enforcement costs within the restitution statute for them to be eligible for an award of restitution. However, in the present case...[police] fall within the general meaning of "victim" and do not therefore need to be explicitly included in order to be eligible for restitution." *Id.* at 46.

4. ***Padilla-Lopez*** – civil remedies are inconsequential.

In *People v. Padilla-Lopez*, 279 P.3d 651, 654 (Colo. 2012), this Court described *Dubois* as creating "a general rule that governmental agency expenses are not typically eligible for recovery under the restitution statute absent an express legislative provision authorizing them, unless the underlying criminal statute encompasses the agency as a primary victim."

In other words, "When the governmental agency seeking cost recovery through the restitution statute does not fall within the defining scope of the underlying criminal statute as a primary victim, the legislature must specifically enumerate the sought-for agency costs within the restitution statute for them to be eligible for an award of restitution." *Id.*

Padilla-Lopez held that a defendant convicted of child abuse could not be ordered to pay restitution to the Department of Human Services ("DHS") for the cost of caring for the defendant's dependent and neglected children. *Id.* at 651-652. DHS did not qualify for restitution because there was no "express legislative pronouncement covering the restitution sought for such costs," and the crime of child abuse did not define DHS as a victim or contain any element referring to wrongful conduct against DHS. *Id.* at 655. "Under the child abuse statute, DHS is not a victim. Rather, the victim defined by the statute is the child." *Id.* at 656.

The Court looked to the definition of "victim" as someone "aggrieved by the conduct of an offender" and defined the word "aggrieved" to mean, "having legal rights that are adversely affected; having been harmed by an infringement of legal rights." *Id.* at 654.

Although a civil law authorized "recoupment of foster placement costs from parents in a dependency and neglect proceeding," those legal rights arose solely from the civil statute. Entitlement to criminal restitution required the existence of legal rights under the criminal statute. *Id.* at 656 n.4 (citing § 19-1-115(4)(d), C.R.S.). "The child abuse statute does not endow DHS with 'legal rights' that can be infringed upon by the crime of child abuse. *Id.* at 655. Therefore, DHS was not an aggrieved victim. *Id.* at 655.

The legal rights of a governmental agency are not "adversely affected by the conduct of the offender simply because the offender's conduct caused them to spend money allocated to them in order to fulfill their public function." *Id.* at 655; *compare People v. McCarthy*, 292 P.3d 1090 (Colo. App. 2012) (because then-existing restitution statute did not mention Medicaid, governmental agency that paid medical expenses for victims of a vehicular assault through Medicaid was ineligible for restitution, and was merely expending funds to perform its public function), *with People v. Oliver*, 405 P.3d 1165 (Colo. App. 2016) (because then-existing restitution statute authorized restitution for insurers who had a contract with the victim, government agency that paid life insurance benefit to family of murdered officer as part of employment contract was eligible for restitution).

5. *Teague v. People* – SANE exams are extraordinary.

Most recently, in *Teague v. People*, 395 P.3d 782, 783 (Colo. 2017), this Court held that law enforcement may recover the cost of a victim's Sexual Assault Nurse Examiner ("SANE") exam. Medical providers are statutorily required to bill the cost of such exams to local law enforcement instead of the patient. § 18-3-407.5, C.R.S.

Although the crime of sexual assault doesn't define law enforcement as a victim, reimbursement was specifically authorized by the restitution statute because

SANE exams qualified as "extraordinary direct public...investigative costs" under section 18-1.3-602(3)(b), C.R.S. *Teague*, 395 P.3d at 785.

"Extraordinary" is undefined, but *Teague* defined it to mean "more than ordinary," "not of the ordinary order or pattern," and "going beyond what is usual, regular, common, or customary." *Id.* at 786 (cleaned up).

Courts must focus on whether the purchased item or expenditure is extraordinary – not whether the crime is extraordinary. *Id.* at 786 (emphasizing that Court's analysis turned on "the unique nature of the exam at issue here, not the nature of the crime or the frequency with which police are called upon to investigate that crime"). *Id.* (emphasis in original).

Teague concluded that SANE examinations and their costs were "extraordinary" because of the hybrid nature of the exams:

> As both a medical and investigative response to a sexual offense, a SANE exam necessarily performs dual roles. It functions not only as a valuable tool for collecting sexual-assault evidence but also as a patient-centered medical procedure that is sensitive to victims' treatment needs, conducted by medical personnel, and limited to the scope of victims' informed consent. We conclude the hybrid nature of these exams renders them, and their resulting costs, extraordinary.

Id. at 786.

The Court acknowledged that investigative blood draws and autopsies are also routinely and entirely performed by medical personnel, but those processes do not

also involve sensitivity in stabilizing and counseling traumatized victims, and this "dual nature...separates SANE exams from more workaday investigative processes." *Id.* Ultimately, the component of compassionate medical care distinguished SANE exams from routine medical investigations like blood draws or autopsies.

6. *People v. Hollis* – no restitution for "buy money."

This brings us to the present case. A division of the Court of Appeals held that "buy money" isn't recoverable in restitution. The division reasoned that the victim of the crime of drug distribution is the public at large, not the Task Force, whose legal rights weren't affected. *Hollis*, ¶ 11. Also, the restitution statute didn't expressly identify "buy money" as recoverable. It wasn't "money advanced by law enforcement," because this phrase was preceded and limited by the phrase, "pecuniary loss suffered by a victim."

> "Restitution" **means any pecuniary loss suffered by a victim** and includes...money advanced by law enforcement agencies.

§ 18-1.3-602(3)(a), C.R.S. (emphasis added). The division reasoned that "money advanced by law enforcement agencies" is "explicitly a subset of 'pecuniary losses suffered by a victim.'" *Hollis*, ¶ 9. Since the other examples of restitution in (3)(a) were for costs suffered by victims, the division concluded that "money advanced by law enforcement agencies" is only recoverable if it was "advanced in relation to" a victim's pecuniary loss. *Id.* In other words, "the statute limits the recovery of such

advances to those related to the pecuniary loss of a victim." *Hollis*, ¶ 12. Since the Task Force wasn't a "victim" whose legal rights were adversely affected, and was simply fulfilling its public function, "the buy money advanced to the Task Force's undercover agent, or to Hollis for that matter, [was] not advanced in relation to a 'pecuniary loss suffered by a victim'" and didn't qualify for restitution. *Hollis*, ¶ 14.

The division also concluded that "buy money" isn't an "extraordinary direct" public investigative cost because, unlike the SANE examination in *Teague*, it was an ordinary, routine, customary investigative expenditure. *Hollis*, ¶¶ 19-20.

Hollis acknowledged that another division reached the opposite conclusion in *People v. Juanda*, 303 P.3d 128 (Colo. App. 2012). However, the *Hollis* division believed that *Juanda* erroneously relied on law from other states that defined restitution victims differently from Colorado, and wrongly allowed restitution for "any money advanced by law enforcement for any purpose." *Hollis*, ¶¶ 10, 12.

C. Analysis – "buy money" is not recoverable as restitution.

1. The Task Force is not an aggrieved victim.

Under *Dubois* and *Padilla-Lopez*, a government entity can be an aggrieved victim when the elements of the offender's crime define the governmental entity as the victim. *Dubois*, 211 P.3d at 46. Hollis was convicted of distribution of a controlled substance. The elements of this crime do not define law enforcement as

a victim. § 18-18-405(1)(a), (2)(a)(I)(B), C.R.S. Just as a "government agency is not 'aggrieved by' the production of a controlled substance or by having to clean it up," *Dubois*, 211 P.3d at 47, the expenditure of "buy money" represents the ordinary performance of tasks within the scope of the Task Force's normal duties.

2. "Buy money" is not specifically authorized by statute.

Since the Task Force isn't an aggrieved victim, the State must establish the existence of an "express legislative pronouncement that such costs are to be included for purposes of restitution." *Dubois*, 211 P.3d at 47. However, the phrase, "buy money" appears nowhere in section 18-1.3-602, C.R.S. Nonexistent language cannot be read into the statute. *Manaois*, ¶ 58.

This statute expressly authorizes governmental agencies to receive restitution for costs incurred in extraordinary public investigation, storing drugs, remediating drug premises, caring for abused animals, and providing governmental insurance benefits. The legislature knew how to include the cost of "buy money" had it intended to do so. *People v. Rojas*, 2019 CO 86M, ¶ 16 (legislature knows how to accomplish goals when it intends to do so). Because "buy money" isn't specifically authorized in section 18-1.3-602, C.R.S., it isn't recoverable in restitution.

3. “Buy money” is not money advanced by a law enforcement agency under section 18-1.3-602(3)(a), C.R.S.

The State asserts that “buy money” qualifies as “money advanced by a law enforcement agency” under section 18-1.3-602(3)(a), C.R.S. The defense disagrees.

Our legislature didn’t define “advanced” in this context, so the Court may refer to the dictionary for guidance. *People v. Voth*, 312 P.3d 144, 149 (Colo. 2013). “Advance” means, “The furnishing of money or goods before any consideration is received in return.” *Advance*, Black’s Law Dictionary (12th ed. 2024).

For example, in the crimes of “financing extortionate extensions of credit” and “financing criminal usury,” the defendant “advances money…as a gift, a loan, or an investment,” for purposes of extortion or usury. §§ 18-15-105, 18-15-106, C.R.S. Gifts, loans, and investments are “advances” because they are furnished before anything valuable is received in return. *See also Mercantile Adjustment Bureau, L.L.C. v. Flood*, 2012 CO 38, ¶ 20 (attorneys may “advance” court costs and litigation expenses for indigent clients).

In the context of restitution, governmental agencies may “advance” money for veterinary services for an injured service animal. § 18-1.3-602(2.3), C.R.S. The animal and its owner are the beneficiaries; the governmental agency advances

money on their behalf before receiving anything valuable in return.[3] *See Castillo v. People*, 2018 CO 62, ¶ 42 ("Statutory definitions of words used elsewhere in the same statute furnish authoritative evidence of legislative intent.").

Law enforcement agencies may also "advance" money on behalf of a victim who has suffered a pecuniary loss. § 18-1.3-602(3)(a), C.R.S. For example, a sexual assault victim at the hospital whose clothes were retained as evidence might receive clothing from a victim assistance specialist who "advanced" money for this purpose. *See Project After Collects Clothing for Victims of Sexual Assault*, Denver7 News (Nov. 29, 2019), https://www.denver7.com/news/local-news/project-after-collects-clothing-for-victims-of-sexual-assault ("I know there was one of the advocates from the police department that said she often goes out and buys clothes.").

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[3] The State argues that injuries to service animals only impact police. OB, pp 24-25. However, "service animal" means *any* animal whose services aided police, firefighters, or government search and rescue groups. Firefighters and search and rescue groups can include volunteers, some of whom use their own dogs. *E.g.*, *Teller Cnty. v. Industrial Claim Appeals Off.*, 2015 COA 52, ¶ 10 (volunteer firefighters and volunteer search and rescue); § 24-33.5-822, C.R.S. (local governments may seek emergency assistance from volunteers) § 33-1-102(1.3), C.R.S. (search and rescue teams coordinated by sheriffs include government employees and volunteers); Katie Fernoff, *Calling out the Dogs: Getting the Most out of Canine Teams* (June 4, 2022), https://coloradosar.org/calling-out-the-dogs-getting-the-most-out-of-canine-teams (Colorado Search and Rescue Association uses dogs owned by their handlers).

Here, the "buy money" was not "advanced" but provided as payment for drugs received immediately in return. The State asserts that the money was "advanced" from the Task Force supervisor to the undercover agent. OB, pp 31, 33-35. However, the internal movement of money within the Task Force didn't cause any loss. It was not until Hollis walked away with the money that it was lost.

Even if the act of giving "buy money" to Hollis constitutes an "advance," the Court of Appeals correctly concluded that, under the plain language of the restitution statutes, the advance must relate to a "pecuniary loss suffered by a victim" in order to qualify for restitution. The phrase, "money advanced by law enforcement agencies" should be read in context and in light of the preceding and qualifying phrase, "pecuniary loss suffered by a victim." *Thompson*, 471 P.3d at 1051 (courts should read statutory phrases in context).

Subsection (3)(a) begins with the language, "'Restitution **means** any pecuniary loss suffered by a victim and **includes**...." § 18-1.3-602(3)(a), C.R.S. (emphasis added). "[A] definition which declares what a term 'means' usually excludes anything not stated." 2A Norman Singer & Shambie Singer, *Sutherland Statutes and Statutory Construction* § 47:7 (7th ed. 2024 update). Thus, subsection (3)(a) excludes anything that is not a "pecuniary loss suffered by a victim." The State correctly observes that the word "includes" is a term of enlargement, but the

entirety of the series described in subsection (3)(a) is preceded and qualified by the phrase, "Restitution means any pecuniary loss suffered by a victim."

The State asserts that requiring an "advance" to relate to the "pecuniary loss suffered by a victim" would add nonexistent words to subsection (3)(a). OB, pp 19-21. However, "[w]hen there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 147 (2012) (discussing series-qualifier canon of statutory construction), *quoted in People v. Lovato*, 2014 COA 113, ¶ 24; *see generally* § 2-4-214, C.R.S. (for postpositive modifiers, Colorado doesn't follow the "last antecedent" rule).

The losses described in subsection (3)(a) all relate to losses suffered by a victim as opposed to reimbursement for the costs of governmental operations as described in subsections (3)(b) (cost of extraordinary public investigation), (3)(c) (cost of storing drugs, remediating drug premises, and caring for abused animals), and (3)(d) (cost of providing government insurance benefits). *People v. Opana*, 2017 CO 56, ¶ 12 (under canon of noscitur a sociis, a term appearing in a series has a meaning in the general nature of the things with which it has been grouped).

As explained in *Dubois*, 211 P.3d at 47, the fact that the premises remediation provision appears within the description of "restitution" instead of the term "victim" reveals that the government's remediation costs "are not suffered as a 'victim' in the sense that" the defined crime victims are. Even though the term "victim" includes "any person who had to expend resources" to remediate a drug manufacturing site, that provision exists simply to make "the entire scheme cohesive to avoid any potential loopholes." *Id.*

This portion of *Dubois* runs directly counter to the State's argument that law enforcement officials using "buy money" to investigate drug crimes committed against the general public at large are "aggrieved" under (3)(a) in the same sense that defined crime victims are. OB, pp 6, 13, 15-16 & n.15, 18-19.

The State asserts that if each example enumerated in (3)(a) is a subset of "pecuniary loss suffered by a victim," the legislature would not have chosen to restrict "rewards paid by victims," as "paid by victims" would be redundant. OB, p 18. However, the phase, "paid by victims" was necessary to clarify that third parties who provide a reward are not "aggrieved" by the conduct of an offender and are not victims entitled to restitution. Even if there is some redundancy, "terms appearing in a series often purposely overlap, as a means of ensuring complete coverage of the concept in question." *Opana*, ¶ 15.

The State asserts that *Hollis* broadly prohibited police agencies from ever being an aggrieved victim. OB, pp 22, 24. But *Hollis* simply applied the rule of *Dubois*: police agencies *can* be an aggrieved victim eligible for restitution under certain circumstances, but the expenditure of ordinary public investigative costs isn't one of them. § 18-1.3-602(3)(b), C.R.S. (limiting restitution for public investigative expenditures to those that are "extraordinary"); *Dubois*, 211 P.3d at 46 (the words "victim...aggrieved by the conduct of an offender" were "not intended to include the ordinary expenses of law enforcement.").

The State argues that, if law enforcement can never be an aggrieved victim, then the provision in (3)(a) relating to "money advanced by a governmental agency for a service animal" would be meaningless, because law enforcement agencies are the only ones impacted by an injury to a service animal. OB, pp 24-25. Again, *Dubois* and *Hollis* did not foreclose the possibility of law enforcement ever being aggrieved victims. Also, injuries to service animals can impact others beyond law enforcement. *See supra* n.3.

Like the other categories enumerated in (3)(a), "money advanced by a governmental agency for a service animal," is a subset of "pecuniary losses suffered by a victim." Service animals themselves cannot be victims for restitution purposes because subsection (4)(a) defines "victim" as a "person," and animals are not

persons. *Nonhuman Rights Proj. v. Cheyenne Mt. Zoological Soc.*, 2025 CO 3, ¶ 25; § 2-4-401, C.R.S.

However, animal owners can be victims. When the owner is a private individual who expended personal funds, the path to restitution is clear. But if the owner paid their expenses with an advance from a governmental agency, or if the owner is a governmental agency, the path is unclear. This is because governmental agencies are neither named victims under the animal cruelty statute, § 18-9-202(1.5)(c), C.R.S., nor permitted restitution for ordinary investigative expenses under *Dubois*.

The legislature's recognition that existing law barred restitution for such expenditures led to the addition of the phrase, "money advanced by a governmental agency for a service animal," to the definition of restitution. *See* Second Reading of H.B. 1055 before the Senate, 65th Gen. Assemb., 1st Reg. Sess. (March 11, 2005) (statement of bill sponsor Sen. Steve Johnson) ("[T]he cost of the care for these animals currently right now is not something that can be recovered."); Hearing on H.B. 1055 before the S. Comm. on State, Veterans, & Mil. Affs., 65th Gen. Assemb., 1st Reg. Sess. (March 8, 2005); Hearing on H.B. 1055 before the H. Judiciary Comm., 65th Gen. Assemb., 1st Reg. Sess. (January 20, 2005); *People v. Rockwell*,

125 P.3d 410, 419 (Colo. 2005) (committee testimony helps illustrate legislative intent).

When H.B. 1055 was enacted, the definition of restitution already included the phrase, "money advanced by law enforcement agencies." If this phrase encompassed broad recovery for law enforcement, it would have covered expenses for service animals and there would have been no need to enact H.B. 1055.

By expanding the definition of restitution to include, "money advanced by a governmental agency for a service animal," the legislature designated the owners of injured service animals as "victims" who qualified for restitution even if they were a private citizen who covered their losses with government funds, or even if they were a government agency that would otherwise be barred from restitution.

To give sensible effect to every part of subsection (3)(a), all of the enumerated losses should be viewed as a subset of "pecuniary losses suffered by a victim," with the understanding that governmental agencies are victims when they advance money for injured service animals, who by virtue of their nonhuman status do not qualify as victims.

The State asserts that the Task Force has legal property rights that might have been recoverable in a civil action. OB, p 27. However, entitlement to restitution requires the existence of legal rights under the criminal statute that was the basis of

the defendant's conviction. *Padilla-Lopez*, 279 P.3d at 656-66. The State argues that *Padilla-Lopez* only applies to agencies created by statute, OB, pp 28-29, but *Padilla-Lopez* applied the rule of *Dubois*, which held that a governmental agency is generally not entitled to restitution for "costs incident to its duties." *Dubois*, 211 P.3d at 45.

The State relies on the expansive phrase, "any pecuniary loss," to argue that the ambit of potential restitution awards is limited only by the proximate cause requirement. OB, p 10 (quoting *Dubois*, 211 P.3d at 45). *Dubois* did identify proximate cause as a limitation on restitution, but not the only one. For example, restitution "does not include damages for physical or mental pain and suffering, loss of consortium, loss of enjoyment of life, loss of future earnings, or punitive damages." § 18-1.3-602(3)(a), C.R.S. Restitution is prohibited in many traffic cases where losses could be covered by an insurance policy. § 18-1.3-603(8)(a), C.R.S. Restitution cannot be based on dismissed or acquitted conduct, absent an agreement to such. *Cowen v. People*, 2018 CO 96, ¶ 21. As relevant here, restitution must be suffered by an "aggrieved victim" and cannot be awarded to law enforcement for ordinary investigative expenses.

The State cites *People v. Cera*, 673 P.2d 807, 808 (Colo. App. 1983), which interpreted Colorado's restitution statute from 1978 (47 years ago). OB, pp 37-38.

That statute did not specifically authorize restitution for a governmental entity. However, the division reasoned that reparations to the government are permitted in other contexts. For example, defendants may be ordered to perform public service, or to repay fraudulently obtained public assistance, *see generally* § 26-2-128, C.R.S. Therefore, the division deduced that restitution could be ordered to the DEA, who provided money to a local police department, who used it as "buy money." No petition for certiorari was filed so this Court never reviewed that case.

Cera is distinguishable. It construed a statute that no longer exists and differs substantially from our current restitution scheme. This Court has addressed, in *Dubois* and *Padilla-Lopez*, the extent to which our current scheme permits recovery by governmental entities. That precedent governs here. *Love v. Klosky*, 2018 CO 20, ¶ 14 (doctrine of stare decisis provides for adherence to precedent).

The State argues that *Cera* was likely the impetus for legislation in 2000 that included provisions allowing some restitution for governmental entities. But *Cera* was decided seventeen years before the 2000 legislation, and the State identifies no nexus between these temporally distant events.

Regardless, it is unnecessary to resort to legislative history because the plain language of the restitution statute limits public investigative costs to those that are extraordinary. Also, any "ambiguity in the meaning of a criminal statute must be

interpreted in favor of the defendant." *Jones*, ¶ 70. For these reasons, "buy money" isn't "money advanced by law enforcement agencies."

4. "Buy money" is not an extraordinary direct public investigative cost under section 18-1.3-602(3)(b), C.R.S.

The State asserts that "buy money" is an extraordinary direct" public investigative cost. The defense disagrees.

Under *Teague*, 395 P.3d at 786, "extraordinary" means "more than ordinary," "not of the ordinary order or pattern," and "going beyond what is usual, regular, common, or customary." In determining whether "buy money" is an "extraordinary direct" public investigative cost, the analysis focuses on the nature of the purchased item or expenditure, not the nature or frequency of the crime of drug distribution. *Id.*

There is nothing extraordinary about an undercover agent's use of "buy money" to purchase drugs. The Task Force's use of "buy money" is so usual, regular, common, and customary that it has a budget for "buy money," official policies and procedures for its use, a safe for its storage, and a machine for counting and recording it. Unlike a SANE examination—which is a medical treatment for victims that also facilitates criminal investigations—the use of "buy money" to purchase illegal narcotics is purely investigative, initiated and performed entirely by police, involves no physical examinations or trauma, reveals no personal or sexual

information, and doesn't provide compassion, counseling, or care to the named victim of the offender's criminal conduct. It is a mere financial transaction.

The State asserts that a hybrid quality should not be dispositive. OB, p 49. The defense doesn't advocate for such a rule, which would not be supported by *Teague*. Under *Teague*, blood draws and autopsies appear to be routine investigative occurrences even though they serve dual purposes that are medical and investigative. If blood draws and autopsies performed entirely by medical professionals are ordinary, the same must be true for "buy money" purchases performed entirely by law enforcement for reasons that are purely investigative and prosecutorial.

The State asserts that "buy money" is an extraordinary direct public investigative cost because it entails "surrendering" money to an offender. OB, p 45. That Hollis may have benefited financially from these transactions doesn't render them unusual. There is nothing extraordinary about enriching lawbreakers in the course of investigating crimes. Police often provide money, goods, services, and benefits to criminals as a means to achieve their overarching investigative goals. *People v. Williams*, 475 P.3d 593, 595 (Colo. 2000) (defendant convicted through testimony of paid informants); *People v. Ornelas-Licano*, 2020 COA 62, ¶ 63 (defendant convicted through testimony of paid informant who acted as paid informant eleven times previously despite having pending criminal and immigration

cases); *People v. Rivera*, 792 P.2d 786, 790 (Colo. 1990) ("When a potential informant offers assistance in the hope of receiving leniency...denying such officials the opportunity...would substantially inhibit legitimate investigations.").

"Buy money" isn't inherently evaporative. "[B]uy money is often recovered immediately (following the arrest of the dealer)." *Juanda*, 303 P.3d at 129. Here, the "buy money" was surrendered only because police chose to defer an arrest. Had they immediately arrested Hollis, the money would have been recovered.

The State asserts that the absence of recovery makes this particular situation "extraordinary." OB, p 47. However, it is a common police tactic to defer an arrest to build a bigger case. *See supra* n.1 (explaining process of "walking up" drug amounts); *e.g.*, *People v. Abiodun*, 111 P.3d 462, 464 (Colo. 2005) (defendant arrested after second undercover drug sale); *People v. Thirty-Three Thousand Two Hundred and Twelve Dollars*, 83 P.3d 1206, 1207 (Colo. App. 2003) (defendant arrested after making multiple undercover drug sales).

The State asserts that it was "extraordinary" for the Task Force to have to spend "buy money" from their tight budget instead of using it for a more desirable purpose. OB, p 51. These assertions are unsupported by the record. At the restitution hearing, the Task Force agent testified, "We do have a specific budget. What that is – I'm not actually sure what it is." TR 8/26/20, p 11:10-13.

The State argues that restitution is necessary "to take the profit out of crime." OB, pp 1, 7, 37 (quoting *People v. Borquez*, 814 P.2d 382, 385 (Colo. 1991)) (interpreting superseded restitution scheme that only applied to probationers). However, Colorado has a civil forfeiture scheme designed for that purpose, and restitution "is not intended as a substitute for a civil action for damages." *People v. Milne*, 690 P.2d 829, 837 (Colo. 1984). The Colorado Contraband Forfeiture Act, § 16-13-501, et seq., C.R.S., allows law enforcement to seize crime-related money and property to replenish their coffers without any corresponding deduction in the budget they receive from taxpayers. § 16-13-506(3), C.R.S. ("[M]oneys allocated to a seizing agency...shall not be considered a source of revenue to meet normal operating needs."). After paying creditors and administrative costs, law enforcement keeps 75% and the rest goes to substance abuse programs. §§ 16-13-506(1)(5); 16-13-311(3)(a), C.R.S. Although the civil forfeiture scheme doesn't appear to preempt restitution statutes, § 16-13-508, C.R.S. (forfeiture is a cumulative right in addition to criminal laws), the existence of a separate scheme that allows police to keep 75% of seized profits from criminal activity shows they do not lack the means to take profit out of crime.

Additionally, Hollis was ordered to pay $867 in costs and fees to various government agencies including the "Victims and Witnesses Assistance and Law

Enforcement Fund," which allocates a portion of this money to law enforcement for purposes that include "purchase of equipment." § 24-4.2-105(2)(3), C.R.S.; *see* §§ 24-4.2-104(1)(a)(I), 24-33.5-506, C.R.S. Thus, the court has already redirected some of the alleged illegal profits away from Hollis and toward police. Hollis was also sentenced to nine years in prison. Overall, his crime was not profitable.

An undercover agent's use of "buy money" to purchase drugs isn't an "extraordinary direct" public investigative cost. Indeed, it is among the most commonplace and ordinary.

5. *Juanda* was wrongly decided.

The State relies on *People v. Juanda*, 303 P.3d at 129-130, where a division of the Court of Appeals held that "buy money" was recoverable as "money advanced by law enforcement" and as an "extraordinary direct" public investigative cost. Respectfully, *Juanda* was wrongly decided.

Juanda held that it was inconsequential whether law enforcement was an aggrieved victim because any money advanced by law enforcement for any purpose was recoverable in restitution, as long as the expenditure was proximately caused by the crime. However, this reasoning divorces the phrase, "money advanced by law enforcement," from its context and the preceding phrase, "pecuniary loss suffered by a victim." *See Padilla-Lopez*, 279 P.3d at 655 (holding that district court's

restitution order "erroneously failed to address the provision...defining 'victim' as a person 'aggrieved by the conduct of an offender'" and "focused only on the 'proximately caused' language...defining 'restitution'").

Hollis correctly concluded that "the statute limits the recovery of such advances to those related to the pecuniary loss of a victim." *Hollis*, ¶ 12. Under the rule of *Dubois* and *Padilla-Lopez*, a governmental agency's expenditure of funds allocated to them to fulfill their public function doesn't transform them into an aggrieved victim for restitution purposes.

Juanda suggested that the DEA's legal rights may have been infringed because it could have sued the defendant for rescission of an illegal contract. But *Padilla-Lopez* held that the existence of a civil remedy doesn't render a governmental entity an aggrieved victim for purposes of criminal restitution. *Padilla-Lopez*, 279 P.3d at 655; *see also Dubois*, 211 P.3d at 45-46.

Juanda also held that "buy money" constitutes an extraordinary direct public investigative cost. However, the *Juanda* division did not have the benefit of this Court's decision in *Teague*, which distinguished extraordinary expenditures like SANE exams from routine investigatory procedures like blood draws or autopsies. Instead, *Juanda* relied almost entirely on cases from other states.

Juanda relied heavily on *People v. Crigler*, 625 N.W.2d 424, 427-429 (Mich. App. 2001), which interpreted Michigan's restitution statute. That statute formerly barred restitution for "buy money," but was amended to include governmental entities within its definition of "victim," so the only issue was whether "buy money" caused financial loss. *Id.* at 428. *Crigler* answered yes, because the "buy money" related to "a particular defendant's criminal transaction" as opposed to salaries and vehicle purchases used in all criminal cases. *Juanda*, 303 P.3d at 130.

Juanda adopted *Crigler* and reasoned that "buy money" was extraordinary because it related to a particular criminal transaction. The State urges this position as well. OB, p 45. But unlike the Michigan statute interpreted in *Crigler*, governmental agencies are not generally included under Colorado's definition of "victim," and Colorado's statutory requirement of proximate causation ensures that *every* restitution order bears a nexus to the offender's criminal conduct. If a nexus is all that is required to characterize an expenditure as extraordinary, the statutory term, "extraordinary," would be superfluous. Blood draws and autopsies also relate directly to a particular criminal transaction, but they appear to be ordinary expenses under *Teague*. Allowing a government agency to obtain restitution based on nothing more than proximate causation runs counter to *Dubois*, which held that the ordinary

investigative expenses of law enforcement generally are *not* eligible for restitution even when they are proximately caused by the crime. *Dubois*, 211 P.3d at 46-47.

Juanda also relied on *Gonzales v. State,* 608 P.2d 23, 26 (Alaska 1980), where the defendant did not dispute his probationary condition to pay restitution, but only challenged the amount. The defendant argued, based on principles of contract law, that restitution should be based on the profit he made from a cocaine sale rather than the amount of "buy money" he received. *Gonzales* upheld the restitution order because Alaska's probation statute required the amount of restitution to reflect "actual damages," not net profit. *Gonzales* is inapposite because it concerned the method of calculating the dollar amount of restitution, which isn't at issue here.

Since restitution is a creature of statute, the restitution jurisprudence in Colorado must reflect our own statutory scheme. *Gonzales* was based on Alaska's pre-1978 statutory scheme, which "contained a single reference to restitution" broadly authorizing restitution for "actual damages or loss caused by the crime." *State v. Grubb*, 546 P.3d 586, 593-94 & n.43 (Alaska, 2024). Even under Alaska's current restitution statute, restitution is much more expansive and extends beyond "victims" to any "other person injured by the offense." Alaska Stat. § 12.55.045. *Compare Maillelle v. State*, 276 P.3d 476, 478 (Alaska App. 2012) (defendants must reimburse the government for Medicaid payments made on behalf of victims

because the State "lost money as a result of" a crime), *with People v. McCarthy*, 292 P.3d 1090 (Colo. App. 2012) (restitution for Medicaid not allowed because then-existing restitution statute did not specifically mention it), *and* § 18-1.3-602(3)(d), C.R.S. (authorizing restitution for Medicaid).[4]

Juanda reasoned that "buy money" was extraordinary because the money was "surrendered, not to those who provide goods and services, but to the criminal offender." *Juanda*, 303 P.3d at 130. But Hollis provided goods to police in the form of narcotics; and as explained above, police often provide money and benefits to criminals to further their investigative goals. *See supra* Argument I(C)(4).

[4] The State cites other extra-jurisdictional cases that are also distinguishable. *See State v. Topping*, 590 A.2d 252, 253-54 (N.J. Super. Ct. App. Div. 1991) (restitution statute didn't require existence of a "victim" but only examined whether the defendant "derived a pecuniary gain" and had the ability to pay); *State v. Neave*, 585 N.W.2d 169, 170-71 (Wis. Ct. App. 1998) ("costs" statute expressly required reimbursement if an "agency expended the moneys to purchase a controlled substance"); *People v. Logan*, 185 A.D.2d 994, 995 (N.Y. App. Div. 1992) ("clearly improper" to award restitution to prosecution, who isn't a "victim" absent express statutory pronouncement like that reflected in subsequent legislation) (citing *People v. Rowe*, 554 N.E.2d 1277 (N.Y. 1990) ("[T]he commonly accepted understanding of the word 'victim' should not be strained so as to include a drug enforcement agency"); *Merkison v. State*, 996 P.2d 1138, 1143-44 (Wyo. 2000) ("buy money" compensable under restitution statute that defined "pecuniary damages" as what a person "could recover against the defendant in a civil action"); *State v. Garcia*, 866 P.2d 5, 6-7 (Utah Ct. App. 1993) (same); *State v. Pettit*, 698 P.2d 1049, 1051 (Or. Ct. App. 1985) (same, and noting that under the governing statute, "the validity of the restitution order…depends on whether there is a civil remedy").

Juanda also reasoned that defendants should be required to return ill-gotten gains as a matter of policy, but "the proper remedy is legislative action, not judicial fiat." *Weeks*, ¶ 38. Overall, *Juanda* did not apply the correct tests, ignored governing Colorado precedents, relied primarily on cases from other states whose laws differ from ours, and reached the wrong result.

The State asserts that the legislature amended section 18-1.3-602 four times since *Juanda* was decided, but did not enact contrary legislation, and thereby implicitly ratified its approval. OB, pp 41-42. However, none of that legislation involved the substance of subsections (3)(a) or (4)(a):

- S.B. 13-229, effective July 1, 2013, probably did not impact *Juanda* since certiorari was not denied in that case until June 10, 2013. Regardless, this bill did not amend (3)(a) or (4)(a). It added (3)(d), which allows governmental agencies to obtain restitution for medical benefits paid on behalf of a victim, for example, via Medicaid. The fact that the legislature created a new subsection to cover costs incurred by governmental agencies instead of folding these costs into subsection (3)(a) supports the view that government agencies performing their ordinary duties generally are not "aggrieved victims."

- H.B. 14-1273, effective July 1, 2014, was not a substantive change but a conforming amendment to update cross-referenced statute numbers.
- H.B. 16-1393, effective July 1, 2016, did not amend (3)(a) or (4)(a). It added subsection (3)(a.5), which allows a "victim, peace officer, firefighter, emergency medical care provider, or emergency medical service provider," who was exposed to the bodily fluids of a defendant convicted of assault, to recover restitution for the cost of medical tests and treatment resulting from the exposure. Again, the fact that the legislature created a new subsection to cover law enforcement costs in this situation instead of folding these costs into subsection (3)(a) supports the view that police officers performing their ordinary duties generally are not "aggrieved victims."
- S.B. 22-043, effective August 10, 2022, did not amend (3)(a) or (4)(a). It added subsection (2.2) defining "critical stages," and subsection (3.7) defining "travel expenses," in conjunction with new language in section 18-1.3-603, C.R.S., allowing victims to obtain restitution for travel expenses to attend critical court hearings.

In sum, these amendments to section 18-1.3-602 do not support the view that the legislature implicitly ratified *Juanda*'s interpretation of subsections (3)(a) and

(4)(a). To the contrary, they support the defense position that law enforcement agencies generally are not "aggrieved victims."

D. Remand for *Weeks*.

If this Court concludes that the "buy money" in this case is compensable in restitution, Hollis respectfully requests a remand to the court of appeals to address an outstanding *Weeks* claim that the division did not reach. *Hollis*, ¶ 21, n.5.

CONCLUSION

The division below correctly concluded that the Task Force isn't entitled to restitution for unrecovered "buy money" under section 18-1.3-602(3)(a) and (b), C.R.S. This Court should affirm the court of appeals' opinion vacating restitution. If this Court reverses, Hollis requests a remand to the court of appeals to address the *Weeks* claim that the division did not reach.

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CERTIFICATE OF SERVICE

I certify that, on February 11, 2025, a copy of this Amended Answer Brief was electronically served through Colorado Courts E-Filing on Marixa Frias of the Attorney General's Office.