SUPREME COURT STATE OF COLORADO 2 East 14th Avenue Denver, CO 80203	DATE FILED November 4, 2024 6:20 PM
On Certiorari to the Colorado Court of Appeals Court of Appeals Case No. 20CA1746	
THE PEOPLE OF THE STATE OF COLORADO, Petitioner, v. NATHAN CRAWFORD HOLLIS, Respondent.	▲ **COURT USE ONLY** ▲ Case No. 23SC834
PHILIP J. WEISER, Attorney General MARIXA FRIAS, Assistant Attorney General* Ralph L. Carr Colorado Judicial Center 1300 Broadway, 9th Floor Denver, CO 80203 Telephone: 720-508-6000 E-Mail: marixa.frias@coag.gov Registration Number: 38746 *Counsel of Record	

PEOPLE'S OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1, and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the word limits set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

☒It contains **9498** words (principal brief does not exceed 9500 words; reply brief does not exceed 5700 words).

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☒ For each issue raised by the petitioner, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1, and C.A.R. 32.

/s/ Marixa Frias

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ISSUE ON REVIEW

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. (2023), as was held in *People v. Juanda*, 303 P.3d 128 (Colo. App. 2012) and contrary to the court of appeals holding here.

INTRODUCTION

This case exemplifies the need to take the profit out of crime. In an undercover controlled drug buy, a law enforcement officer put money in the defendant's hands, but didn't get it back. Now the defendant embarks on complex statutory interpretations to avoid having to pay that money back in restitution. This Court should not permit him to do so.

STATEMENT OF THE CASE AND THE FACTS

In January 2019, the Weld County Drug Task Force (Task Force) began a seven-month-long investigation of Nathan Crawford Hollis's illicit drug activity. (CF 2108, p 1; CF 2109, p 1).[1] Between February

[1] The direct appeal stemmed from two Weld County prosecutions in Case Nos. 19CR2108 and 19CR2109. The People will refer to the Court File in these respective cases as "CF 2108" and "CF 2109."

2019 and August 2019, the Task Force conducted six undercover controlled drug buys in which Hollis sold the undercover officer various amounts of methamphetamine or cocaine.[2]

As part of a global disposition, Hollis pleaded guilty to two counts of unlawful distribution of a controlled substance weighing over 112 grams. (TR 3/5/20, pp 5:23-6:15, 9:8-24; CF 2108, pp 40-48; CF 2109, pp 42-50). The district court sentenced him to concurrent nine-year-prison terms. (TR 3/5/20, p 24:1-6; CF 2108, p 38; CF 2109, p 40).

Restitution Proceedings

The prosecution filed timely motions for restitution and supporting documentation requesting a total of $1640 in drug buy money. (CF 2108, pp 52-55; CF 2109, pp 59- 60). Hollis objected to the request by written motion, arguing that "buy money" is not recoverable as "restitution" as either "money advanced by law enforcement agencies" under section 18-1.3-602(3)(a), C.R.S. (2024) or an

[2] The People have gathered part of this information from the Colorado State Courts – Data Access System.

"extraordinary direct public investigative cost" under section 18-1.3-602(3)(b), C.R.S. (2024). (CF 2108, pp 57-59; CF 2109, pp 63-65).

The district court held a restitution hearing. The prosecution presented the testimony of Officer Oliveros, a law enforcement investigator with the Task Force. Oliveros testified concerning the undercover drug buys in which an undercover officer, using the Task Force's "buy money," purchased narcotics from Hollis. Oliveros explained that "buy money" is "money that has previously been recorded by the [Task Force], and . . . is used to buy narcotics from individuals"; the money is recorded by running it "through a money counter, which then records the serial number on each individual bill." (TR 8/26/20, pp 6:14-7:1). He added that the Task Force provided an officer with a total of $1640 in buy money that was used for two separate undercover drug purchases from Hollis. (*Id.* pp 5:17-7:23). However, the buy money was not recovered after Hollis' arrest, despite a search of his residence. (*Id.* p 8:8-21).

On cross-examination, Oliveros testified that the Task Force had a "specific budget" for buy money, but he was unaware of the amount; the

Task Force's buy money was kept in a safe accessible to supervisors; to obtain the buy money for a particular controlled buy, the case agent would "fill out a buy money sheet" and give it to a supervisor; the Task Force conducted about five to ten controlled buys per month; and using an undercover officer to conduct the controlled buys was "common." (TR 8/26/20, pp 9:9-14:20). Hollis did not present any contrary testimony or evidence.

Relying on *People v. Juanda*, 2012 COA 159, in which a division of the court of appeals concluded that a law enforcement agency's loss of buy money was recoverable as restitution, the district court ordered Hollis to pay the requested restitution amount. (TR 8/26/20, pp 21:11-23:17).

Direct Appeal and Court of Appeals Opinion

Hollis directly appealed the district court's restitution order, contending that buy money was not recoverable restitution as either "money advanced by law enforcement agencies" or an "extraordinary direct public investigative cost." The People argued the contrary, relying, as did the district court, on the 2012 *Juanda* decision.

In a published opinion, a division of the court of appeals agreed with Hollis that a law enforcement agency's loss of buy money is neither "money advanced by law enforcement agencies" nor an "extraordinary direct public investigative cost." *See People v. Hollis*, 2023 COA 91, ¶¶ 5, 14, 21. In doing so, it declined to follow *Juanda*, thereby creating a split of authority.

SUMMARY OF THE ARGUMENT

The issue presented here is three-fold: (1) whether, for restitution purposes, the Task Force, a law enforcement agency, qualifies as a "victim" within the meaning of that term in section 18-1.3-602(4)(a), C.R.S. (2024); (2) whether that agency's unrecovered buy money constitutes "money advanced by [a] law enforcement agenc[y]" and, therefore, is recoverable "restitution" under section 18-1.3-602(3)(a), C.R.S. (2024); and (3) whether such money constitutes an "extraordinary direct public . . . investigative cost[]" and, therefore, is recoverable "restitution" under section 18-1.3-602(3)(b), C.R.S. (2024). The answer to all three questions is, "yes."

A law enforcement agency that advances buy money to an agent for use in an undercover controlled drug buy from a defendant is directly aggrieved when that money is not recovered after the defendant's arrest. The agency is aggrieved because its legal property rights in the buy money have been infringed. As such, it is a "victim" under subsection (4)(a), as was the Task Force here. Further, as the *Juanda* division concluded, buy money qualifies as "money advanced by law enforcement agencies." This Court should adopt *Juanda*'s construction, and conclude that the Task Force's buy money was so recoverable.

Additionally, a law enforcement agency's loss of buy money constitutes an "extraordinary direct public investigative cost[]." Because buy money is surrendered to a defendant in the commission of a drug distribution offense, it is qualitatively different than common investigative costs and, thus, "extraordinary." Again, *Juanda* correctly concluded as such and this Court should follow it.

In the end, Hollis sold drugs to an undercover officer and was able to pocket the buy money. He shouldn't be able to profit from his crime; he owes that money in restitution.

ARGUMENT

I. A law enforcement agency that suffers a pecuniary loss in the form of unrecovered "buy money" is a victim that qualifies for restitution. Because unrecovered "buy money" qualifies as either "money advanced by law enforcement agencies" or "extraordinary direct public investigative costs," it is recoverable as restitution under section 18-1.3-602(3)(a) and (b).

A. Preservation and Standard of Review

Though the People did not present an extensive analysis of whether the Task Force was a per se "victim" in the court of appeals, we asserted that a governmental agency is the implied "victim" that has been aggrieved under the restitution statute's provision for "money advanced by law enforcement agencies," and that the Task Force was an aggrieved victim. (COA AB, pp 21-22). We further argued that the Task Force's unrecovered buy money qualified as either "money advanced by law enforcement agencies" or "extraordinary direct public

investigative costs" and, therefore, the Task Force's loss of that money was recoverable as restitution. (COA AB, pp 6-41). So, this claim is preserved for review.

This Court's interpretation of the restitution statute and its determination of whether "buy money" qualifies as "money advanced by law enforcement agencies" or as "extraordinary direct public investigative costs" raise questions of law subject to de novo review. *See, e.g., People v. Roddy*, 2021 CO 74, ¶ 17 (statutory interpretation).

In conducting that review, this Court's "fundamental responsibility is to determine and give effect to the General Assembly's purpose and intent in enacting it." *People v. Hernandez*, 250 P.3d 568, 570-71 (Colo. 2011) (quotations omitted). In doing so, this Court looks to the statutory language first, giving its words and phrases their plain and ordinary meaning. *Thompson v. People*, 2020 CO 72, ¶ 22. This Court must neither add words to a statute nor subtract words from it. *People v. Diaz*, 2015 CO 28, ¶ 12. And this Court must consider the statutory scheme as a whole, giving a consistent, harmonious, and sensible effect to all its parts. *Thompson*, ¶ 22. As well, this Court

avoids absurd or unreasonable results. *People ex rel. Rein v. Jacobs*, 2020 CO 50, ¶ 57.

B. Law

Colorado's restitution statute obligates convicted offenders to "make full restitution to those harmed by their misconduct." § 18-1.3-601(1)(b), C.R.S. (2024). The payment of restitution by criminal offenders to their victims serves to make those victims whole, but it also is a mechanism that advances the rehabilitation of offenders and serves as a deterrent to future criminality. *See* § 18-1.3-601(1)(c),(d); *People in Interest of A.V.*, 2018 COA 138M, ¶ 23. For these reasons, restitution is a "crucial element of sentencing." *Roberts v. People*, 130 P.3d 1005, 1007 (Colo. 2006).

But what types of losses or categories of items are eligible for recovery in restitution? And who qualifies as a victim entitled to recovery? The legislature has used language and provided illustrations in the definitional section of the restitution statute, section 18-1.3-602, that favors answering those questions broadly.

Beginning with subsection (3)(a), the legislature defines the term "restitution" as "*any pecuniary loss* suffered by a victim . . . proximately caused by an offender's conduct...." § 18-1.3-602(3)(a), C.R.S. (2024) (emphasis added). "When used as an adjective in a statute, the word 'any' means 'all.'" *Stamp v. Vail Corp.*, 172 P.3d 437, 447 (Colo. 2007). Thus, the only limiting principle in the "ambit of potential restitution awards" is the proximate cause requirement. *Dubois v. People*, 211 P.3d 41, 45 (Colo. 2009).

Looking at this subsection in its entirety underscores that the legislature's intended scope of what may qualify as "restitution" remains broad and that the overall purpose of this subsection is to illustrate categories of losses that may be subject to compensation. "Restitution"

> *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.

§ 18-1.3-602(3)(a) (emphasis added). The legislature's use of the phrase "includes but is not limited to," as well as its culminating phrase "and other losses or injuries....," leaves no reasoned doubt as to the broad categories of losses that victims may recover. § 18-1.3-602(3)(a); *see People v. Roggow*, 2013 CO 70, ¶ 20 ("The phrase 'includes, but is not limited to' suggests an expansion or enlargement and a broader interpretation." (quotations omitted)); *Preston v. Dupont*, 35 P.3d 433, 438 (Colo. 2001) (recognizing that a "statutory definition of a term as 'including' certain things does not restrict the meaning to those items specified").

Looking beyond that definition, subsection (3)(b) expands the scope of the term "restitution" to include certain *costs*. It provides that "restitution" "may also include extraordinary direct public and all private investigative costs." § 18-1.3-602(3)(b). Indeed, other enumerated costs under subsections (3)(c) and (d), not applicable here, that may be incurred by a governmental agency are also included as "restitution." *See* § 18-1.3-602(3)(c)(I)(A)(B)(C)(II), (d).

Having broadly defined what is eligible for compensation as "restitution," the legislature then turns to defining "victim" in subsection (4)(a) of the statute. Again, the legislature first does so broadly, defining "victim" as "*any person aggrieved* by the conduct of an offender." § 18-1.3-602(4)(a) (emphasis added). Although the statute does not define "aggrieved," this Court has applied the dictionary definition of "aggrieved" to mean "as having legal rights that are adversely affected; having been harmed by an infringement of legal rights." *People v. Padilla-Lopez*, 2012 CO 49, ¶ 15 (quotations omitted).

Following this expansive definition of "victim," subsection (4)(a) then lists six non-exhaustive examples of who may qualify as a "victim." *See* § 18-1.3-602(4)(a)(I)-(VI). That non-exhaustive list includes "[a]ny person who had to expend resources for the purposes described in paragraph[] b . . . of subsection (3)," § 18-1.3-602(4)(a)(VI), that is, for "extraordinary direct public and all private investigative costs," § 18-1.3-602(3)(b).

Although the legislature has provided the foregoing guidance concerning the term "restitution," it did not, as relevant here,

separately define either "money advanced by law enforcement agencies" or "extraordinary direct public investigative costs" under subsections (3)(a) and (b). And Colorado has a dearth of case law addressing the meaning of these phrases.

Even so, as the People will show next, a law enforcement agency's unrecovered buy money falls under either category of "restitution," and this Court should so conclude.

C. Analysis

1. The Task Force is a "victim" under subsection (4)(a).

As a preliminary matter, the Task Force, a governmental law enforcement entity, is a "victim" within the meaning of section 18-1.3-602(4)(a) because it is a person that was aggrieved by Hollis's conduct. This Court should begin with this premise because the division concluded the contrary. *Hollis*, ¶ 11. Respectfully, the division's analysis is incorrect.

Recall, the statutory definition of "victim" is expansive as it makes "*any* person aggrieved by the conduct of an offender" a "victim." § 18-

1.3-602(4)(a) (emphasis added). Unlike previous versions of the statute that had defined "victim" as any person who had been "immediately and directly aggrieved by an offender's conduct," the restitution statute "no longer limits restitution only to persons [directly] injured by the conduct alleged as the basis for the conviction." *Dubois*, 211 P.3d at 45.

This definition parallels the breadth of the "restitution" definition—"any pecuniary loss." To interpret the definition of "victim" more narrowly would violate this Court's maxim that "we avoid inconsistent constructions." *People in Interest of J.G.*, 2016 CO 39, ¶ 13. And to interpret them similarly would "not lead to unreasonable results." *Weld Cnty. Sch. Dist. RE-12 v. Bymer*, 955 P.2d 550, 556 (Colo. 1998).

That said, this Court has recognized that the broad definition of "victim" is "unclear because it is potentially boundless," *Dubois*, 211 P.3d at 43, though it has not delineated the outer boundaries of who qualifies as a "victim." Still, this Court's *Dubois* decision—which admittedly dealt with a "discrete scenario" with a "relatively unique set of circumstances"—provides some guidance. *See id.* at 46-47.

Dubois acknowledged that "governmental entities are not explicitly excluded [from the statute] as recipients of a restitution award" and, therefore, such entities "count[] as 'any person'" under the statute. *Id.* at 46 (referencing, in support, section § 2-4-401(8), C.R.S. (2008), which includes in the definition of "person" any "governmental agency"). Even so, *Dubois* noted that the statutory language defining "victim" as "aggrieved by the conduct of an offender" is "not intended to include the *ordinary expenses* of law enforcement." 211 P.3d at 46 (emphasis added). Thus, two holdings emerged from *Dubois*: (1) *typically*, for law enforcement costs to be eligible for an award of restitution, they must be specifically authorized by a legislative provision and (2) a peace officer or governmental entity is eligible for recovery of costs as restitution where the underlying crime encompasses the peace officer or entity as a primary victim. *Id.*[3]

[3] The People construe *Dubois* to mean that a peace officer or governmental entity is eligible to seek restitution *at least* where the underlying crime encompasses either of them as a primary victim; but *Dubois* does not set this as the bar or assert it is the *only* way a peace officer or governmental entity may qualify as "victims" under the restitution statute. That is, the People do not construe *Dubois* to mean

Here, the division concluded that the Task Force did not qualify as a "victim" under subsection (4)(a). In doing so, it relied on this Court's *Padilla-Lopez* decision to conclude that the Task Force was not aggrieved by Hollis's conduct because its legal rights were not adversely affected; instead, it "simply spent money allocated to it 'in order to fulfill [its] public function,' which is investigating drug-related crimes." *Hollis*, ¶ 11 (quoting *Padilla-Lopez*, ¶ 18).

But the division also touched on a law enforcement agency's eligible status as a "victim" in its discussion of whether buy money

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that the underlying crime must define them as primary victims to qualify as "victims" for purposes of restitution and if the underlying crime does not do so, they are not "victims." The People acknowledge though that *Dubois* has been interpreted to mean the contrary, *see People v. Padilla-Lopez*, 2012 CO 49, ¶ 11 (and ¶ 27, Eid, J., dissenting). Indeed, the *Hollis* division, quoting *Padilla-Lopez*, stated that "law enforcement agencies are not victims *unless* they 'fall within the defining scope of the underlying criminal statute as a primary victim.'" *People v. Hollis*, 2023 COA 91, ¶ 18 (emphasis added). Being defined in the underlying criminal statute cannot be the test—a governmental agency seeking restitution for monies it expended for the loss of a service animal under section 18-1.3-602(2.3),(3)(a), C.R.S. (2024), is still a "victim" for purposes of restitution despite not being the primary victim of any particular underlying crime; indeed, any number of crimes could result in a governmental agency losing a service animal in the performance of official duties.

qualifies as "money advanced by law enforcement agencies" under section 18-1.3-602(3)(a). In rejecting the People's premise that buy money falls within the scope of "money advanced by law enforcement agencies," the division *implicitly presupposed* that a law enforcement agency cannot be the primary (or, direct) "victim" attempting to recover this type of pecuniary loss. *See Hollis*, ¶ 9. The division explained:

> The People first argue that the buy money is 'money advanced by [a] law enforcement agenc[y]' under section 18-1.3-602(3)(a). But this argument reads the statute too broadly. This phrase is explicitly a subset of 'pecuniary loss suffered by a victim.' *All the examples of restitution payments in subsection (3)(a) are for costs suffered by 'victims,'* such as 'out-of-pocket expenses,' 'anticipated future expenses,' and 'rewards paid by victims.' *Thus, 'money advanced by [a] law enforcement agenc[y]' must be advanced in relation to the 'pecuniary loss' of a victim* – not for investigative drug deals with suspects.

Hollis, ¶ 9 (citations omitted, emphasis added). The People address the flaws in the implicit presupposition next.

a. A law enforcement agency may be an aggrieved, primary victim seeking as restitution "money advanced by law enforcement agencies."

To begin, recall that the restitution statute defines "restitution" and "victim" in separate subsections. But in the division's analysis of subsection (3)(a), it erred by conflating the terms "restitution" and "victim." It appears to have been drawn into this error by first describing "money advanced by [a] law enforcement agenc[y]" as a "subset" of "pecuniary loss suffered by a victim." *Hollis*, ¶ 9. Subsection (3)(a) provides examples of restitution. If each example was only a subset, then the legislature would not have chosen to restrict "rewards paid by victims," as "paid by victims" would be redundant.

Subsection (3)(a) identifies the *categories of pecuniary losses* suffered by victims that fall under the umbrella of "restitution" and are compensable, subject to proximate cause being established. It offers a non-exhaustive list of pecuniary losses eligible for compensation. It

does not necessarily resolve who qualifies as a victim as the term "victim" is defined separately in subsection (4)(a).

But the division's analysis of subsection (3)(a) suggests that a law enforcement agency cannot be a primary or direct "victim," claiming as a pecuniary loss "money advanced by [a] law enforcement agenc[y]" because, according to the division, "[a]ll the examples of restitution payments in subsection (3)(a) are for costs suffered by 'victims'" and, therefore, "'money advanced by [a] law enforcement agenc[y]' *must be advanced in relation to the 'pecuniary loss' of a victim*...." *See Hollis*, ¶¶ 9, 12 (emphasis added). In other words, the division's construction limits this phrase to mean money advanced by the agency for the benefit of the direct (or, primary) victim of a defendant's criminal offense.

In doing so, the division restricts what is intended as a particular category of pecuniary loss. Worse, the division precludes the possibility that "law enforcement agencies" could be among the persons "aggrieved by the conduct of an offender" under subsection (4)(a), which also

contains expansive language, "includes but is not limited to." The division misreads the statute.

Looking first at the statutory structure of subsection (3)(a), it is clear that for certain categories of pecuniary losses the legislature included necessary limiting provisions. Thus, the legislature used the prepositional phrase "*by victims*" to modify "rewards paid"; in a similar vein, it used the prepositional phrase "*by law enforcement agencies*" to modify "money advanced" and "*by a governmental agency for a service animal*" to modify "money advanced." *See* § 18-1.3-602(3)(a) (emphasis added). The legislature used these prepositional phrases to limit the ambit of persons who could potentially seek recovery for these types of losses through specifying *by whom* they are recoverable (subject, again, to proximate cause). In the absence of a prepositional phrase restricting by whom these specific types of pecuniary losses may be recoverable, the losses are boundless. For example, "rewards paid" could be applicable to anyone, such as Crime Stoppers; similarly, standing alone, the pecuniary loss "money advanced" could be applicable to anyone.

So, turning to "money advanced by law enforcement agencies" specifically, the purpose of "by law enforcement agencies" is not, contrary to the division's interpretation, to make this provision a subset of pecuniary loss suffered by a primary victim but to identify *who* potentially can recover.

The division's interpretation is also flawed because the statute does not say that "money advanced by [a] law enforcement agenc[y]" has to be done by that entity "*in relation to* the pecuniary loss of a victim." By so interpreting the statute, the division added these words, which it cannot do. *See Diaz*, ¶ 12 (court must not add words to a statute); *see also Nichols v. United States*, 578 U.S. 104, 110 (2016) ("To supply omissions transcends the judicial function."). Contrary to the division's interpretation, "money advanced by [a] law enforcement agenc[y]" is only one category or type of pecuniary loss eligible for recovery. And as illustrated above, "law enforcement agenc[y]" merely delineates who *may be* a victim entitled to compensation, of course subject to proximate cause.

Additionally, the division's interpretation rendered subsection (4)(a) entirely inapplicable to "law enforcement agencies" who advance money. In other words, under the flawed subset view, unless the advance was made in relation to a primary victim, a court cannot even consider the agency's victim status under subsection (4)(a). But this the division also cannot do under rules of statutory interpretation. *See, e.g., Corley v. United States*, 556 U.S. 303, 314 (2009) ("[A] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." (quotations omitted)); *see also Romer v. Bd. of Cnty. Comm'rs*, 956 P.2d 566, 567 (Colo. 1998) (absence of specific provisions or language in a statute "is not an error or omission, but a statement of legislative intent"); § 2-4-201(1)(c), C.R.S. (2024) ("A just and reasonable result is intended.").

The division's interpretation is flawed for yet another reason: if a law enforcement agency cannot independently be a primary victim, then the "money advanced by [a] law enforcement agenc[y]" phrase would be purposeless (as would the phrase immediately following it, "money advanced by a governmental agency for a service animal," which is

examined below). *See* § 18-1.3-602(3)(a). Such a construction cannot be sustained. *See People v. A.S.M.*, 2022 CO 47, ¶ 22 (emphasizing that courts must "strive to avoid interpretations that would render statutory language meaningless" (quotations omitted)).

Consider the division's example of "money advanced by [a] law enforcement agenc[y]" to show that this language is not superfluous: "[T]he statute would still encompass advances law enforcement may make for expenses incurred by a victim of an offense, such as a domestic violence victim's relocation expenses." *Hollis*, ¶ 13 n.3. The division cites no authority—nor are the People aware of any—for such an advance. More importantly, that this type of advancement of funds is what is intended for subsection (3)(a) seems unlikely given that reasonable relocation expenses for a victim's safety are an enumerated loss compensable by the Crime Victim Compensation Board under the Crime Victim Compensation Act. *See* § 24-4.1-109(1)(l), C.R.S. (2024).[4]

[4] If, for example, a Crime Victim Compensation Board reimburses a crime victim for money she spent in relocating and the Board, thereafter, seeks restitution for the victim compensation claim it paid, the Board becomes the qualifying victim under the restitution statute.

This flaw in the division's interpretation rendering statutory language meaningless becomes more apparent by considering the "money advanced by a governmental agency for a service animal" phrase in subsection (3)(a). The legislature defines this phrase as "costs incurred" by a "law enforcement agency . . . for the veterinary treatment and disposal of a service animal that was harmed while aiding in official duties...." § 18-1.3-602(2.3). "Service animal" is defined as "any animal, the services of which are used to aid in the performance of official duties by a peace officer [or] law enforcement agency...." § 18-1.3-602(3.5).[5]

If, as the division suggests, a law enforcement agency cannot independently be a primary victim—but must, instead, advance monies on behalf of some other primary victim—then this type of service-

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See § 18-1.3-602(4)(a)(IV), C.R.S. (2024); *see, e.g.*, *People v. Rivera*, 250 P.3d 1272, 1275 (Colo. App. 2010).

[5] "Service animal" includes use by a "peace officer, law enforcement agency, fire department, fire protection district, or governmental search and rescue agency." § 18-1.3-602(3.5), C.R.S. (2024). For ease of reference, the People will, hereinafter, refer only to use by a "law enforcement agency."

animal-pecuniary-loss would seldom, if ever, be compensable. After all, a "service animal" is used only by a *law enforcement agency* in its official duties. § 18-1.3-602(3.5). And that use may incidentally, but by no means necessarily, benefit a primary (or direct) victim. The loss of a "service animal"—whether for veterinary treatment or disposal—is a loss suffered only by, and a cost incurred only by, a *law enforcement agency*. § 18-1.3-602(2.3). Clearly then, the legislature intended that a law enforcement agency could be the primary "victim" that seeks restitution for "money advanced by a governmental agency for a service animal."

And this interpretation underscores that a law enforcement agency can likewise be the primary victim that seeks recovery for "money advanced by law enforcement agencies."

In sum, a law enforcement agency may constitute the primary "victim" seeking as restitution "money advanced by law enforcement agencies." Next, the People turn to showing that, contrary to the division's conclusion, the Task Force was "aggrieved by the conduct of an offender" as required under subsection (4)(a).

b. The Task Force was directly aggrieved by the loss of the money paid to Hollis and, thus, was a victim eligible to seek restitution.

In *Padilla-Lopez*, this Court applied a dictionary definition of "aggrieved"—"having legal rights that are adversely affected; having been harmed by an infringement of legal rights"—to conclude that a state agency, the Department of Human Services (DHS), was not a victim for restitution purposes because it had not been aggrieved by the defendant's conduct. *Padilla-Lopez*, ¶¶ 15-20. In reaching this conclusion, this Court "decline[d] to expand the definition of the word 'victim' to include governmental agencies whose legal rights have not been 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.* ¶ 18.

Seizing on that concept, here the division concluded that the Task Force had not been "aggrieved" because it "simply spent money allocated to it in order to fulfill its public function, which is investigating drug-related crimes." *Hollis*, ¶ 11 (quotations omitted).

In reaching this conclusion, the division ignored differences between DHS and the Task Force.

The Task Force had legal property rights in the buy money and those rights were adversely affected by Hollis' conduct when he took that money and handled it in a way that precluded recovery by the Task Force. As *Juanda* points out, this loss is the "sort of [legal] infringement that could support a civil action for damages," *Juanda*, ¶ 12, such as one under contract theories for recission and restitution, *see, e.g., State v. Pettit*, 698 P.2d 1049, 1051 (Or. Ct. App. 1985); *see also Merkison v. State*, 996 P.2d 1138, 1143-44 (Wyo. 2000) (concluding law enforcement agency entitled to restitution for unrecovered buy money where agency had civil cause of action available under state's forfeiture provisions of controlled substances act and, therefore, the buy money qualified as recoverable "pecuniary damages" under state's restitution act); *State v. Garcia*, 866 P.2d 5, 7 (Utah Ct. App. 1993) (concluding similarly under Utah law). So, the Task Force was "aggrieved," as this Court understood that term in *Padilla-Lopez*, *i.e.*, for "having legal rights that are adversely affected."

Turning to the division's assessment that the Task Force was not "aggrieved" because it merely spent money allocated to it to perform a public function, this test should not be applied categorically to determine if any governmental agency has been aggrieved. As the dissent in *Padilla-Lopez* observed, *Dubois* does not "purport to define the outer boundaries of government agency 'victims'" or "impose . . . an across-the-board requirement that the legislature expressly identify a government agency as victim before it may be considered a 'victim' under section 18-1.3-602(4)(a)." *Padilla-Lopez*, ¶¶ 26, 28 (Eid, J., dissenting). Though this Court declined to hold that DHS, the agency in *Padilla-Lopez*, was a "victim," reasoning that it sought to recover "expenditures made in the course of fulfilling its statutorily mandated function to provide necessary shelter, sustenance, and guidance to dependent and neglected children," *Padilla-Lopez*, ¶ 17 (quotations omitted), to apply that standard here misses the mark.

First, as previously illustrated, unlike in *Padilla-Lopez*, the Task Force was *directly* injured by Hollis's conduct because Hollis accepted the buy money and the Task Force was unable to recover it.

Second, the government agencies are dissimilar. DHS is a state agency created by statute, *see, e.g.*, § 26-1-105, C.R.S. (2024); it is statutorily required to provide the public certain programs and services, identified in section 26-1-201, C.R.S. (2024). At issue in *Padilla-Lopez* was DHS's provision of child welfare services – specifically, foster care and psychological counseling to the defendant's children as a result of her child abuse offense. *See Padilla-Lopez*, ¶¶ 4, 20; § 26-5-101(3), C.R.S. (2024). By contrast, the Task Force is not a state agency created by statute, it is a creature of the local Weld County government. To the People's knowledge, there is no comparable statute, similar to DHS's, governing and identifying with specificity what a law enforcement agency, such as the Task Force, is legally required to do; the People presume the Task Force is governed by the Weld County Code, but review of that code does not reveal specific duties required by law. Thus, the source of DHS's and the Task Force's respective functions is different.

And third, the pecuniary loss the Task Force is trying to recover is different from the reimbursement DHS sought to receive for

expenditures it incurred in providing ordinary foster care services that it was statutorily required to provide, as was at issue in *Padilla-Lopez*. The *Padilla-Lopez* court drew this distinction in concluding that DHS was not "aggrieved." *See Padilla-Lopez*, ¶¶ 17-18. In other words, that the defendant's conduct caused DHS to spend money allocated to it to perform one of its statutorily required public functions did not infringe on its legal rights. *Id.* ¶¶ 17-18. Unlike DHS in *Padilla-Lopez*, the Task Force is not allocated monies to provide *statutorily* required services.

For these reasons, the Task Force was "aggrieved," and thus a victim under subsection (4)(a). Next, the People will show that its buy money is a recoverable pecuniary loss.

2. Unrecovered "buy money" qualifies as "money advanced by law enforcement agencies" and, therefore, is "restitution" under section 18-1.3-602(3)(a).

Under section 18-1.3-602(3)(a), the legislature has expressly enumerated "money advanced by law enforcement agencies" as one category of pecuniary loss that is recoverable as "restitution" should

that loss be proximately caused by the offender's conduct. *See* § 18-1.3-602(3)(a). The legislature did not, however, define "money advanced by law enforcement agencies." So, what can it mean? Caselaw, the plain meaning of that phrase, and statutory history provide guidance. Following these avenues makes clear that the Task Force was entitled to restitution.

a. The Court of Appeals' 2012 *Juanda* decision is instructive and should be followed.

At a minimum, "money advanced by law enforcement agencies" should include a law enforcement agency's "buy money," meaning money fronted by the law enforcement agency to its officer or agent for use in undercover controlled drug buys, but which was not recovered. A division of the court of appeals reached this conclusion in *Juanda*—the only other published Colorado authority addressing "money advanced by law enforcement agencies" under subsection (3)(a)—and it is instructive here.

In *Juanda*, the Drug Enforcement Agency (DEA) advanced money to one of its undercover agents for use in four controlled drug buys with the defendant. *Juanda*, ¶¶ 1, 8. After this "buy money" could not be recovered from the defendant, the DEA sought to recover it as restitution. *Id.* ¶¶ 3, 8. The *Juanda* division upheld the district court's determination that the DEA's buy money qualified as "money advanced by [a] law enforcement agenc[y]" under section 18-1.3-602(3)(a). *Id.* ¶ 8.

The division reasoned that the money was advanced by the DEA to its agent, who then used the money to buy drugs from the defendant; although "buy money is often recovered immediately (following the arrest of the dealer)," in the case before it the money was not recouped and was, therefore, recoverable as restitution. *Id.* In reaching its conclusion, the *Juanda* division cited the similar conclusion reached in *Gonzales v. State*, 608 P.2d 23 (Alaska 1980). *See id.*

True, the *Juanda* division did not extensively analyze the meaning of the phrase "money advanced by law enforcement agencies" under subsection (3)(a). Even so, its interpretation is reasonable. In contrast, the *Hollis* division's interpretation of this phrase is not

reasonable, as demonstrated *infra*. And in concluding that unrecovered buy money does not qualify as "money advanced by [a] law enforcement agenc[y]," the *Hollis* division failed to explain why buy money, specifically, does not fall under the umbrella of this category of pecuniary loss, instead relying on its flawed determination that a law enforcement agency cannot be the primary victim.

Further, the division's assessment that "the *Juanda* division read the statute to mean *any* money advanced by law enforcement *for any purpose* is recoverable as restitution," *Hollis*, ¶ 12 (emphasis added), is overstated. On the contrary, the *Juanda* division only held that money advanced by a law enforcement agency to its agent for use in a controlled drug buy that is unrecovered falls within the statutory phrase. This Court need do no more than adopt *Juanda* to resolve this case. And by doing so, this Court would not be expanding the outer limits of "restitution."

Additionally, as explained next, the plain and ordinary meaning of this phrase leads to the same result.

b. The plain and ordinary meaning of "money advanced by law enforcement agencies" encompasses unrecovered buy money.

In construing the phrase "money advanced by law enforcement agencies," this Court looks first to the plain meaning of the statutory language. *See Cowen v. People*, 2018 CO 96, ¶ 12.

Considering first the phrase's term "advanced," because the legislature did not define that term, this Court may consider dictionary definitions to determine its plain and ordinary meaning. *Id.* ¶ 13. The verb "advance" means "to give money to someone as a loan or before the usual time," *Advance*, The Britannica Dictionary, https://www.britannica.com/dictionary/advance; "to supply beforehand; furnish on credit or before goods are delivered or work is done," *Advance*, Dictionary.com, https://www.dictionary.com/browse/advance.

Thus, with this understanding of "advanced" as guidance, putting the whole phrase together, "money advanced by law enforcement agencies" plainly includes money that a law enforcement agency has given some party or entity, *i.e.*, an undercover officer, before or ahead of

some other event happening, *i.e.*, a controlled drug buy or subsequent arrest. Certainly, as between the law enforcement agency and the undercover officer, the agency does not expect an undercover officer to use his own money for an undercover drug buy; instead, the agency *advances* him money to enable him to perform his work. Thus, when such buy money is unrecovered after the defendant's arrest, it is a pecuniary loss recoverable as "restitution" under subsection (3)(a).

As illustrated *infra*, the *Hollis* division's construction is illogical. If, as the division reasoned, the pecuniary loss must be suffered by the (primary) victim of the crime, *i.e.*, assault, but it is a law enforcement agency that has "advanced" the money, how can the money be the victim's loss if only the agency has expended funds? The division's construction never satisfactorily answers this question.

But even assuming that "money advanced by law enforcement agencies" is ambiguous because it is susceptible of multiple reasonable interpretations, *see Cowen*, ¶ 12, that unrecovered buy money should reasonably qualify as "money advanced by [a] law enforcement agenc[y]" is supported by several factors.

First, the statutory language is broad; the legislature did not limit the phrase "money advanced by law enforcement agencies." And had the legislature intended that buy money should be excluded from this type of pecuniary loss, it knew how to do so. *See Regents of Univ. of Colo. v. Students for Concealed Carry on Campus, LLC*, 2012 CO 17, ¶ 20 (noting that the legislature knows how to exclude certain items when it intends to). Specifically, the legislature excluded certain losses from the definition of "restitution," including "damages for physical or mental pain and suffering," which could be suffered by a direct victim, and "loss of consortium," which could be suffered only by a direct victim's spouse or domestic partner, that might otherwise have fit within the broad definition of "any pecuniary loss." *See* § 18-1.3-602(3)(a).

Second, the legislature has declared that the restitution statute "shall be liberally construed to accomplish" its purposes of ordering and disbursing restitution to crime victims and aiding in an offender's reintegration into society. *See* § 18-1.3-601(2). Indeed, as this Court has recognized, restitution is intended not just to make victims whole,

but also, importantly, "to take the profit out of crime." *People v. Borquez*, 814 P.2d 382, 385 (Colo. 1991). Excluding unrecovered buy money as a recoverable loss thwarts these fundamental purposes, especially because the defendant got the benefit of the buy money.

And third, the statutory history supports the People's construction. When the legislature made significant changes to our state's restitution laws in 2000, creating an entirely new article 18.5 under Title 16, and creating one comprehensive definition of the term "restitution," it specifically included, for the first time, "*money advanced by law enforcement agencies*" in that definition. *See* Ch. 232, sec. 1, § 16-18.5-102, 2000 Colo. Sess. Laws 1030-31. Unfortunately, the legislative history does not indicate why the legislature specifically included this phrase. But caselaw from this and other jurisdictions provides some insight.

In 2000, when the legislature added this phrase, it was presumably aware of one previously-published decision by the court of appeals, *People v. Cera*, 673 P.2d 807, 808 (Colo. App. 1983), in which the division upheld a restitution award to the DEA for monies it had

"fronted" to an undercover police officer for a controlled drug buy from the defendant. *See Vaughan v. McMinn*, 945 P.2d 404, 409 (Colo. 1997) ("The legislature is presumed to be aware of the judicial precedent in an area of law when it legislates in that area."). And the legislative history indicates that a commissioned legislative study looked to existing caselaw in formulating the proposed amendments to the restitution statutes. *See* Hearing on H.B. 00-1169 before the S. Judiciary Comm., 62nd Gen. Assemb., 2nd Reg. Sess. (Apr. 19, 2000) (statement by M. McGhee, 6:36-7:04). The *Cera* division held that the DEA qualified as a victim for restitution purposes under the then-applicable section 16-11-204.5, C.R.S. (1973) because the "property rights in the buy money which were invaded by the defendant belonged to the DEA." *Cera*, 673 P.2d at 808. Thus, *Cera* may have been the source and legal authority for the legislature's inclusion of "money advanced by law enforcement agencies" in the "restitution" definition.[6]

[6] Notably, prior case law supports other types of pecuniary losses that the legislature chose to include in its revamped definition of "restitution" in 2000. For example, "rewards paid by victims" in section 18-1.3-602(3)(a) may have as its source *People v. Dillingham*, 881 P.2d

Further, in addition to *Cera*, the determination that a law enforcement agency's buy money is recoverable as restitution was not a jurisprudential or statutory anomaly when our legislature revamped the definition of "restitution" in 2000.

On the contrary, several other jurisdictions had, by that time, recognized this type of loss as recoverable restitution under their respective states' laws. *See, e.g.*, *Merkison*, 996 P.2d at 1143-44; *Gonzales v. State*, 608 P.2d 23, 26 (Alaska 1980); *Garcia*, 866 P.2d at 7; *Pettit*, 698 P.2d at 1051; *State v. Topping*, 590 A.2d 252, 253-54 (N.J. Super. Ct. App. Div. 1991); *see also State v. Neave*, 585 N.W.2d 169, 170-71 (Wis. Ct. App. 1998) (discussing Wis. Stat. § 973.06(1)(am), providing "moneys expended by a law enforcement agency" to mean buy

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440, 441-42 (Colo. App. 1994) (restitution order for a $1000 reward paid by the victim); "private investigative costs" in subsection (3)(b) may have as its sources *People v. Duvall*, 908 P.2d 1178, 1179-80 (Colo. App. 1995) (restitution order for private drug store company's employee time spent investigating defendant's drug theft) and *People v. Phillips*, 732 P.2d 1226, 1229-30 (Colo. App. 1986) (restitution order for investigative costs private insurer incurred in processing intentional burning of home); and "pubic investigative costs" may have as its source *People v. Witt*, 15 P.3d 1109, 1110-11 (Colo. App. 2000) (restitution order for state agency employee time spent investigating fraud).

money and a permissible cost assessed against the defendant); *People v. Logan*, 185 A.D.2d 994, 995 (N.Y. App. Div. 1992) (recognizing that New York's penal law had been amended in 1991 "to authorize restitution to law enforcement agencies for unrecovered funds utilized to purchase narcotics as part of investigations leading to convictions," citing N.Y. Penal Law § 60.27(9) (1991)).

Additionally, the legislature's addition in 2005 of another category of pecuniary loss to the definition of "restitution" in subsection (3)(a)—"money advanced by a governmental agency for a service animal"—may indirectly shed some insight on the intended breadth of the phrase "money advanced by law enforcement agencies." When the legislature added "money advanced by a governmental agency for a service animal," it contemporaneously added subsection (2.3) to expressly define "money advanced by a governmental agency for a service animal" and added subsection (3.5) to define "service animal." *See* Ch. 46, sec. 1, § 18-1.3-602, 2005 Colo. Sess. Laws 192-93; *see* § 18-1.3-602(2.3) and (3.5), C.R.S. (2024). The legislature defined "money advanced by a governmental agency for a service animal" as "costs incurred" by a law

enforcement agency for treatment or disposal of a service animal harmed while performing official duties. *See* § 18-1.3-602(2.3).

However, the legislature did not, at that time or since, separately define the pecuniary loss "money advanced by law enforcement agencies." That distinction must be considered. Though the legislature used the same two words, "money advanced" in these two statutory phrases, the "money advanced by a governmental agency for a service animal" phrase in subsection (3)(a) is unique. The legislature demonstrated its uniqueness by explaining what "money advanced" means in the context of the loss of a governmental service animal. *See* § 18-1.3-602(2.3) and (3.5). Thus, this Court should be reluctant to adopt a restrictive definition of "money advanced by law enforcement agencies" when the legislature could have done so, but did not.

Finally, several subsections of section 18-1.3-602 have been amended or added four times since the 2012 *Juanda* decision (in 2013, 2014, 2016, and 2022) and yet the legislature has not restricted the phrase "money advanced by law enforcement agencies" in subsection (3)(a). Thus, the legislature has impliedly ratified *Juanda*. *See People*

v. Swain, 959 P.2d 426, 430-31 (Colo. 1998) ("[T]he legislature is presumed, by virtue of its action in amending a previously construed statute without changing the portion that was construed, to have accepted and ratified the prior judicial construction.").

In sum, the legislature expressly authorized as recoverable "restitution" "money advanced by law enforcement agencies" under subsection (3)(a). A law enforcement agency's unrecovered buy money should, at a minimum, qualify as this type of pecuniary loss.

Regardless, as explained next, buy money should also be recoverable as an "extraordinary direct public investigative cost[]."

3. Unrecovered "buy money" also qualifies as an "extraordinary direct public investigative cost[]" and, therefore, is "restitution" under section 18-1.3-602(3)(b). The Task Force was entitled to restitution on this ground.

As the division correctly observed, there is a "dearth of appellate guidance regarding the scope of the phrase 'extraordinary direct public . . . investigative costs'" under section 18-1.3-602(3)(b). *Hollis*, ¶ 15. To the People's knowledge, only the instant case, *Juanda*, and *Teague v.*

People, 2017 CO 66 have addressed this phrase. Even so, for the following reasons, this Court should conclude that unrecovered buy money falls within the scope of that type of cost.

a. The loss of buy money is a qualitatively different cost of investigation and, thus, is extraordinary.

To begin, the legislature did not define the term "extraordinary" or provide examples of "extraordinary direct public investigative costs" within the meaning of subsection (3)(b). Dictionary definitions provide that "extraordinary" means "going beyond what is usual, regular, or customary," *Extraordinary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/extraordinary; it also is defined as "very unusual, special, unexpected, or strange" or "used to describe a large cost or loss that does not happen regularly," *Extraordinary*, Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/extraordinary. Accordingly, the plain meaning of the phrase "extraordinary direct public investigative costs" is costs that are not usual, regular or

customary or are special and that are incurred by a public person or entity as part of an investigation. Under this plain meaning, the loss of buy money qualifies as an "extraordinary direct public investigative cost."

A law enforcement or governmental agency's loss of buy money is not a usual or customary *cost* of a criminal investigation. It is unique to drug offenses, as opposed to the wide range of other crimes. And it is particular to drug investigations that focus on proving distribution rather than on possession.

Another jurisdiction described the difference this way:

> The loss of buy money is qualitatively unlike the expenditure of other money related to a criminal investigation, because it results directly from the crime itself; that is, the money is lost when it is exchanged for the controlled substance. The payment of salaries and overtime pay to the investigators, the purchase of surveillance equipment, the purchase and maintenance of vehicles, and other similar expenditures are "costs of investigation" unrelated to a particular defendant's criminal transaction. These expenditures would occur whether or not a particular defendant was found to be engaged in the sale of controlled substances. *However, the loss of the buy money used to purchase specific controlled substances from the subject of a criminal investigation directly results from the commission of a crime, and it causes*

> *financial harm to the governmental entity involved—the narcotics enforcement team*.

People v. Crigler, 625 N.W.2d 424, 428 (Mich. Ct. App. 2001) (emphasis added). Thus, one critical distinction from a normal, investigative cost is that the loss of buy money is a cost that is borne directly from a particular offender's commission of drug distribution. After all, illegal drugs are sold for profit, not given away. And even though, as *Juanda* observed, undercover drug transactions may themselves be common, the commonality or frequency of those transactions themselves does not detract from the unique quality of the money that is lost; as *Juanda* stated, "*buy money is an extraordinary cost because it is surrendered*, not to those who provide goods and services, but *to the criminal offender*" himself. *Juanda*, ¶ 9.

But even more than that, the loss of buy money is characteristically different than other types of investigative costs because an offender does not profit from an agency's normal operating costs, but he does profit from unrecovered buy money, keeping it for himself or using it to purchase even more drugs or engage in other

criminal activity. Therefore, unless recovered, this cost is a windfall to the defendant.

Although "extraordinary direct public investigative costs" may encompass other types of investigative costs, that possibility should not preclude awarding restitution to a law enforcement agency for unrecovered buy money.

Despite the foregoing, the division rejected the People's contention that unrecovered buy money is compensable. It reasoned that because buy money is "used solely to investigate drug-related crimes," these costs are "routinely incurred," and the Task Force "specifically budgeted for that purpose," *Hollis*, ¶¶ 20-21, such costs were usual, common or customary and, thus, not extraordinary. *Id.* ¶ 21.

But as the People have shown, the division's comparison is myopic. Within investigations of drug offenses, controlled buys by undercover agents may be routine. But the vast majority of criminal investigations do not involve undercover agents, much less controlled buys.

Further, that an agency may have budgeted for a specific purpose also does not detract from the extraordinary quality of those funds. No one would argue, for example, that because a law enforcement agency has monies allocated for use of tracking dogs in manhunts that the use of those funds when needed is common or customary. The same would be true of monies allocated to using drones in protecting visiting dignitaries. Thus, that an agency may "specifically budget[]" for an occurrence is not probative, much less dispositive. Additionally, as *Juanda* observed, buy money is typically *recovered* after an arrest; it is only in atypical, *i.e.*, extraordinary, circumstances, as in *Juanda* and here, that the buy money is not recovered. That factor, too, supports the extraordinary nature of these funds.

For these reasons, unrecovered buy money should be deemed an extraordinary direct public investigative cost.

An examination of this Court's *Teague* decision, the only decision from this Court to address the meaning of "extraordinary direct public investigative costs" and on which *Hollis* relied, does not mandate a contrary result.

b. *Teague* does not demand a contrary result.

In *Teague*, this Court concluded that a Sexual Assault Nurse Examiner ("SANE") examination cost qualified as an "extraordinary direct public investigative cost" under subsection (3)(b) that is recoverable by the state as restitution. It reasoned that the exam is "unique" due to its hybrid quality in that medical personnel go "beyond what is usual" and play a large role in the investigative process, documenting evidence, while at the same time counseling the victim. *Teague*, ¶ 16. Because of this "dual nature," these exams are separate "from more workaday investigative processes" and are "not simply extraordinary, but unique." *Id.* Significantly, this Court reached this conclusion based "on the unique nature of the exam" itself and "not the nature of the crime or the frequency with which police are called upon to investigate that crime." *Id.* Thus, it does not matter that controlled buys are frequently used when investigating the specific crime of distribution of controlled substances. Rather, what is significant is that

they are an extraordinary technique uniquely used in investigating a relatively narrow range of offenses.

Moreover, *Teague* did not determine the outer bounds of what constitutes an "extraordinary direct public investigative cost." Indeed, it could not as any number of other circumstances could qualify as "extraordinary."

Further, the division ignored *Teague*'s unique circumstances in determining that the loss of buy money does not constitute as an "extraordinary" cost because it "d[oes] not have a dual or hybrid purpose" as the cost of a SANE exam as was determined in *Teague*. *Hollis*, ¶ 20. To the extent the division suggests that a dual or hybrid quality is dispositive of whether a particular cost is extraordinary, that test fails to account for other extraordinary costs, such as paying for services of tracking dogs or renting drones, as noted above.

In short, *Teague* provides some guidance here. And focusing on other parts of the definitions in the restitution statute also provides insight.

c. Reading subsections (3)(b),(c) and (d) and (4)(a)(VI) together, as this Court must, supports the People's construction.

A more holistic look at the restitution statute supports the view that the loss of buy money should qualify as an "extraordinary direct public investigative cost" under subsection (3)(b).

As a preliminary matter, the legislature has made plain not only that direct public investigative costs are recoverable "restitution," *see* § 18-1.3-602(3)(b), but also that "[a]ny person who had to expend resources" for purposes of subsection (3)(b) (and subsections (3)(c), and (d)), is statutorily a "victim," § 18-1.3-602(4)(a)(VI). Thus, whether the Task Force is a "victim" is not disputable—it is under subsection (4)(a)(VI)—and whether the legislature has specifically authorized recovery of certain investigative costs as restitution is also not at issue—it has under subsection (3)(b). *See Dubois*, 211 P.3d at 46 (holding that typically for law enforcement costs to be eligible for an award of restitution, they must be specifically authorized by a

legislative provision). Thus, the only real question here is whether the loss of buy money is, indeed, an "extraordinary" cost.

In answering that question, the legislature's choice of words in its definition of "victim"—"*had to expend resources*"—under subsection (4)(a)(VI) is instructive. A "resource" is "a useful or valuable possession or quality that a person or organization has, for example, money...." *Resource*, Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/resource. The statutory language "*had to* expend" suggests a resource that the victim was forced to use as a result of the offender's conduct in lieu of using it for some other, more desirable purpose. And it is no coincidence that the primary victims that had to expend those resources are governmental agencies as it is their costs that are largely incurred under subsections (3)(b), (c), and (d). *See* § 18-1-602(3)(b),(c), and (d)[7].

[7] The People acknowledge that: subsection (3)(b) authorizes public and *private* investigative costs; subsection (3)(c) authorizes costs incurred "by a government agency or *private entity*"; and subsection (3)(d) authorizes costs incurred "by a governmental agency or *insurer*." § 18-1-602(3)(b),(c), and (d) (emphasis added). Even so, it is more likely that the authorized costs are predominantly incurred by governmental

Thus, this choice of words in subsection (4)(a)(VI), "had to expend," together with the recognition that the recoverable costs incurred under subsections (3)(b), (c), and (d) are those borne primarily by *governmental agencies* specifically, supports concluding that the legislature understood that governmental agencies do not have infinite monetary resources. Consistent with this understanding, the legislature made clear its intent that those listed governmental resources that had to be expended due to an offender's criminal wrongdoing should be replenished by the offender through restitution.

When viewing a governmental agency's monetary resources as limited, then a law enforcement agency's loss of buy money is, indeed, an "extraordinary" public investigative cost. A contrary interpretation, such as the division's, *see Hollis*, ¶¶ 20-21, suggests that merely because a law enforcement agency may budget for undercover narcotics purchases that the budget itself is unlimited or that the agency's overall

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agencies (as opposed to private entities) as these costs are largely for the public's benefit, *i.e.*, remediating a place used to manufacture controlled substances; disposing of animals under animal cruelty laws; providing medical benefits, etc.

funds are. That is speculation, and more likely untrue in practice. As the *Crigler* court observed:

> [N]arcotics enforcement teams are typically joint law enforcement projects that involve county and state police resources. These teams, scattered around the state and responsible for the investigation of narcotics trafficking . . . *generally have limited amounts of buy money available to make narcotics purchases*. When the enforcement teams fail to recover some or all of the buy money used to make narcotics purchases from particular drug dealers, the ability of these teams to make other narcotics purchases in the course of future investigations is impaired, and they are therefore clearly financially harmed.

Crigler, 625 N.W.2d at 424 (emphasis added).

In short, considering these other definitional provisions of the restitution statute supports the conclusion that the loss of buy money qualifies as an extraordinary direct public investigative cost.

This Court should so conclude. Moreover, this conclusion permits this Court to avoid the nuanced questions of how "money advanced by law enforcement agencies" under subsection (3)(a) should be interpreted, and does not risk expanding the outer limits of what constitutes a "victim."

CONCLUSION

Based on the foregoing reasons and authorities, the People respectfully request that this Court reverse.

PHILIP J. WEISER
Attorney General

/s/ Marixa Frias
MARIXA FRIAS, 38746*
Assistant Attorney General
Criminal Appeals Section
Attorneys for the People of the State of Colorado
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **PEOPLE'S OPENING BRIEF** upon **LISA WEISZ** via Colorado Courts E-Filing System (CCES) on November 4, 2024.

/s/ Marixa Frias