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SUMMARY
October 5, 2023

2023COA91

No. 20CA1746, *People v. Hollis* — Criminal Law — Sentencing — Restitution — Money Advanced by Law Enforcement Agencies — Extraordinary Public Investigative Costs

A division of the court of appeals holds that a law enforcement agency cannot recover as restitution the amount of money spent as unrecovered “buy money” (i.e., money spent by law enforcement during undercover drug deals) because such money is neither “money advanced by law enforcement agencies” for a victim’s pecuniary loss nor an “extraordinary” direct public investigative cost under section 18-1.3-602(3), C.R.S. 2023. In doing so, the division disagrees with a prior division’s interpretation of both phrases in *People v. Juanda*, 2012 COA 159.

Court of Appeals No. 20CA1746
Weld County District Court Nos. 19CR2108 & 19CR2109
Honorable Vincente G. Vigil, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Nathan Crawford Hollis,

Defendant-Appellant.

ORDER VACATED

Division VII
Opinion by JUDGE TOW
Brown and Schock, JJ., concur

Announced October 5, 2023

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¶ 1 Defendant, Nathan Crawford Hollis, appeals the district court’s order requiring him to pay restitution for “buy money” — money spent by law enforcement during undercover drug deals with Hollis. At issue is whether, under Colorado’s restitution statute, this buy money qualifies as (1) “money advanced by law enforcement agencies” for a victim’s pecuniary loss or (2) an “extraordinary” public investigative cost. § 18-1.3-602(3), C.R.S. 2023. We conclude it is neither, and in doing so we disagree with the holding of another division of this court in *People v. Juanda*, 2012 COA 159. Accordingly, we vacate the district court’s restitution order.

I. Background

¶ 2 The Weld County Drug Task Force regularly conducts “controlled buys,” in which an undercover officer purchases drugs from a suspect. The Task Force has a specific budget for “buy money,” which it uses for such transactions. An officer at Hollis’s restitution hearing testified that the Task Force conducts between five and ten controlled buys per month.

¶ 3 The Task Force conducted several controlled buys with Hollis over the course of several days, and each time Hollis was permitted

to leave with the buy money. After his eventual arrest, the Task Force searched Hollis’s home, but none of the buy money was recovered.

¶ 4 Hollis pleaded guilty to two counts of distribution of a controlled substance and was sentenced to concurrent nine-year terms in the custody of the Colorado Department of Corrections.¹ The district court then ordered Hollis to pay restitution to the Task Force for the unrecovered buy money.

II. Analysis

¶ 5 Hollis contends that section 18-1.3-602 does not specifically allow restitution for buy money. The People counter that buy money qualifies both as “money advanced by law enforcement agencies” under section 18-1.3-602(3)(a) and as an “extraordinary” direct public investigative cost under section 18-1.3-602(3)(b). We agree with Hollis.

A. Standard of Review and Applicable Law

¶ 6 We review de novo issues of statutory interpretation. *Dubois v. People*, 211 P.3d 41, 43 (Colo. 2009). “In construing a statute, we

¹ These pleas were in two separate Weld County cases, 19CR2108 and 19CR2109.

aim to ascertain and give effect to the intent of the General Assembly.” *Id.* In doing so, we first look to the statutory language, giving words and phrases their ordinary meanings and construing them according to the rules of grammar and common usage.

Thompson v. People, 2020 CO 72, ¶ 22. Further, we read the statutory scheme as a whole, seeking to harmonize the parts and avoiding constructions that render words or phrases superfluous or that lead to absurd results. *Id.* “If the statute is unambiguous, then we apply it as written.” *Id.*

¶ 7 Colorado’s restitution statute defines restitution as “any pecuniary loss *suffered by a victim* and includes . . . money advanced by law enforcement agencies.” § 18-1.3-602(3)(a) (emphasis added). Restitution also includes “extraordinary direct public . . . investigative costs.” § 18-1.3-602(3)(b).

¶ 8 “[T]ypically[,] the legislature must specifically include law enforcement costs within the restitution statute for them to be eligible for an award of restitution.” *Dubois*, 211 P.3d at 46. In other words, if the police department “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.” *People v. Padilla-Lopez*, 2012 CO 49, ¶ 11.

B. “Money Advanced by Law Enforcement Agencies”

¶ 9 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.” § 18-1.3-602(3)(a). 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.

¶ 10 In this context, “[v]ictim’ means any person aggrieved by the conduct of an offender.” § 18-1.3-602(4)(a). In other words, a “victim” is a person whose “legal rights [were] adversely affected.” *Padilla-Lopez*, ¶ 16 (quoting Black’s Law Dictionary 77 (9th ed. 2009)). However, our supreme court has held that “victim” does not 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.* at ¶ 18.²

¶ 11 The Task Force is not a victim under the restitution statute. It was not “aggrieved” by Hollis’s conduct. None of its legal rights was adversely affected. The task force simply spent money allocated to it “in order to fulfill [its] public function,” which is investigating drug-related crimes. *Id.* Rather, the victim of narcotics distribution is the public at large. *Cf. Dubois*, 211 P.3d at 47 (noting that the public at large — and not law enforcement — is the primary victim of the crime of manufacturing a controlled substance).

¶ 12 The People ask that we follow *Juanda*, in which the division held that buy money was recoverable as restitution because it was money advanced by a law enforcement agency. The division recognized the definition of “victim” in the restitution statute but opined that “it ultimately does not matter whether the [law enforcement agency] is ‘aggrieved’” because the legislature expressly authorized recovery of money “advanced by a law enforcement

² Victim also includes a person who expends “extraordinary direct public . . . investigative costs.” § 18-1.3-602(4)(a)(VI), C.R.S. 2023. We discuss the People’s claim that buy money falls in that category in Part II.C.

agency.” *Juanda*, ¶¶ 11, 13. The division concluded that buy money is included in the phrase “money advanced by [a] law enforcement agenc[y]” in section 18-1.3-602(3)(a) because the “money was advanced by the [government agency] to its undercover agent.” *Juanda*, ¶ 8. In essence, the *Juanda* division read the statute to mean any money advanced by law enforcement for any purpose is recoverable as restitution. But as we explain above, the statute limits the recovery of such advances to those related to the pecuniary loss of a victim.

¶ 13 Because the division in *Juanda* gave no meaning to the placement of the phrase “money advanced by law enforcement” within the restitution statute, it divorced that language from the limiting principle that the advance be related to a victim’s pecuniary loss.³ Consequently, we decline to adopt the division’s analysis. See *People v. Simpson*, 2012 COA 156, ¶ 24 (noting that a decision

³ We note that our construction does not render the relevant language superfluous. For example, the 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.

of one division of the court of appeals does not bind another division).

¶ 14 To the contrary, we conclude that the buy money advanced to the Task Force’s undercover agent, or to Hollis for that matter, is not advanced in relation to a “pecuniary loss suffered by a victim.” Thus, it is not recoverable as restitution under section 18-1.3-602(3)(a).

C. “Extraordinary” Public Investigative Cost

¶ 15 Next, the People contend that the buy money constitutes “extraordinary direct public . . . investigative costs” recoverable as restitution under section 18-1.3-602(3)(b). We disagree.

¶ 16 We begin by noting the dearth of appellate guidance regarding the scope of the phrase “extraordinary direct public . . . investigative costs.” Our supreme court has only considered the issue one time, in *Teague v. People*, 2017 CO 66. The supreme court looked to the dictionary and determined that “extraordinary” public investigative costs are those that are “‘not of the ordinary order or pattern,’ and ‘go[] beyond what is usual, regular, common, or customary.’” *Id.* at ¶ 15 (quoting Webster’s Third New International Dictionary 807 (2002)). Applying that definition, the

court held that the costs of a sexual assault nurse examiner (SANE) examination paid by law enforcement were extraordinary because the “hybrid nature” of such examinations — serving both investigative and medical treatment purposes — “separates SANE exams from more workaday investigative processes and renders them not simply extraordinary, but unique.” *Id.* at ¶ 16.

¶ 17 The only other appellate opinion that interprets this phrase is *Juanda*.⁴ In *Juanda* — which was decided before *Teague* — the division considered buy money an extraordinary cost because it was “surrendered, not to those who provide goods and services, but to the criminal offender.” *Juanda*, ¶ 9 (citing *People v. Crigler*, 625 N.W.2d 424, 428 (Mich. Ct. App. 2001)).

¶ 18 We again disagree with the division’s analysis in *Juanda*. Notably, we think the division’s reliance on *Crigler* was misplaced. In *Crigler*, the Michigan Court of Appeals was tasked with determining whether buy money fell within the ambit of Michigan’s restitution statute, which allowed for restitution for the “loss or

⁴ There is one other published case from this court, *People v. Rogers*, 2014 COA 110, which held that SANE exams were not extraordinary direct public investigative costs, but that decision was reversed in *Teague v. People*, 2017 CO 66.

destruction of property of a victim of the crime.” 625 N.W.2d at 427 (emphasis omitted) (quoting Mich. Comp. Laws § 780.766(3) (2023)). Thus, the Michigan court’s analysis focused on whether the law enforcement agency was a victim (which the statute defined as “an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime”). *Id.* (emphasis omitted) (quoting Mich. Comp. Laws § 780.766(1)). As we have already determined, the Task Force was not a victim under Colorado’s very different definition. Indeed, because of the definitional difference, the analysis in *Crigler* is inconsistent with our supreme court’s pronouncement that law enforcement agencies are not victims unless they “fall within the defining scope of the underlying criminal statute as a primary victim.” *Padilla-Lopez*, ¶ 11.

¶ 19 And despite the *Juanda* division’s reliance on it for the point, *Crigler* had nothing to do with whether buy money is an “extraordinary direct public . . . investigative cost” — a phrase that does not even appear in Michigan’s restitution statute.

¶ 20 Unlike the cost of the SANE examination in *Teague*, the buy money at issue did not have a dual or hybrid purpose. It was

money used solely to investigate drug-related crimes. And as officers of the Task Force testified, controlled buys occur several times per month using money *specifically budgeted* for that purpose.

¶ 21 Again, extraordinary costs are those that are “not of the ordinary order or pattern” and “go[] beyond what is usual, regular, common, or customary.” *Teague*, ¶ 15 (quoting Webster’s Third New International Dictionary at 807). We need not endeavor to establish the outer bounds of what types of public investigative costs are extraordinary. We believe it sufficient to conclude that purely investigative costs that are routinely incurred and specifically budgeted for are “usual, regular, common, or customary.” The buy money is, therefore, not an extraordinary public investigative cost under section 18-1.3-602(3)(b).⁵

III. Disposition

¶ 22 The order is vacated.

JUDGE BROWN and JUDGE SCHOCK concur.

⁵ In light of our disposition, we need not address Hollis’s argument first raised in his reply brief that the district court lacked authority to order restitution pursuant to *People v. Weeks*, 2021 CO 75.