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Court of Appeals
Division II
State of Washington
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NO. 53674-9-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

TAMI REEVES,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR COWLITZ COUNTY

The Honorable Stephen H. Warning, Judge

REPLY BRIEF OF APPELLANT

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A. ISSUE IN REPLY

Investigative expenditures do not make law enforcement a “victim” entitled to restitution under the Sentencing Reform Act (SRA).

B. ARGUMENT IN REPLY

THE SRA DOES NOT AUTHORIZE RESTITUTION TO COMPENSATE LAW ENFORCEMENT FOR THE COSTS OF INVESTIGATING OR PROSECUTING AN OFFENSE; THE STATE’S CONTRARY ARGUMENT RELIES ON INAPPOSITE AUTHORITY APPLYING A DIFFERENT STATUTE.

The State concedes the SRA authorizes restitution only for “victims.” Respondent’s Brief (Resp. Br.) at 3 (citing State v. Kinneman, 122 Wn. App. 850, 866, 95 P.3d 1277 (2004)). But it contends a law enforcement agency is a “victim,” for purposes of restitution, whenever it spends money enforcing the law. Resp. Br. at 3. In support of this position, the State cites a Division One case from 1986, State v. Forbes, 43 Wn. App. 793, 794, 719 P.2d (1986), and three out-of-state cases. Resp. Br. at 3-5.

Forbes is not on point: it interpreted RCW 9.95.210(2) (1983), a probation statute not at issue in this case. 43 Wn. App. at 799. Restitution under that statute is not limited to “victims,” as the State concedes it is here. Chapter 9.95 RCW (1983); Resp. Br. at 3 (citing Kinneman, 122 Wn. App. at 866).

The statute at issue in this case is RCW 9.94A.753(3). See Brief of Appellant at 3. It limits restitution to “victims,” and it does not authorize reimbursement for law enforcement’s investigative expenditures. State v. Tobin, 161 Wn.2d 517, 527 n.3, 166 P.3d 1167 (2007) (noting, with approval, that trial court denied restitution reimbursing State for salaries paid to detectives during investigation); State v. Cawyer, 182 Wn. App. 610, 618, 330 P.3d 219 (2014) (SRA’s restitution statute does not authorize State to recover costs of prosecution).

If the State’s position were correct, every felony conviction would entitle the State to total compensation for the costs of investigation and prosecution. That is contrary to the SRA’s plain language, as applied in Tobin, 161 Wn.2d 517, and Cawyer, 182 Wn. App. 610.

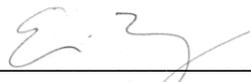
C. CONCLUSION

This court must reverse the award of restitution to the Cowlitz Wahkiakum Narcotics Task Force.

DATED this 12th day of FEBRUARY, 2020.

Respectfully submitted,

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