NO. 103150-5

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JAMES DEAN SCHULTZ,

Petitioner.

STATE'S ANSWER TO PETITION FOR REVIEW AND CROSS-PETITION

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A. IDENTITY OF RESPONDENT

The State of Washington is the Respondent in this case.

B. COURT OF APPEALS DECISION

The Court of Appeals decision at issue is State v. Schultz, No. 84570-5-I, __ Wn. App. 2d __, 548 P.3d 559 (2024).

C. ISSUES PRESENTED FOR REVIEW

1. Petitioner Schultz seeks review of the Court of Appeals' holding that Schultz's challenge to his standard-range sentence fails because the trial court considered the mitigation evidence presented by Schultz before exercising its discretion to conclude that an exceptional sentence was not warranted on the facts of this case. The State asks this Court to deny review of this issue because the criteria for review are not met.

2. Schultz seeks review of the Court of Appeals' holding that the trial court properly exercised its discretion in awarding restitution for property lost as a result of the crime—paid time off used by the victim's parents to deal with the

aftermath of Schultz's murder of their son. The State asks this Court to deny review of this issue because the criteria for review are not met.

3. Schultz seeks review of the Court of Appeals' holding that there is no state or federal constitutional right to jury trial regarding criminal restitution. The State asks this Court to deny review of this issue because the criteria for review are not met.

4. The State seeks review of the Court of Appeals' holding that interest on restitution is "analogous" to costs of litigation and thus, pursuant to State v. Ramirez, 191 Wn.2d 732, 426 P.3d 714 (2018), cases pending on direct appeal when a 2023 statutory amendment regarding interest on restitution took effect must be remanded for the trial court to hold a hearing—with all the attendant expenditure of judicial resources and disruption to victims—to consider whether to reduce or waive interest on restitution. Because that decision is in conflict with decisions of this Court and involves an issue of

substantial public interest that should be determined by this Court, review is warranted solely on that issue. RAP 13.4(b)(1), (4).

D. STANDARD FOR ACCEPTANCE OF REVIEW

"A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b).

E. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

The State charged the defendant, James Dean Schultz, with murder in the first degree, with a special allegation that he was armed with a firearm at the time of the crime. CP 1.

Schultz later pled guilty to a reduced charge of murder in the second degree with the same special allegation. CP 19, 71. The trial court rejected Schultz's request for an exceptional sentence below the standard range and imposed a high-end standard-range sentence of 220 months in prison, plus the mandatory 60-month firearm enhancement, for a total sentence of 280 months in prison. CP 72, 74, 82. Schultz timely appealed. CP 219, 286.

The trial court later held a contested restitution hearing and ordered Schultz to pay a total of $10,539.67 in restitution to the victim's family and the Crime Victims Compensation Fund. CP 260. Schultz timely appealed that order as well, and the two appeals were consolidated. CP 262. The Court of Appeals affirmed Schultz's sentence and restitution order, but remanded for the trial court to strike the Victim Penalty Assessment and DNA fee and to reconsider interest on restitution in light of recent statutory amendments.

2. SUBSTANTIVE FACTS.

a. After a Fight He Started, Schultz Disengages to Obtain a Gun and Then Returns to Fatally Shoot the Victim Three Times.

One night in June 2020, Schultz was at a bonfire next to a river in unincorporated King County at which victim Nicholas Germer and others were also present.[1] CP 5, 8. Schultz was 34 years old and Germer was 24 years old; the two were strangers. CP 5. When Germer got into a heated argument with some young women at the bonfire, Schultz inserted himself into the interaction and punched Germer in the face. CP 7. Germer then hit Schultz in the head with a glass bottle he was holding at the time, knocking Schultz down a small embankment. CP 7; 1RP[2] 154. Schultz got up and went to the truck in which he had arrived, where he retrieved a firearm. CP 8.

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[1] These facts are drawn from the Certification for Determination of Probable Cause, to which Schultz stipulated for purposes of sentencing, as well as from testimony at sentencing. CP 46.

[2] The Verbatim Report of Proceedings consists of two volumes that are not consecutively paginated. The first, which Schultz

Schultz's companion, Dylan Syacsure, tried to help Schultz, who was bleeding, into the truck, but Schultz said he was going to "get that guy." CP 8. One of the women who had argued with Germer was leaving at this time, and heard Schultz asking Syacsure for a gun and asking whether it was loaded. CP 7. Dylan urged Schultz not to "do it," but Schultz only shoved Syacsure and returned to the bonfire anyway, hiding the gun behind his back. CP 7-8.

Schultz walked up to Germer and fired four bullets, hitting Germer at least three times in the chest, abdomen, and legs. CP 5, 7. Schultz and all those present except Germer then fled the scene as someone called 911. CP 5, 8; 1RP 152. Medics resuscitated Germer at the scene and transported him to a hospital, but he died of his wounds while in surgery. CP 5, 9.

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refers to as "RP" and this brief will refer to as "1RP," covers certain pretrial hearings, the May 5, 2022, guilty plea hearing, and the September 16, 2022, sentencing hearing. The second, which this brief will refer to as "2RP," covers the January 31, 2023, restitution hearing.

Descriptions of the shooter's tattoos eventually led police to identify Schultz as a suspect; several witnesses then identified him in photo montages as the shooter. CP 6-8. Schultz eventually turned himself in and, after Miranda[3] warnings, gave a recorded statement in which he denied being hit with a bottle, denied having a gun at the bonfire, and denied shooting Germer. CP 8. Schultz claimed that he fell down the embankment because he was drunk and that afterwards Syacsure helped him to their vehicle and they left. CP 8. However, when contacted by police, Syacsure confirmed that Schultz shot Germer and described his interaction with Schultz at the truck immediately beforehand. CP 8.

Schultz eventually pled guilty to a reduced charge of second-degree murder with a firearm enhancement. CP 19, 46.

[3] Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

b. The Trial Court Considers Schultz's Mitigating Evidence But Rejects the Requested Exceptional Sentence as Factually Unwarranted.

At sentencing, Schultz requested an exceptional sentence of 78 months, well below the standard range of 123-220 months. CP 72, 81-82. He argued that two statutory mitigating factors supported the imposition of an exceptional sentence: (1) his "capacity to . . . conform his . . . conduct to the requirements of the law, was significantly impaired" by executive functioning deficits resulting from prenatal alcohol exposure, and (2) "[t]o a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident." CP 83; RCW 9.94A.535(1)(a), (e).

Schultz provided the court with a report by Dr. Natalie Novick Brown, a psychologist who had diagnosed Schultz with Neurodevelopmental Disorder Associated with Prenatal Alcohol Exposure ("ND-PAE"), a disorder that is on the Fetal Alcohol Syndrome Disorder spectrum but which has lesser diagnostic criteria than a diagnosis of Fetal Alcohol Syndrome.

CP 117; 1RP 93, 96-97. Novick Brown's testing revealed that Schultz had an IQ of 80, which "ruled out" a diagnosis of intellectual disability. CP 1160; 1RP 118. However, in some areas such as executive functioning, Schultz performed well below what would be expected based on his IQ alone. 1RP 118, 122.

Although she never spoke to Schultz about the events surrounding the shooting and did not address anything that happened after Schultz was struck with a bottle, Novick Brown opined that it was "likely Mr. Schultz's ND-PAE directly influenced his alleged offense conduct." CP 117; 1RP 129.

At the beginning of the sentencing hearing, the trial court confirmed that it had already reviewed all the written presentencing materials, which included Novick Brown's report. 1RP 84; CP 115-77. Schultz then presented testimony by forensic psychologist Megan Carter, a colleague of Novick Brown who had reviewed her report and the testing on which she relied and had formed the same opinions. 1RP 84-91, 126.

Like Novick Brown, Carter had never spoken to Schultz about the events surrounding the murder. 1RP 127. She nevertheless opined that Schultz's diagnosis would have significantly impaired his executive functioning regardless of alcohol use. 1RP 130-31. On cross-examination, however, she admitted that she could not quantify the degree to which alcohol played a role in Schultz's actions. 1RP 140.

The expert opinions relied heavily on their belief that Schultz's mental condition prevented him from processing information quickly. E.g., CP 173. However, neither expert addressed the fact that Schultz disengaged from the victim, took the time to obtain a gun from his vehicle, was encouraged by a friend not to return to the bonfire, and chose to walk back to the victim and shoot him multiple times. Carter acknowledged that one of the bases for her conclusion that Schultz's diagnosis played a role in the crime was her belief that the situation at the bonfire was novel and unpredictable, but she admitted that she

never asked the defendant whether the situation was new or unusual for him. RP 140.

Carter testified that some of the ways a diagnosis like Schultz's might manifest in a police interrogation would be things such as poor memory, providing false information in order to fill in memory gaps or give police what the person thought they wanted, inability to foresee long-term consequences of their statements to police, acting out behaviorally, emotional dysregulation, and difficulty with mental multitasking. 1RP 135-37. Later in the sentencing hearing, the State presented testimony by the lead detective, Sergeant James Belford, indicating that Schultz displayed none of these deficits during the four and half hours they spoke to each other, and in fact displayed good memory and strategic thinking in an attempt to avoid being held responsible for his actions. 1RP 158-65.

At the end of her cross-examination, Carter conceded that although she believed Schultz's diagnosis caused him to "have

difficulty effectively thinking and processing information," Schultz would still have understood that shooting someone would result in their death. 1RP 145.

Germer's mother, father, and sister all gave oral victim impact statements at the hearing, explaining the emotional devastation they suffered as a result of the crime. 1RP 172-85. Schultz did not allocute, but referred to a letter he had written to the court. 1RP 191.

In response to Schultz's argument for an exceptional sentence, the State argued that neither statutory mitigating factor identified by Schultz applied because Schultz was the first aggressor, not Germer, and because the evidence before the court did not establish that Schultz's capacity to conform his conduct to the requirements of law was significantly impaired by his mental condition. 1RP 191-94. The State pointed out that Schultz did not display any of the deficits in his conversation with police that the defense experts believed diminished his culpability, and that his actions leading up to the

shooting demonstrated goal-oriented behavior and an opportunity to reflect before he chose to return to the bonfire to shoot the victim. 1RP 193-94. The State asked the court to impose a sentence at the high end of the standard range. 1RP 171.

The trial court then issued its ruling. 1RP 195-97. It began by noting that it had spent time preparing for the sentencing, "including considering the written materials that were provided to me," which included "the expert opinions that were provided," among other things. 1RP 195. The court stated that it had "also considered and ha[d] been taking notes in regard to the testimony given today and the arguments and statements made today." 1RP 196. The court reiterated that it had considered "all of those things," plus "the purposes and rationale of the Sentencing Reform Act," in making its sentencing decision. 1RP 195-96.

The court then highlighted "factual points that I think are important." 1RP 196. The court then summarized the

information provided by Syacsure and one of the women who had argued with Germer about Schultz's actions and statements in returning to the vehicle, obtaining a gun with the intent to "get" Germer, refusing to be dissuaded by Syacsure, and returning to the bonfire with the gun hidden behind his back in order to shoot Germer. 1RP 196-97. Although the court never summarized the substance of the mitigating information provided by Schultz or the parties' arguments for and against the imposition of an exceptional sentence, the factual points mentioned by the court indicated its agreement with the State's arguments.

The trial court concluded by saying, "Weighing all the factors that go into this decision and require me to balance several things, I find that the appropriate sentence in this case is at the high end of the standard range." 1RP 197. Schultz did not object to the trial court's ruling as insufficiently detailed or constitutionally insufficient. 1RP 197.

c. The Trial Court Orders Schultz to Pay Restitution.

Roughly four months after sentencing, the trial court held a contested restitution hearing. 2RP 1-13. The State provided documentation that Germer's mother had taken ten days off work due to emotional distress immediately after her son's murder, made up of three days of bereavement leave and seven days of paid time off ("PTO"). CP 196. The State similarly provided documentation that Germer's father had taken nine days off work due to emotional distress immediately after his son's murder, made up of two days of bereavement leave and seven days of PTO. CP 199. Each parent's "Time Loss Claim" form noted that restitution was only requested for the PTO, not the bereavement leave, and each contained an attestation under penalty of perjury that the form was "a true and correct summary of the time loss incurred by the employee as a result of the crime investigated under" the cause number for this case. CP 196, 199.

The State sought restitution for the value of the PTO lost to Germer's parents due to their emotional distress in the wake of their son's murder, which totaled $1,784 to Germer's mother and $2,334 to Germer's father. CP 194. The State also sought $6,375 of restitution to the Crime Victims Compensation Fund for burial expenses and $45 to Germer's sister for counseling after his murder. CP 244, 281-85; 2RP 9.

Schultz argued that he had a state and federal constitutional right to have restitution proved to a jury beyond a reasonable doubt and that requiring him to pay the requested restitution to Germer's parents would violate the state and federal excessive fines clauses because he was unable to pay it and because it was difficult "to say what amount of paid time off is proportional to the crime."[4] CP 206-07, 210-11, 214-18. He did not raise an excessive fines challenge regarding the

[4] Schultz also argued below that due process entitled him to confront witnesses at a restitution hearing, but that claim is not raised on appeal. CP 211-14.

restitution request to CVC or Germer's sister. 2RP 9; CP 206-18. Schultz also did not argue that the restitution requested for Germer's parents' lost wages was not statutorily authorized—he challenged it only as a violation of the Excessive Fines Clause. CP 206-18; 2RP 1-13. He specifically conceded that "there is certainly a nexus between, you know, their loss and grief and inability to work." 2RP 5.

The trial court rejected Schultz's constitutional arguments, finding that no caselaw supported Schultz's jury demand and that the requested restitution was not constitutionally excessive under the analysis set out in caselaw. 2RP 10-11. The court ordered Schultz to pay the full amount of the requested restitution. 2RP 10; CP 260-61.

When Schultz was sentenced in September 2022, the imposition of interest on restitution was mandatory, though it could be reduced or waived following payment of the principal and release from full confinement. Former RCW 10.82.090. Accordingly, Schultz's judgment and sentence stated that

"restitution shall bear interest pursuant to RCW 10.82.090." CP 73. On January 1, 2023—30 days before Schultz's restitution hearing—an amendment to RCW 10.82.090(2) took effect that granted trial courts the discretion to waive the imposition of restitution interest after considering certain factors:

> The court may elect not to impose interest on any restitution the court orders. Before determining not to impose interest on restitution, the court shall inquire into and consider the following factors: (a) Whether the offender is indigent as defined in RCW 10.101.010(3) or general rule 34; (b) the offender's available funds, as defined in RCW 10.101.010(2), and other liabilities including child support and other legal financial obligations; (c) whether the offender is homeless; and (d) whether the offender is mentally ill, as defined in RCW 71.24.025. The court shall also consider the victim's input, if any, as it relates to any financial hardship caused to the victim if interest is not imposed. The court may also consider any other information that the court believes, in the interest of justice, relates to not imposing interest on restitution. After consideration of these factors,

> the court may waive the imposition of restitution interest.[5]

LAWS OF 2022, ch. 260, § 12. At the restitution hearing, Schultz did not ask the trial court to exercise its new discretion to waive interest on restitution. 2RP 1-11.

d. The Court of Appeals Remands for Reconsideration of Interest on Restitution.

On direct appeal, Schultz argued that, because his conviction was not yet final when the statutory amendment occurred, his case should be remanded for the trial court to consider whether to waive interest on restitution, pursuant to State v. Ramirez, 191 Wn.2d 732, 426 P.3d 714 (2018). Br. of Appellant at 46-50. The State argued that Schultz was not entitled to remand because the amendment took effect before his restitution hearing and because, even if the restitution hearing had predated the amendment, interest on restitution is

[5] The current version of RCW 10.82.090(2) subsequently went into effect July 1, 2023; the only change was the updating of a statutory citation. LAWS OF 2023, ch. 449, § 13.

not the type of litigation cost governed by Ramirez and the cases on which Ramirez is founded.

The Court of Appeals did not address the timing of Schultz's restitution hearing and simply cited to its holding in State v. Reed, 28 Wn. App. 2d 779, 782, 538 P.3d 946 (2023), that "restitution interest is analogous to costs for purposes of applying the rule that new statutory mandates apply in cases, like this one, that are on direct appeal," as the basis for remanding this case for a hearing at which Schultz would have another chance to ask the Court to consider waiving interest on restitution.

F. THIS COURT SHOULD DENY SCHULTZ'S PETITION FOR REVIEW

Schultz fails to establish that any of the criteria for review set out in RAP 13.4(b) are present in the issues he raises in his petition for review. As the briefing below and the Court of Appeals' opinion amply demonstrate, the Court of Appeals properly rejected Schultz's challenges to (1) the trial court's conclusion, after considering Schultz's mitigating evidence,

that an exceptional sentence below the standard range was not warranted on the facts of this case, (2) the imposition of restitution for paid time off used by the victim's parents as a result of the crime, and (3) this Court's precedent that there is no state or federal constitutional right to have restitution proven to a jury beyond a reasonable doubt.

G. THIS COURT SHOULD REVIEW THE LOWER COURT'S DECISION TO REMAND THIS CASE FOR RECONSIDERATION OF INTEREST ON RESTITUTION

The Court of Appeals' decision that amendments to the restitution interest statute apply to all cases pending on direct appeal when the amendment takes effect is in conflict with decisions of this Court and involves an issue of substantial public interest that should be determined by this Court. RAP 13.4(b)(1), (4).

As a preliminary matter, remand for a hearing to reconsider interest on restitution is not a small matter to be taken lightly. The waiver analysis requires prosecutors to try to obtain information from victims regarding "any financial

hardship caused to the victim if interest is not imposed" RCW 10.82.090(2). In many cases, victims and survivors have already gone through a years-long ordeal of waiting for a case to go to trial, testifying at trial, providing documentation regarding restitution, and attempting to reconstruct their life after sentencing, at which point they might reasonably believe that the case is behind them. This Court should not be cavalier about requiring remand in every single case involving restitution that was still pending on direct appeal when the statutory amendment regarding restitution interest took effect.

Not only does a remand hearing have the potential to force victims to engage yet again with the traumatic events they have survived, but hearings on remand require appointment of defense counsel, transportation of the defendant from the Department of Corrections' custody, and the expenditure of already-scarce judicial, prosecutorial, and public defense resources. Unlike a remand to strike the Victim Penalty Assessment or DNA fee, which does not require a hearing, a

remand for a new hearing regarding interest is much more involved, and this Court should be correspondingly careful to ensure that such remand hearings occur only when the law and this Court's precedent truly require them. As such, whether remand to reconsider interest is required in a case like this is a matter of substantial public interest that should be determined by this Court.

Sentencing is governed by the law in effect at the time the defendant committed the offense being sentenced. RCW 9.94A.345; RCW 10.01.040; State v. Jenks, 197 Wn.2d 708, 715, 487 P.3d 482 (2021); In re Pers. Restraint of Carrier, 173 Wn.2d 791, 808-09, 272 P.3d 209 (2012). Statutory amendments are presumed to apply only prospectively, unless the legislature indicates its intent that it apply retroactively. Carrier, 173 Wn.2d at 809; RCW 10.01.040.

To apply a statute to a case even though "the precipitating event under the statute occurred before the date of enactment" is to apply the statute retroactively. Carrier, 173

Wn.2d at 809. To apply a statute to a case in which the precipitating event occurred *after* the date of enactment is to apply the statute prospectively. Id. A statute that affects a vested or substantive right may not be applied retroactively. State v. Blank, 131 Wn.2d 230, 250, 930 P.2d 1213 (1997).

"To determine what event precipitates or triggers application of [a] statute," this Court "look[s] to the subject matter regulated by the statute." Id. For example, this Court concluded that the precipitating event for a statute governing sealing of juvenile court records is the moment at which the respondent satisfies the sealing criteria, and thus prospective application of an amendment tightening the sealing requirements did not affect juveniles who satisfied the former criteria for sealing before the effective date of the amendment, even though they did not bring a motion to seal until after the amendment. State v. T.K., 139 Wn.2d 320, 323, 987 P.2d 63 (1999). And in the context of a change in the law regarding Batson challenges, "the precipitating event is the voir dire

itself." State v. Jefferson, 192 Wn.2d 225, 248, 429 P.3d 467 (2018).

In State v. Blank, this Court held that the precipitating event for application of a statute permitting imposition of appellate attorney fees and costs of appellate litigation was the termination of the appeal. 131 Wn.2d 230, 249, 930 P.2d 1213 (1997). Critically, the termination of an appeal is the point at which appellate costs are determined and imposed in the first instance. RAP 14.1(a) ("The appellate court determines costs in all cases after the filing of a decision terminating review.").

In Ramirez, this Court addressed an amendment to former RCW 10.01.160(3) that prohibited courts from imposing discretionary "costs" on defendants who are indigent at the time of sentencing. 191 Wn.2d 732, 748, 426 P.3d 714 (2018). "Costs," within the statute at issue in Ramirez, exlusively refers to "expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program

under chapter 10.05 RCW or pretrial supervision." RCW 10.01.160(2).

Rather than independently analyzing the precipitating event for the particular statute at issue in Ramirez, the Ramirez Court looked to Blank and described its holding as being that "the 'precipitating event' for a statute 'concerning attorney fees and costs of litigation' was the termination of the defendant's case and . . . that the statute therefore applied prospectively to cases that were pending on appeal when the costs statute was enacted." Id. at 749. Overlooking the fact that Blank dealt specifically with costs of *appellate* litigation, which are not imposed on a defendant until the termination of the appeal, whereas the costs of trial court litigation at issue in Ramirez are imposed at sentencing, the Court chose to extend Blank to the facts of Ramirez on the grounds that both cases involved amendments "concern[ing] the court's ability to impose costs on a criminal defendant following conviction." Id.

Ramirez is a misapplication of Blank that runs counter to this Court's long line of jurisprudence evaluating the precipitating events for a newly amended statutes. It should be confined to its facts: statutory amendments concerning "costs" as that term is defined in RCW 10.01.160, meaning "expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW or pretrial supervision." RCW 10.01.160(2). This aligns with this Court's more recent characterization of its decisions in Ramirez and Blank as "concerning attorney fees and costs of litigation" and this Court's unwillingness to extend them beyond that context. State v. Jenks, 197 Wn.2d 708, 723, 487 P.3d 482 (2021) (holding that precipitating event for application of the "three strikes" statute is the commission of the third "strike").

Contrary to what the Court of Appeals concluded here and in Reed and Ellis, not every legal financial obligation imposed at sentence is a "cost" within the meaning of Ramirez.

For example, the $100 domestic violence penalty assessment "is not a cost of prosecution under RCW 10.01.160." State v. Smith, 9 Wn. App. 2d 122, 127, 442 P.3d 265 (2019). Restitution and interest on restitution are also not "costs" within the meaning of RCW 10.01.160 and Ramirez.

Despite that warning, Ramirez's failure to examine the precipitating event for application of the statute at issue in that case, and the limited meaning of "cost" in Ramirez, lower courts have mistakenly concluded that Ramirez requires remand for a hearing in all cases involving restitution interest that were pending appeal when the restitution interest statute was appended. E.g., State v. Reed, 28 Wn. App. 2d 779, 782, 538 P.3d 946 (2023); State v. Ellis, 27 Wn. App. 2d 1, 16, 530 P.3d 1048 (2023).

There is no basis to extend the holding in Ramirez so far. Restitution is compensation to those who bore losses caused by the defendant's crime; it is not a cost related to the litigation of the case. RCW 9.94A.753(3), (6), (7). The obligation to pay

interest on restitution cannot be separated from the restitution obligation itself; the legislature's purpose in imposing interest on restitution is to compensate the victim for the lost value of money. State v. Ramos, 24 Wn. App. 2d 204, 227-28, 520 P.3d 65, 78 (2022). Significantly, interest on restitution is not shared with any governmental entity but is paid solely to the victims, and "the legislature clearly intends that victims be made whole." Id. at 228. This obligation is of an entirely different character than litigation costs payable to the government under RCW 10.01.160. See id. at 221 n.11 (distinguishing the statutory process for ordering costs from the process applicable to ordering restitution).

This Court should continue to limit Ramirez to the specific context in which it occurred and hold that, as to statutes imposing legal financial obligations other than costs of litigation, the precipitating event is the point at which the financial obligation is imposed, whether that be sentencing or a restitution hearing. It should overrule Reed and Ellis on this

issue and reverse the lower court's holding in this case as conflicting with Jenks, Blank, and this Court's other precedent regarding the precipitating event for various statutory amendments. The Court of Appeals' holding here and in Reed and Ellis imposes significant burdens on victims and lower courts, and whether remand is necessary in cases like this one is an issue of substantial public interest that should be determined by this Court.

H. CONCLUSION

For the foregoing reasons, Schultz's petition for review should be denied, and the State's cross-petition for review should be granted.

This document contains 4,924 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 5th day of July, 2024.

Respectfully submitted,

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