

[Cite as *State v. Reyes*, 2004-Ohio-2686.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 82963

|                     |   |               |
|---------------------|---|---------------|
| STATE OF OHIO       | : |               |
|                     | : |               |
| Plaintiff-Appellee  | : | JOURNAL ENTRY |
|                     | : |               |
| -VS-                | : | AND           |
|                     | : |               |
| JOSE A. REYES       | : | OPINION       |
|                     | : |               |
| Defendant-Appellant | : |               |

|                                      |              |
|--------------------------------------|--------------|
| Date of Announcement<br>of Decision: | MAY 27, 2004 |
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| Character of Proceeding: | Criminal appeal from<br>Court of Common Pleas<br>Case No. CR-424471 |
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| Judgment: | Vacated and remanded. |
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Date of Journalization:

Appearances:

|                         |  |
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| For Plaintiff-Appellee: | WILLIAM D. MASON<br>Cuyahoga County Prosecutor<br>JOSE TORRES-RAMIREZ, Assistant<br>Prosecuting Attorney<br>1200 Ontario Street<br>Cleveland, Ohio 44113 |
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| For Defendant-Appellant: | ROBERT L. TOBIK<br>Cuyahoga County Public Defender<br>PAUL KUZMINS, Assistant Public<br>Defender<br>100 Lakeside Place<br>1200 West Third Street |
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JAMES J. SWEENEY, J.

{¶1} Defendant-appellant Jose A. Reyes appeals from the trial court's May 21, 2003 judgment entry that modified defendant's previously imposed sentence by increasing the amount of restitution from \$100 to \$21,837.64. Defendant has raised four assignments of error challenging that restitution order, which are attached as Appendix A. The State concedes to the validity of the assigned errors. Accordingly, the first assignment of error is sustained, and the May 21, 2003 restitution order is vacated and this matter is remanded with instructions to impose the original sentence. The remaining assignments of error are overruled as moot. App.R. 12(A)(1)(c).

{¶2} Judgment vacated and remanded.

{¶3} It is ordered that appellant recover of appellee his costs herein taxed.

{¶4} The Court finds there were reasonable grounds for this appeal.

{¶5} It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas to carry this judgment into execution.

{¶6} A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

APPENDIX A

{¶7} "I. The trial court erred in ordering restitution to Darrin Hutchinson and Robert Williams where the appellant was not originally ordered to pay restitution to them at the sentencing hearing.

{¶8} "II. The trial court erred in its determination of the restitution amount owed to Douglas Robinson when it considered more than the 'victim's economic loss.'

{¶9} "III. The trial court erred in ordering restitution above and beyond the amounts actually incurred by the individual victims.

{¶10} "IV. The trial court erred in ordering Mr. Reyes to pay restitution without considering his ability to pay as required by R.C. 2929.19(B)(6).

JAMES J. SWEENEY  
JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's

announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. 112, Section 2(A)(1).