

**IN THE SUPREME COURT OF OHIO
2018**

STATE OF OHIO,

Case No. 2018-705

Plaintiff-Appellant,

On Appeal from the
Franklin County Court of Appeals,
Tenth Appellate District

-vs-

ZACHARY C. ALLEN,

Court of Appeals
Case No. 17AP-296

Defendant-Appellee.

BRIEF OF PLAINTIFF-APPELLANT STATE OF OHIO

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STATEMENT OF FACTS

On August 14, 2016, the Franklin County Grand Jury issued an indictment, charging defendant with seven counts of forgery, in violation of R.C. 2913.31, and seven counts of possession of criminal tools, in violation of R.C. 2923.24. (Trial Rec. 4) On January 5, 2017, while represented by counsel, defendant entered a guilty plea to seven counts of forgery, and the remaining counts were dismissed. (Trial Rec. 39, 40) At the plea hearing, the prosecutor explained that, on July 5, 2016, defendant entered three different Chase Bank branches, on Morse Road Crossing, in Columbus, on Tuller Road, in Dublin, and on Wilson Bridge Road, in Worthington, and cashed four checks, made payable to himself each for \$598.23, on an account belonging to Park Club Apartments. (T. Plea and Bond Hearing, 16-17) On July 19, 2016, defendant went to two Middlefield Banking Company branches, on State Street, in Westerville and on Perimeter Drive, in Dublin, and cashed two checks on an account identified as belonging to Tuttle's Grove Apartments. (*Id.* at 17) And, on July 25, 2016, defendant cashed a check written on an account identified as belonging to Progressive Flooring Services at First Merchants Bank on West Fifth Avenue, in Columbus. (*Id.*) Defendant admitted that he had been given the checks by someone and that he knew the checks were counterfeit. (*Id.*)

On March 13, 2017, defendant appeared for sentencing. (T. 3/13/17, 2) When the State requested that the court order restitution be paid to the banks which cashed the checks that defendant presented, defendant objected, arguing that the banks were "third parties" and would likely be reimbursed by insurance. (*Id.* at 2, 4) The trial court continued the proceedings to ascertain whether insurance proceeds had been paid to the banks. (*Id.* at 5)

At the second sentencing proceeding, on March 27, 2017, the State indicated that the banks did not have insurance for the losses they suffered. (T. 3/27/17, 9) Defendant did not contest the amount of restitution owed for the forged checks. (*Id.* at 4) Instead, he argued that

the banks were “third parties” and were not victims of the forgery offenses. (*Id.* at 4-5, 7-8) The trial court found that the banks were victims of defendant’s forgery offenses and ordered defendant to pay restitution to the banks for the amounts they paid defendant for the forged checks he presented. (*Id.* at 18-19; *see also id.* at 11) The court noted that defendant received money to which he was not entitled, based on uttering fraudulent instruments, and the banks suffered the losses. (*See id.* at 11, 18-19)

Defendant appealed to the Tenth District Court of Appeals, challenging only the order to pay restitution. (App. Rec. 19) On April 19, 2018, the court of appeals issued its decision, reversing and vacating the trial court order requiring defendant to pay restitution to the three banks which cashed the checks defendant presented. (App. Rec. 26; *State v. Allen*, 10th Dist. No. 17AP-296, 2018-Ohio-1529) The court of appeals found that the banks which cashed the checks were not “victims” of defendant’s forgery offenses, but were “third parties that reimbursed the accounts that the money was taken from.” *Allen*, 2018-Ohio-1529, ¶17.

The State filed a discretionary appeal (App. Rec. 29), and on August 1, 2018, this Court accepted jurisdiction over the State’s proposition of law, regarding whether a bank, which cashes a forged check when it is presented for payment, is a victim of a forgery offense, to which restitution may be ordered, under R.C. 2929.18.

ARGUMENT

Proposition of Law: A bank which cashes a forged check, suffers an economic loss, and is a “victim,” under R.C. 2929.18. When a defendant is convicted of forgery, he may be ordered to pay restitution to a bank which cashed the forged check defendant presented.

R.C. 2929.18(A)(1) authorizes a trial court to impose restitution to the victim of the criminal offense for the economic loss suffered, as part of the sentence imposed on an offender for a felony conviction. “A trial court has discretion to order restitution in an appropriate case and may base the amount it orders on a recommendation of the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, but the amount ordered cannot be greater than the amount of economic loss suffered as a direct and proximate result of the commission of the offense.” *State v. Lelain*, 136 Ohio St.3d 248, 2013-Ohio-3093, paragraph one of the syllabus; R.C. 2929.18(A)(1). “Economic loss” is defined as “any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes * * * any property loss * * * incurred as a result of the commission of the offense. * * *” R.C. 2929.01(L).

The United States Supreme Court recognized the importance of restitution as a criminal sanction, when it stated:

Restitution is an effective rehabilitative penalty because it forces the defendant to confront in concrete terms, the harm his actions have caused. Such a penalty will affect the defendant differently than a traditional fine, paid to the State as an abstract and impersonal entity, and often calculated without regard to the harm the defendant caused. Similarly, the direct relation between the harm and the punishment gives restitution a more precise deterrent effect than a traditional fine.
* * *

(Citation omitted.) *Kelly v. Robinson*, 479 U.S. 36, 49, n.10, 107 S.Ct. 353, 93 L.Ed.2d 216 (1986).

Because criminal proceedings focus on the State's interests in rehabilitation and punishment, rather than the victim's desire for compensation, we conclude that restitution orders imposed in such proceedings are 'for the benefit of' the State. Similarly, they are not assessed 'for ... compensation' of the victim. The sentence following a criminal conviction necessarily considers the penal and rehabilitative interests of the State.

Id. at 53 (ellipse sic) (footnote omitted), quoting 11 U.S.C. §523(a)(7). Thus, "restitution is an integral part of an offender's sentence, not only as punishment, but for rehabilitation as well."

State v. McKenney, 8th Dist. No. 79033, 2001 WL 587493, *2 (May 31, 2001).

In this case, defendant pleaded guilty to seven counts of forgery, in violation of R.C. 2913.31, which provides, as relevant here, that "[n]o person, with purpose to defraud, or knowing that [he] is facilitating a fraud, shall * * * (3) utter, or possess with purpose to utter, any writing, that [defendant] knows to have been forged." The forgery counts of the indictment alleged that the defendant, on the date specified, in Franklin County, and in violation of R.C. 2913.31, "with purpose to defraud, or knowing that he was facilitating a fraud, did utter, or possess with purpose to utter, a writing, to wit: check * * * , dated * * * , in the amount of * * * , payable to Zachary C. Allen, that Zachary Curtis Allen knew to have been forged." (Trial Rec.

4) And there was no dispute that, on three different dates, defendant went to multiple bank branches around central Ohio and presented forged checks for payment, knowing that the checks were forged and for which defendant received money to which he was not entitled from the banks. As will be explained, the court of appeals' conclusion, that the banks were not "victims" of defendant's forgery offenses, but were "third parties," because they "reimbursed" the bank customers' accounts, is flawed for multiple reasons and must therefore be reversed.

First, the banks were "victims," because they suffered the economic losses resulting from defendant's criminal conduct, as they paid the forged checks defendant presented, reimbursed the customers' accounts, and were therefore harmed by defendant's conduct. *State v. Estes*, 3rd

Dist. No. 13-11-14, 2011-Ohio-5740, ¶¶14-18. *See also State v. Abdullah*, 2nd Dist. No. 24503, 2012-Ohio-5405, ¶9 (businesses bore economic losses from robberies); *State v. Kiser*, 2nd Dist. No. 24419, 2011-Ohio-5551, ¶29, (Fain, J., concurring) (noting that PNC bank would be victim of credit card fraud if it had never charged customer for fraudulent charges or had credited customer's account back before customer incurred out of pocket losses from unauthorized purchases); *State v. Stump*, 4th Dist. No. 13CA10, 2014-Ohio-1487, ¶18 (Harsha, J. dissenting) (restitution to bank not subject to mandatory prohibition in R.C. 2929.18(A)(1) or elsewhere and was authorized by law for theft conviction, where defendant used bank customer's account information to make unauthorized transfer of funds). Also, the banks were the objects of defendant's criminal offenses, because they paid the forged checks defendant presented. *See State v. Pietrangelo*, 11th Dist. No. 2003-L-125, 2005-Ohio-1686, ¶15 (defining victim).

In *Estes*, the Third District Court of Appeals determined that a bank which cashed forged checks on an existing line of credit was a "victim[] who directly suffered the economic loss as a result of [defendant's] wrongdoing, and [was] not [a] third party seeking reimbursement for money paid out to an injured party, such as in the case of a typical insurance settlement." *Estes*, 2011-Ohio-5740, ¶14. In *Estes*, the bank which cashed the forged checks paid funds to the defendant and therefore suffered an economic loss as a result of defendant's forgeries. *Id.* at ¶17. Thus, the bank was a victim which suffered the economic loss as a direct result of defendant's criminal conduct, and no abuse of discretion was demonstrated based on the order to pay restitution to Fifth Third Bank. *Id.* at ¶18.

In an analogous case, the Eighth District Court of Appeals upheld an order of restitution to an insurance company in an insurance fraud case. *State v. Hinson*, 8th Dist. No. 87132, 2006-Ohio-3831, ¶¶51-56. The appellate court determined that the insurer was not merely a third

party seeking reimbursement for its payment on an insurance policy, but was a victim of the insurance fraud and within the bounds of former R.C. 2929.18(A). *Id.* at ¶53. And the court recognized that to hold otherwise would be to reward the defendant for her felonious acts. *Id.* See also *State v. Christian*, 2d Dist. No. 25256, 2014-Ohio-2672, ¶112, vacated on other grounds, 143 Ohio St.3d 417, 2015-Ohio-3374 (insurance company may be victim in insurance fraud prosecution); *State v. Anglen*, 8th Dist. 102022, 2015-Ohio-4070, ¶¶32-33 (upholding restitution to lending businesses which suffered economic losses and were therefore victims of defendant's theft-related offenses). Similarly, here, the multiple banks defendant entered and presented fraudulent checks to, and from which he received money that did not belong to him, were victims of his multiple forgeries, when they cashed the forged checks defendant presented for payment.

Here, the appellate court acknowledged that a "victim" is someone harmed by a crime or wrong, *Allen*, 2018-Ohio-1529, ¶15, but concluded that the banks which cashed the forged checks defendant presented were not victims, even though there was no dispute that the banks suffered the economic losses of defendant's criminal offenses. This incongruous result cannot withstand scrutiny. See generally *In re M.A.*, 2016-Ohio-1161, ¶¶24, 29-31, 61 N.E.3d 630 (11th Dist.) (victim is "object of crime"; upholding restitution to school district for expenses incurred in responding to bomb threat underlying inducing panic offense); *State v. Simmons*, 2017-Ohio-1348, ¶¶54-61, 88 N.E.3d 651 (10th Dist.) (restitution may be ordered for actual loss caused by crime; upholding order to pay restitution to Ohio Dept. of Medicaid but reversing restitution amount). Again, here, the banks paid the checks defendant presented and actually suffered the losses incurred by defendant's criminal offenses; the banks were harmed by defendant's criminal conduct and thus were victims of the forgery offenses he committed. They were therefore proper

recipients of an order to pay restitution and were not third-parties as the court of appeals erroneously concluded.

The appellate court's analysis appears to be grounded in an erroneous premise that there can only be one victim of a crime, as the court concluded that the account holders/bank customers were the victims in this case. *Allen*, 2018-Ohio-1529, ¶¶16-17. In fact, however, it cannot seriously be disputed that an offender's commission of a crime can result in harm to more than one person or entity, and, as a result, there can certainly be multiple victims of a criminal offense. *See Abdullah*, 2012-Ohio-5405, ¶7 (businesses and employees identified as victims of robberies). The appellate court's analysis that, only the account holders/bank customers were victims of defendant's forgery offenses, to the exclusion of the banks, simply does not hold true. *See Allen*, 2018-Ohio-1529, ¶15 (quoting Black's Law Dictionary definition of victim as a person¹ harmed by a crime or wrong). Because there can be more than one person or entity harmed by an offender's commission of a crime, there can be more than one victim, and thus, more than one person or entity to whom restitution can, and should, be ordered, under R.C. 2929.18(A). Thus, the court of appeals' analysis that the only victims of defendant's forgeries were the account holders/bank customers, to the exclusion of the banks, ignores this basic truth.

The appellate court's conclusion, that only the account holders, not the banks, were victims of defendant's forgeries, where the banks actually suffered the losses, is flawed for

¹ A corporation is a person. *See Union Sav. Ass'n v. Home Owners Aid, Inc.*, 23 Ohio St.2d 60, 62, 262 N.E.2d 558 (1970) ("A corporation is an artificial person, created by the General Assembly and deriving its power, authority and capacity from the statutes."); *Youngstown Sheet & Tube Co. v. City of Youngstown*, 91 Ohio App.3d 431, 435, 108 N.E.2d 571 (7th Dist. 1951) (private corporations regarded as persons within meaning of constitution); *Patel v. AT&T*, 7th Dist. No. 94-B-49, 1997 WL 39907 (Jan. 30, 1997) (noting corporations enjoy various constitutional rights). Thus, a business may be a proper recipient of an order to pay restitution. *See, e.g., Estes* (restitution to Fifth Third Bank); *Abudllah* (restitution to Rite Aid and Key Bank); *Anglen* (restitution to lending businesses).

several other reasons. For example, a bank retains a property interest in customers' deposits, as was recently recognized by the United States Supreme Court, in *Shaw v. United States*, ___ U.S. ___, 137 S.Ct. 462, 196 L.Ed.2d 373 (2016). There, the Supreme Court considered whether a bank or a bank depositor was the victim of an alleged violation of the federal bank fraud statute. *Shaw v. United States*, 137 S.Ct. 462. The Supreme Court addressed an analogous argument, as defendant made here, that a bank customer/account holder is the victim of a bank fraud, to the exclusion of the bank. In rejecting Shaw's argument, the Supreme Court first noted that "the basic flaw" in the defendant's argument was grounded "in the fact that the bank, too, had property rights in [the account holder's] bank account." *Id.* at 466.

When a customer deposits funds, the bank ordinarily becomes the owner of the funds and consequently has the right to use the funds as a source of loans that help the bank earn profits (though the customer retains the right, for example, to withdraw funds.) * * * Sometimes, the contract between the customer and the bank provides that the customer retains ownership of the funds and the bank merely assumes possession. * * * But even then the bank is like a bailee, say, a garage that stores a customer's car. * * * And as bailee, the bank can assert the right to possess the deposited funds against all the world but for the bailor (or, say, the bailor's authorized agent). This right, too, is a property right. * * * Thus, [defendant's] scheme to cheat [the account holder] was also a scheme to deprive the bank of certain bank property rights.

(Citations omitted.) *Id.*

Similarly, here, each of the three separate banks which defendant targeted had property interests in the account holders/customers' deposits. When the banks paid the forged checks defendant presented and later replaced the stolen funds, the banks were harmed and suffered economic losses, and were therefore proper recipients of restitution, under R.C. 2929.18(A). *Estes*, 2011-Ohio-5740, ¶¶14-18; *Abdullah*, 2012-Ohio-5405, ¶9. *See also Kiser*, 2011-Ohio-5551, ¶29, (Fain, J., concurring); *Stump*, 2014-Ohio-1487, ¶18 (Harsha, J. dissenting).

Also, the banks were liable to their customers for the economic losses resulting from defendant's criminal offenses, as R.C. 1304.30(A) provides that an item is "properly payable"

from an account if it is authorized by a customer and in accordance with any agreement between the bank and the customer. The Official Comment to R.C. 1304.30 provides that an item containing a forged drawer's signature or forged indorsement is *not* properly payable. *See also Ed Stinn Chevrolet, Inc. v. National City Bank*, 28 Ohio St.3d 221, 227, 503 N.E.2d 524 (1986); *Natl. City Bank v. Rhoades*, 150 Ohio App.3d 75, 779 N.E.2d 799 (2nd Dist. 2002). Therefore, “[a] bank that pays an item against a customer’s account that is not properly payable is *required to recredit* the customer’s account in the amount of the item.” (Emphasis added.) *Id.* at ¶39. And any failure to pay as directed by the customer renders the bank strictly liable for any loss sustained. *Id.* at ¶40. Thus, the banks which cashed the forged checks defendant presented were liable to the account holders/bank customers for paying items that were not “properly payable” and were certainly victims of defendant’s forgeries.

The court of appeals also erroneously concluded that the banks were not victims to which restitution could be ordered, but were “third parties,” because the banks “reimbursed” the account holders’ accounts. But the banks actually suffered the losses resulting from defendant’s criminal conduct—giving defendant cash to which he was not entitled when he entered the banks and presented forged items for payment. That the banks later returned the stolen funds to the customers’ accounts should not be dispositive to the determination of whether they suffered harm and were therefore victims, under R.C. 2929.18(A). “[T]he purpose of R.C. 2929.18(A) is to require the offender to reimburse the victim – or whatever entity paid the victim — for the economic loss suffered.” *State v. Bartholomew*, 119 Ohio St.3d 359, 2008-Ohio-4080, ¶12.

The lower court cited four cases as support for its analysis that the banks that cashed the forged checks defendant presented were third-parties and therefore not entitled to restitution. *Allen*, 2018-Ohio-1529, ¶16, citing *State v. Harris*, 2015-Ohio-4412, 46 N.E.3d 198 (6th Dist.),

State v. Crum, 5th Dist. No. 12CAA 08 0056, 2013-Ohio-903, *Stump*, 2014-Ohio-1487, and *Kiser*, 2011-Ohio-5551. However, none of these cases are analogous or persuasive to the instant case, and the court's reliance on them was misplaced.

For example, in *Harris*, 2015-Ohio-4412, ¶3, the defendant was convicted of attempted engaging in a pattern of corrupt activity and theft, based on skimming credit cards and using cloned credit cards to purchase goods from retailers; the victim named in the indictment was the true owner of the credit card information, who was reimbursed by the bank for the loss. Here, the indictment alleged that defendant uttered or possessed with intent to utter forged instruments, which he presented to the banks for payment. There were no victims specifically identified in the indictment. (Trial Rec. 4) The *Harris* decision is not persuasive.

In *Kiser*, 2011-Ohio-5551, ¶2, the defendant's theft conviction was based on stealing the drivers' licenses and credit cards of two overnight guests then making unauthorized purchases, and in *Stump*, 2014-Ohio-1487, ¶2, the defendant's theft conviction was based on using one bank customer's account information to transfer funds from that customer's account to the defendant's account, then withdrawing those funds. In both of these instances the appellate courts determined that the banks were third parties that reimbursed the victims. Notably, in *Kiser*, at ¶29, one judge wrote a concurring opinion identifying circumstances under which the case may have been decided differently. And the *Stump* court majority opinion questioned the logic of the statutory scheme prohibiting restitution to third parties. *Stump*, at ¶12, n.3. One judge dissented from the decision. *Id.* at ¶18.

In *Crum*, 2013-Ohio-903, ¶2, the defendant's theft conviction was based on his use of a company credit card at the place where he had been employed, Thorson's Greenhouse. The *Crum* court actually upheld the restitution order to the owner of the business, Douglas Thorson,

but remanded for the trial court to ascertain whether the victim had been reimbursed by a third party for the credit card losses. *Id.* at ¶¶9-14. In remanding, the appellate court stated that “[i]f a victim is reimbursed by a third-party, the victim has not suffered an economic loss. Third-parties are ‘not statutorily entitled to recover the costs of its decision to reimburse’ the victim.” *Id.* at ¶12. Nonetheless, the court upheld the decision ordering restitution to the business. *Id.* at ¶11.

Thus, none of these cases support the lower court’s determination that the banks in this case were not victims of defendant’s forgeries, but were third parties to which restitution could not be ordered, where defendant entered the banks, presented forged checks, and received cash that did not belong to him from the banks. Indeed, restitution orders would rarely be upheld under the appellate court’s strained “third party” “reimbursement” analysis. *See State v. Nitsche*, 2016-Ohio-3170, ¶79, 66 N.E.3d 135 (8th Dist.) (restitution for homicide victim’s funeral expenses); *State v. Huston*, 12th Dist. No. CA2010-12-020, 2011-Ohio-3912, ¶16 (restitution to parents for costs incurred for victim’s medical tests); *State v. Cartwright*, 12th Dist. No. CA2016-11-018, 2017-Ohio-7212 (restitution to OEPA for remediation caused by open dumping); *Bartholomew*, 119 Ohio St.3d 359 (restitution to OAG reparations fund that reimbursed victim’s mother for counseling expenses). And although lower courts in Ohio often employ a “third party” analysis, *see Allen*, 2018-Ohio-1529, ¶16, the analysis breaks down when applied to entities that actually suffered the losses inflicted, as the banks in this case did.

But even if the banks were “third parties,” R.C. 2929.18 should not be construed to bar all restitution to third parties. *Bartholomew*, 119 Ohio St.3d 359, ¶14. “R.C. 2929.18(A)(1) reveals that it does not contain a mandatory prohibition against restitution to third parties. Instead, courts have relied on the deletion of the language authorizing payments to third parties to conclude that such payments are no longer permitted.” *State v. Burns*, 6th Dist. Nos. L-11-

1192, L-11-1198, 2012-Ohio-4191, ¶20. *See also State v. Christman*, 12th Dist. Nos. CA2009-03-007, CA2009-03-008, 2009-Ohio-6555, ¶18 (noting R.C. 2929.18(A)(1) authorizes restitution to permissible third parties only); *Cartwright*, 2017-Ohio-7212, ¶¶17-18. *See also* R.C. 2929.11(A) (court shall consider need for “making restitution to the victim of the offense, the public, or both.”). The June 2004 amendment to R.C. 2929.18(A) repealed language that *required* restitution to third parties, but did not prohibit it. *Bartholomew*, 119 Ohio St.3d 359, ¶15. Barring restitution to all “third parties,” even those who have been harmed by and suffered losses from the defendant’s criminal conduct, is unwarranted and should not be sanctioned by this Court, as it promotes the unjust enrichment of the wrongdoer, *see State v. Thornton*, 2017-Ohio-4037, ¶23, 91 N.E.3d 359 (1st Dist.) (Mock, J., concurring) (defendant should not reap benefit of illegal activity), as occurred here. (T. 3/17/17, 11)

Finally, it is noteworthy that, while Marsy’s Law is not binding in this case, because the offenses preceded the effective date of the amendment, it is binding moving forward. Article I, Section 10a of the Ohio Constitution now provides, in pertinent part: “(A) To secure for victims justice and due process throughout the criminal and juvenile justice systems, a victim shall have the following rights, which shall be protected in a manner no less vigorous than the rights afforded to the accused: * * * (7) to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim; * * * .” It defines “victim” as “a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act.” Ohio Constitution, Article I, Section 10a(D). Thus, Marsy’s Law contains a more expansive definition of a crime victim, and there now exists a constitutional right to full and timely mandatory restitution to the person harmed by the commission of the offense. Under Marsy’s Law, any victim harmed by

fraudulent, criminal behavior, as occurred here when the banks incurred the economic losses resulting from defendant's presenting forged checks for payment, will be constitutionally entitled to full and timely restitution, including the banks in this case which sustained the losses from defendant's forgeries. As it stands, the appellate court decision contravenes Marsy's Law.

Because the trial court properly ordered defendant to pay restitution to the banks he defrauded, when he received cash that did not belong to him for forged checks he presented, and because the banks sustained the economic losses of defendant's offenses, the appellate court's decision reversing the trial court's restitution order should be reversed.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court reverse the judgment of the Tenth District Court of Appeals reversing the restitution order imposed by the trial court.²

Respectfully submitted,

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bfarnbacher@franklincountyohio.gov

Counsel for Plaintiff-Appellant

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was delivered via electronic mail, this day, September 5th, 2018, to ROBERT D. ESSEX, 373 South High Street-12th Fl., Columbus, Ohio 43215, at rdessex@franklincountyohio.gov, Counsel for Defendant-Appellee.

/s/ Barbara A. Farnbacher
Barbara A. Farnbacher 0036862
Assistant Prosecuting Attorney

² If this Court *sua sponte* contemplates a decision upon an issue not briefed, the State respectfully requests notice of that intention and requests an opportunity to brief the issue before this Court makes its decision. *Miller Chevrolet v. Willoughby Hills*, 38 Ohio St.2d 298, 301 & n. 3, 313 N.E.2d 400 (1974); *State v. 1981 Dodge Ram Van*, 36 Ohio St.3d 168, 170, 522 N.E.2d 524 (1988).

ORIGINAL

IN THE SUPREME COURT OF OHIO
2018

18-0705

STATE OF OHIO,

Case No.

Plaintiff-Appellant,

On Appeal from the
Franklin County Court
of Appeals, Tenth
Appellate District

-vs-

ZACHARY C. ALLEN,

Court of Appeals
Case No. 17AP-296

Defendant-Appellee.

NOTICE OF APPEAL OF PLAINTIFF-APPELLANT STATE OF OHIO

RON O'BRIEN 0017245
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and

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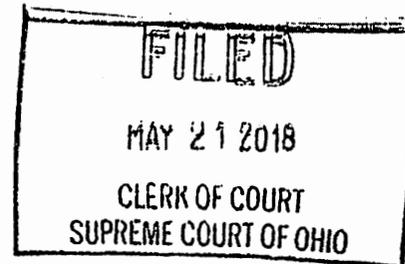
COUNSEL FOR PLAINTIFF-APPELLANT

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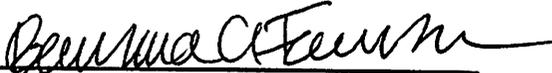
NOTICE OF APPEAL OF PLAINTIFF-APPELLANT STATE OF OHIO

Plaintiff-appellant, the State of Ohio, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Franklin County Court of Appeals, Tenth Appellate District, entered in *State v. Allen*, 10th Dist. No. 17AP-296, on April 19, 2018, and from the journal entry entered in this case, on April 29, 2018. This appeal is being timely filed pursuant to S.Ct.Prac.R. 7.01(A)(1)(a).

The State of Ohio invokes the jurisdiction of the Supreme Court on the grounds that the case presents substantial constitutional questions, presents questions of public or great general interest, and involves a felony and warrants the granting of leave to appeal.

Respectfully submitted,

RON O'BRIEN 0017245
Prosecuting Attorney


BARBARA A. FARNBACHER 0036862
(Counsel of Record)
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Counsel for Plaintiff-Appellant

CERTIFICATE OF SERVICE

This is to certify that, pursuant to S.Ct.Prac.R. 3.11(A)(1)(a) and (A)(3), a copy of the foregoing was hand delivered this day, May 21st, 2018, to ROBERT D. ESSEX, 373 South High Street-12th Fl., Columbus, Ohio 43215, Counsel for Defendant-Appellee, and sent by regular U.S. Mail to Timothy Young, Ohio Public Defender, at 250 E. Broad St., Suite 1400, Columbus, Ohio, 43215.



BARBARA A. FARNBACHER

0036862

Assistant Prosecuting Attorney

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 17AP-296
v.	:	(C.P.C. No. 16CR-4178)
	:	
Zachary C. Allen,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on April 19, 2018, appellant's assignment of error is sustained, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is reversed, and the restitution order is vacated in accordance with law consistent with said decision. Costs assessed against appellee.

KLATT, SADLER, and BRUNNER, JJ.

/S/JUDGE
By: Judge William A. Klatt

Franklin County Ohio Court of Appeals Clerk of Courts- 2018 Apr 29 4:32 PM-17AP000296

Tenth District Court of Appeals

Date: 04-29-2018
Case Title: STATE OF OHIO -VS- ZACHARY C ALLEN
Case Number: 17AP000296
Type: JEJ - JUDGMENT ENTRY

So Ordered

The image shows a handwritten signature in cursive script that reads "William A. Klatt". The signature is written in black ink and is positioned over a circular, textured seal or stamp.

/s/ Judge William A. Klatt

Electronically signed on 2018-Apr-29 page 2 of 2

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 17AP-296
 : (C.P.C. No. 16CR-4178)
 Zachary C. Allen, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on April 19, 2017

On brief: *Ron O'Brien*, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee. **Argued:** *Barbara A. Farnbacher*.

On brief: *Yeura R. Venters*, Public Defender, and *Robert D. Essex*, for appellant. **Argued:** *Robert D. Essex*.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Defendant-appellant, Zachary C. Allen, appeals from the March 28, 2017 decision of the Franklin County Court of Common Pleas ordering him to pay restitution to three different banks. Because the banks were not the victims of the underlying offenses, we reverse.

{¶ 2} Allen was indicted on seven counts of forgery, in violation of R.C. 2913.31, all felonies of the fifth degree, and seven counts of possession of criminal tools, in violation of R.C. 2923.24, all felonies of the fifth degree. On January 5, 2017, he withdrew his not guilty plea and entered a guilty plea to the seven counts of forgery.

{¶ 3} At the plea hearing, the state represented that on July 5, 2016, Allen entered three different Chase Banks and cashed four checks. All of the checks were made payable to Allen for the amount of \$598.23 on an account identified as belonging to Park Club Apartments. On July 19, 2016, Allen went to the Middlefield Banking Company in Westerville, Ohio, and in Dublin, Ohio. At these banks, he cashed two checks made payable to himself on an account identified as belonging to Tuttle's Grove Apartments. Also, on July 25, 2016, Allen cashed a check written on an account identified as belonging to Progressive Flooring Services at First Merchants Bank. Allen admitted in an interview that he had been given the checks by someone else, that he went to the banks at that person's request, and that he knew the checks were counterfeit.

{¶ 4} In accordance with the plea agreement, the trial court entered a nolle prosequi on the seven counts of possession of criminal tools. The parties also agreed to jointly recommend to the trial court that Allen be placed on community control. The plea agreement further contained a provision that stated: "I understand that the Court may also require me to pay costs, restitution, day fines, and/or costs of all sanctions imposed upon me. I understand that the imposition of financial sanctions would constitute a civil judgment against me. (R.C. 2929.18)."

{¶ 5} On March 13, 2017, Allen appeared before the trial court for sentencing. The state requested that Allen be ordered to pay restitution to Middlefield Banking Company, First Merchants Bank, and Chase Bank. Allen objected because the banks were not the account holders on the checks but third parties. When the issue of whether the banks would be reimbursed by insurance arose, the court continued the hearing.

{¶ 6} At the March 27, 2017 sentencing hearing, Allen continued to object to being ordered to pay restitution. He did not dispute the amount of the forged checks but argued there was no evidence that the accounts for Progressive Flooring, Park Club Apartments, and Tuttle's Grove Apartments had been reimbursed by the banks. If the banks had reimbursed the accounts, then Allen contended the reimbursement made the banks third parties and not eligible to receive restitution pursuant to R.C. 2929.18.

{¶ 7} The state responded by noting that the indictment does not list a specific victim for the forgery counts. It represented that the banks did not have insurance coverage

for the losses they suffered. Because the checks were presented to the banks and the banks paid out the money, the state contended that the banks were the victims.

{¶ 8} The trial court sentenced Allen to a period of community control for three years. The trial court did not impose a fine and waived court costs. However, the trial court ordered Allen to pay restitution to Middlefield Banking Company in the amount of \$1,750.48; to First Merchants Bank in the amount of \$675.13; and to Chase Bank in the amount of \$2,392.92. The trial court found that because these were forgery offenses, the banks were the victims as they had the utterances directed at them.

{¶ 9} Allen appealed that decision, asserting the following assignment of error:

The trial court committed reversible error by ordering Defendant-Appellant to pay restitution to banks at which he had cashed checks he had forged.

{¶ 10} Allen argues that the trial court erred when it ordered him to pay restitution to the three banks. He contends that the banks were not the victims. As a result, the imposition of restitution to the banks violated R.C. 2929.18(A)(1).

{¶ 11} A sentencing court has discretion to order restitution for the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. *State v. Lelain*, 136 Ohio St.3d 248, 2013-Ohio-3093, ¶ 3. On review of a trial court's imposition of restitution as part of a felony sentence, we apply the standard set forth in R.C. 2953.08(G)(2)(b), inquiring whether the imposition of restitution is clearly and convincingly contrary to law. *State v. Richmond*, 10th Dist. No. 17AP-366, 2018-Ohio-147, ¶ 8; *State v. Thornton*, 1st Dist. No. C-160501, 2017-Ohio-4037, ¶ 12; *State v. Brown*, 2d Dist. No. 26945, 2017-Ohio-9225, ¶ 25. However, when the issue is to whom restitution can be awarded, we apply a de novo standard of review. *State v. Johnson*, 10th Dist. No. 14AP-336, 2014-Ohio-4826, ¶ 5; *State v. Cartwright*, 12th Dist. No. CA2016-11-018, 2017-Ohio-7212, ¶ 11; *State v. Shifflet*, 4th Dist. No. 13CA23, 2015-Ohio-4250; *State v. Harris*, 6th Dist. No. WD-14-069, 2015-Ohio-4412, ¶ 8; *State v. Maurer*, 8th Dist. No. 103162, 2016-Ohio-1380; and *In re M.A.*, 11th Dist. No. 2015-L-075, 2016-Ohio-1161.

{¶ 12} R.C. 2929.18 provides in pertinent part:

(A) Except as otherwise provided in this division and in addition to imposing court costs pursuant to section 2947.23 of the Revised Code, the court imposing a sentence upon an offender for a felony may sentence the offender to any financial

sanction or combination of financial sanctions authorized under this section or, in the circumstances specified in section 2929.32 of the Revised Code, may impose upon the offender a fine in accordance with that section. Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense.

{¶ 13} The statute sets forth four possible payees to whom a trial court may order restitution to be paid: the victim, the adult probation department that serves the county on behalf of the victim, the clerk of courts, or another agency designated by the court. The restitution order must be based on the victim's economic loss. "Economic loss" is "any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense." R.C. 2929.01(L). As the banks are not an adult probation department, clerk of court, or another agency designated by the court such as the reparations fund, the banks must be "victims" in order to be entitled to an order of restitution.

{¶ 14} R.C. 2929.18 does not define "victim." "The Ohio Revised Code contains a number of different definitions for 'victim' at various junctures in the Code, but at no point is there promulgated a generally applicable definition that applies to the entire Revised Code or even to the state's criminal code, found in Title 29." *State v. Orms*, 10th Dist. No. 14AP-750, 2015-Ohio-2870, ¶ 15. Some Ohio appellate districts have relied on R.C. 2930.01(H)(1) to determine who qualifies as a victim for purposes of restitution. *See, e.g., Thornton* at ¶ 15; *State v. Hunter*, 2d Dist. No. 25521, 2013-Ohio-3759; *Harris* at ¶ 8; and

Maurer at ¶ 19. That section defines "victim" as "[a] person who is identified as the victim of a crime or specified delinquent act in a police report or in a complaint, indictment, or information that charges the commission of a crime and that provides the basis for the criminal prosecution." R.C. 2930.01(H)(1). Other appellate districts have declined to use this definition outside of the Victim's Rights, R.C. Chapter 2930, as R.C. 2930.01 specifies that the definitions apply to that chapter only. *Cartwright* at ¶ 13 (R.C. 2930.01(H)(1)'s definition is limited in scope and has no application in determining who is a victim for purposes of restitution under R.C. 2929.18(A)(1)); *State v. Ritchie*, 174 Ohio App.3d 582, 2007-Ohio-6577 (5th Dist.) (declined to use R.C. 2930.01(H)(1) to define "victim" for purposes of R.C. 2953.36); *State v. Goudy*, 7th Dist. No. 15 BE 0046, 2016-Ohio-5193. In this case, the indictment does not identify a victim for any of the forgery counts.

{¶ 15} Black's Law Dictionary defines "victim" broadly as "[a] person harmed by a crime, tort, or other wrong." Black's Law Dictionary (10th Ed.2014). The state argues that because the banks cashed the checks Allen presented for payment, they suffered the economic losses as a result of the forgeries. The state relies on *State v. Estes*, 3d Dist. No. 13-11-14, 2011-Ohio-5740, as support for its contention that a bank that cashes a forged check is the victim of the offense. In *Estes*, the defendant used his ex-wife's information to apply for two credit cards in her name. He then used the credit cards to make various purchases. The defendant also used courtesy checks on his ex-wife's existing line of credit to cause monies to be deposited into his bank account. The Third District Court of Appeals determined that the banks were the victims who directly suffered economic loss because the purchases and deposits were funded by the banks. There is no indication that the defendant's ex-wife was required to pay the credit cards or that any money was taken from her accounts.

{¶ 16} In this case, however, the representation made to the trial court was that the accounts of Tuttle's Grove Apartments, Park Club Apartments, and Progressive Flooring were reimbursed by the banks. Thus, it was the account holders, not the banks, who suffered the direct economic harm from Allen's actions. The majority of appellate courts that have addressed similar scenarios have determined that a bank that reimburses its customer is a third-party and cannot be awarded restitution from a defendant. *Harris* at ¶ 8; *State v. Crum*, 5th Dist. No. 12 CAA 08 0056, 2013-Ohio-903, ¶ 12; *State v. Stump*, 4th

Dist. No. 13CA10, 2014-Ohio-1487, ¶ 12; *State v. Kiser*, 2d Dist. No. 24419, 2011-Ohio-5551, ¶ 16.¹

{¶ 17} We agree with these appellate districts. Although the banks cashed the forged checks, the economic loss was initially suffered by Tuttle's Grove Apartments, Park Club Apartments, and Progressive Flooring. The banks are third-parties that reimbursed the accounts that the money was taken from. As such, the banks are not the victims of Allen's offenses and therefore are not entitled to an order of restitution. The sole assignment of error is sustained.

{¶ 18} For the foregoing reasons, we reverse the judgment of the Franklin County Court of Common Pleas and vacate the order to pay restitution to Middlefield Banking Company, First Merchants Bank, and Chase Bank.

Judgment reversed; restitution order vacated.

SADLER and BRUNNER, JJ., concur.

¹ Although not relevant in this case, we note that a defendant can agree to pay third-party restitution as part of a plea agreement. *Harris* at ¶ 8; *State v. Johnson*, 2d Dist. No. 24288, 2012-Ohio-1230, ¶ 14; *Maurer* at ¶ 25.

**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CRIMINAL DIVISION**

State Of Ohio, : **TERMINATION NO. 13**
 :
Plaintiff, :
 :
vs. : **Case No. 16CR 4178**
 :
Zachary C. Allen : **Judge Holbrook**
 :
Defendant, :

JUDGMENT ENTRY
(Community Control)

On **January 5, 2017**, the State of Ohio was represented by Assistant Prosecuting Attorney **LINDSAY MILLER** and the Defendant was represented by Attorney **RENA PASSAS**. The Defendant, after being advised of his rights pursuant to Crim. R. 11, entered a plea of **GUILTY** to the **Counts One, Three, Five, Seven, Nine, Eleven and Thirteen** of the Indictment, to wit: **FORGERY**, in violation of **Section 2913.31** of the Ohio Revised Code, **ALL** being a **Felony** of the **Fifth Degree**. Upon application of the Assistant Prosecuting Attorney, and for good cause shown, it is hereby **ORDERED** that a nolle prosequi be entered for **COUNTS TWO, FOUR, SIX, EIGHT, TEN, TWELVE AND FOURTEEN** of the Indictment.

The Court found the Defendant guilty of the charges to which the plea was entered, received a pre-sentence investigation, and proceeded to sentencing.

On **March 27, 2017**, a sentencing hearing was held pursuant to R.C. 2929.19. The State of Ohio was represented by Assistant Prosecuting Attorney **MICHAEL HUGHES** and the Defendant was represented by Attorney **RENA PASSAS**. The Assistant Prosecuting Attorney and the Defendant's attorney **did** jointly recommend a sentence.

The Court afforded counsel an opportunity to speak on behalf of the Defendant and addressed the Defendant personally affording **him** an opportunity to make a statement on **his** own behalf in the form of mitigation and to present information regarding the existence or non- existence of the factors the Court has considered and weighed.

The Court hereby imposes a period of Community Control for **THREE (3) YEARS**. In addition to the provisions of R.C. 2951.02 and the general requirements of the Franklin County Department of Community Control, as authorized by the Common Pleas Court and as given to the Defendant in writing, the Court imposes the following Community Control Sanctions (See R.C. 2929.15, R.C. 2929.16 and R.C. 2929.17): **Defendant shall be placed on Intensive Specialized Control/Chemical Dependency Supervision with Kendra Davis as his assigned Probation Officer. Defendant shall submit to a Netcare evaluation and complete any recommended treatment. Defendant to have drug evaluation and treatment, on an out-patient**

basis, follow aftercare recommendations and participate in random drug / urine screens. Defendant shall complete Cognitive Behavior Program.

The Court has considered the Defendant's present and future ability to pay a fine and financial sanction and docs, pursuant to R.C. 2929.18, hereby render judgment for the following fine and/or financial sanctions: **No fine imposed. Court costs are waived. Defendant is further Ordered to pay restitution as follows: (1) Middlefield Banking Company, 17 N. State Street, Westerville, OH 43081 the amount of \$1,750.48; (2) First Merchants Bank, Attn: Dave Benjamin, 3650 Olentangy River Road, Columbus, OH 43220 the amount of \$675.13; and (3) Chase Bank, Attn: Chase Remittance Processing, 2550 Westfield Drive, Suite 1L-6025, Elgin, IL 60124 the amount of \$2,392.92.**

The total fine and financial sanction judgment is **\$4,818.53**.

After the imposition of Community Control, the Court pursuant to R.C. 2929.19(B)(5) notified the Defendant, orally and in writing, what could happen if he violates Community Control. The Court further indicated that if the Defendant violates Community Control he will receive a prison term of **Eighty-Four (84) Months** to be served at the Ohio Department of Rehabilitation and Correction.

The Court finds that the Defendant has **nineteen (19) days** of jail credit and hereby certifies the time to the Ohio Department of Rehabilitation and Correction.



Holbrook, Michael, JUDGE

Copies to:
Prosecuting Attorney: MICHAEL HUGHES
Counsel for Defendant: RENA PASSAS
Case No. 16CR 4178

Court Disposition

Case Number: 16CR004178

Case Style: STATE OF OHIO -VS- ZACHARY C ALLEN

Case Terminated: 13 - Guilty or No Contest Plea to Reduced Charge

Final Appealable Order: No

2929.18 Financial sanctions - felony.

(A) Except as otherwise provided in this division and in addition to imposing court costs pursuant to section 2947.23 of the Revised Code, the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section or, in the circumstances specified in section 2929.32 of the Revised Code, may impose upon the offender a fine in accordance with that section. Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.

If the court imposes restitution, the court may order that the offender pay a surcharge of not more than five per cent of the amount of the restitution otherwise ordered to the entity responsible for collecting and processing restitution payments.

The victim or survivor may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(2) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision, or as described in division (B)(2) of this section to one or more law enforcement agencies, with the amount of the fine based on a standard percentage of the offender's daily income over a period of time determined by the court and based upon the seriousness of the offense. A fine ordered under this division shall not exceed the maximum conventional fine amount authorized for the level of the offense under division (A)(3) of this section.

(3) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision when appropriate for a felony, or as described in division (B)(2) of this section to one or more law enforcement agencies, in the following amount:

- (a) For a felony of the first degree, not more than twenty thousand dollars;
- (b) For a felony of the second degree, not more than fifteen thousand dollars;
- (c) For a felony of the third degree, not more than ten thousand dollars;
- (d) For a felony of the fourth degree, not more than five thousand dollars;
- (e) For a felony of the fifth degree, not more than two thousand five hundred dollars.

(4) A state fine or costs as defined in section 2949.111 of the Revised Code.

(5)

(a) Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including the following:

(i) All or part of the costs of implementing any community control sanction, including a supervision fee under section 2951.021 of the Revised Code;

(ii) All or part of the costs of confinement under a sanction imposed pursuant to section 2929.14, 2929.142, or 2929.16 of the Revised Code, provided that the amount of reimbursement ordered under this division shall not exceed the total amount of reimbursement the offender is able to pay as determined at a hearing and shall not exceed the actual cost of the confinement;

(iii) All or part of the cost of purchasing and using an immobilizing or disabling device, including a certified ignition interlock device, or a remote alcohol monitoring device that a court orders an offender to use under section 4510.13 of the Revised Code.

(b) If the offender is sentenced to a sanction of confinement pursuant to section 2929.14 or 2929.16 of the Revised Code that is to be served in a facility operated by a board of county commissioners, a legislative authority of a municipal corporation, or another local governmental entity, if, pursuant to section 307.93, 341.14, 341.19, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code and section 2929.37 of the Revised Code, the board, legislative authority, or other local governmental entity requires prisoners to reimburse the county, municipal corporation, or other entity for its expenses incurred by reason of the prisoner's confinement, and if the court does not impose a financial sanction under division (A)(5)(a)(ii) of this section, confinement costs may be assessed pursuant to section 2929.37 of the Revised Code. In addition, the offender may be required to pay the fees specified in section 2929.38 of the Revised Code in accordance with that section.

(c) Reimbursement by the offender for costs pursuant to section 2929.71 of the Revised Code.

(B)

(1) For a first, second, or third degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code, the sentencing court shall impose upon the offender a mandatory fine of at least one-half of, but not more than, the maximum statutory fine amount authorized for the level of the offense pursuant to division (A)(3) of this section. If an offender alleges in an affidavit filed with the court prior to sentencing that the offender is indigent and unable to pay the mandatory fine and if the court determines the offender is an indigent person and is unable to pay the mandatory fine described in this division, the court shall not impose the mandatory fine upon the offender.

(2) Any mandatory fine imposed upon an offender under division (B)(1) of this section and any fine imposed upon an offender under division (A)(2) or (3) of this section for any fourth or fifth degree felony violation of any provision of Chapter 2925., 3719., or 4729. of the Revised Code shall be paid to law enforcement agencies pursuant to division (F) of section 2925.03 of the Revised Code.

(3) For a fourth degree felony OVI offense and for a third degree felony OVI offense, the sentencing court shall impose upon the offender a mandatory fine in the amount specified in division (G)(1)(d) or (e) of section 4511.19 of the Revised Code, whichever is applicable. The mandatory fine so imposed shall be disbursed as provided in the division pursuant to which it is imposed.

(4) Notwithstanding any fine otherwise authorized or required to be imposed under division (A)(2) or (3) or (B)(1) of this section or section 2929.31 of the Revised Code for a violation of section 2925.03 of the Revised Code, in addition to any penalty or sanction imposed for that offense under section 2925.03 or sections 2929.11 to 2929.18 of the Revised Code and in addition to the forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code, the court that sentences an offender for a violation of section 2925.03 of the Revised Code may impose upon the offender a fine in addition to any fine imposed under division (A)(2) or (3) of this section and in addition to any mandatory fine imposed under division (B)(1) of this section. The fine imposed under division (B)(4) of this section shall be used as provided in division (H) of section 2925.03 of the Revised Code. A fine imposed under division (B)(4) of this section shall not exceed whichever of the following is applicable:

(a) The total value of any personal or real property in which the offender has an interest and that was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of section

2925.03 of the Revised Code, including any property that constitutes proceeds derived from that offense;

(b) If the offender has no interest in any property of the type described in division (B)(4)(a) of this section or if it is not possible to ascertain whether the offender has an interest in any property of that type in which the offender may have an interest, the amount of the mandatory fine for the offense imposed under division (B)(1) of this section or, if no mandatory fine is imposed under division (B)(1) of this section, the amount of the fine authorized for the level of the offense imposed under division (A)(3) of this section.

(5) Prior to imposing a fine under division (B)(4) of this section, the court shall determine whether the offender has an interest in any property of the type described in division (B)(4)(a) of this section. Except as provided in division (B)(6) or (7) of this section, a fine that is authorized and imposed under division (B)(4) of this section does not limit or affect the imposition of the penalties and sanctions for a violation of section 2925.03 of the Revised Code prescribed under those sections or sections 2929.11 to 2929.18 of the Revised Code and does not limit or affect a forfeiture of property in connection with the offense as prescribed in Chapter 2981. of the Revised Code.

(6) If the sum total of a mandatory fine amount imposed for a first, second, or third degree felony violation of section 2925.03 of the Revised Code under division (B)(1) of this section plus the amount of any fine imposed under division (B)(4) of this section does not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section 2929.31 of the Revised Code, the court may impose a fine for the offense in addition to the mandatory fine and the fine imposed under division (B)(4) of this section. The sum total of the amounts of the mandatory fine, the fine imposed under division (B)(4) of this section, and the additional fine imposed under division (B)(6) of this section shall not exceed the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section 2929.31 of the Revised Code. The clerk of the court shall pay any fine that is imposed under division (B)(6) of this section to the county, township, municipal corporation, park district as created pursuant to section 511.18 or 1545.04 of the Revised Code, or state law enforcement agencies in this state that primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender pursuant to division (F) of section 2925.03 of the Revised Code.

(7) If the sum total of the amount of a mandatory fine imposed for a first, second, or third degree felony violation of section 2925.03 of the Revised Code plus the amount of any fine imposed under division (B)(4) of this section exceeds the maximum statutory fine amount authorized for the level of the offense under division (A)(3) of this section or section 2929.31 of the Revised Code, the court shall not impose a fine under division (B)(6) of this section.

(8)

(a) If an offender who is convicted of or pleads guilty to a violation of section 2905.01, 2905.02, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code also is convicted of or pleads guilty to a specification of the type described in section 2941.1422 of the Revised Code that charges that the offender knowingly committed the offense in furtherance of human trafficking, the sentencing court shall sentence the offender to a financial sanction of restitution by the offender to the victim or any survivor of the victim, with the restitution including the costs of housing, counseling, and medical and legal assistance incurred by the victim as a direct result of the offense and the greater of the following:

(i) The gross income or value to the offender of the victim's labor or services;

(ii) The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the "Federal Fair Labor Standards Act of 1938," 52 Stat. 1060, 20 U.S.C. 207, and state labor laws.

(b) If a court imposing sentence upon an offender for a felony is required to impose upon the offender a financial sanction of restitution under division (B)(8)(a) of this section, in addition to that financial sanction of restitution, the court may sentence the offender to any other financial sanction or combination of financial sanctions authorized under this section, including a restitution sanction under division (A)(1) of this section.

(9) In addition to any other fine that is or may be imposed under this section, the court imposing sentence upon an offender for a felony that is a sexually oriented offense or a child-victim oriented offense, as those terms are defined in section 2950.01 of the Revised Code, may impose a fine of not less than fifty nor more than five hundred dollars.

(10) **[Added by 131st General Assembly File No. TBD, HB 60]** For a felony violation of division (A) of section 2921.321 of the Revised Code that results in the death of the police dog or horse that is the subject of the violation, the sentencing court shall impose upon the offender a mandatory fine from the range of fines provided under division (A) (3) of this section for a felony of the third degree. A mandatory fine imposed upon an offender under division (B)(10) of this section shall be paid to the law enforcement agency that was served by the police dog or horse that was killed in the felony violation of division (A) of section 2921.321 of the Revised Code to be used as provided in division (E)(1)(b) of that section.

(10) **[Added by 131st General Assembly File No. TBD, HB 359]** In addition to any other fine that is or may be imposed under this section, the court imposing sentence upon an offender for any of the following offenses that is a felony may impose a fine of not less than seventy nor more than five hundred dollars, which shall be transmitted to the treasurer of state to be credited to the address confidentiality program fund created by section 111.48 of the Revised Code:

(a) Domestic violence;

(b) Menacing by stalking;

(c) Rape;

(d) Sexual battery;

(e) Trafficking in persons;

(f) A violation of section 2905.01, 2905.02, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code, if the offender also is convicted of a specification of the type described in section 2941.1422 of the Revised Code that charges that the offender knowingly committed the offense in furtherance of human trafficking.

(C)

(1) Except as provided in section 2951.021 of the Revised Code, the offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section to pay the costs incurred by a county pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code to the county treasurer. The county treasurer shall deposit the reimbursements in the sanction cost reimbursement fund that each board of county commissioners shall create in its county treasury. The county shall use the amounts deposited in the fund to pay the costs incurred by the county pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code.

(2) Except as provided in section 2951.021 of the Revised Code, the offender shall pay reimbursements imposed upon the offender pursuant to division (A)(5)(a) of this section to pay the costs incurred by a municipal corporation pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code to the treasurer of the municipal corporation. The treasurer shall deposit the reimbursements in a special fund that shall be established in the treasury of each municipal corporation. The municipal corporation shall use the amounts deposited in the fund to pay the costs incurred by the municipal corporation pursuant to any sanction imposed under this section or section 2929.16 or 2929.17 of the Revised Code or in operating a facility used to confine offenders pursuant to a sanction imposed under section 2929.16 of the Revised Code.

(3) Except as provided in section 2951.021 of the Revised Code, the offender shall pay reimbursements imposed pursuant to division (A)(5)(a) of this section for the costs incurred by a private provider pursuant to a sanction

imposed under this section or section 2929.16 or 2929.17 of the Revised Code to the provider.

(D) Except as otherwise provided in this division, a financial sanction imposed pursuant to division (A) or (B) of this section is a judgment in favor of the state or a political subdivision in which the court that imposed the financial sanction is located, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed pursuant to division (A)(5)(a)(ii) of this section upon an offender who is incarcerated in a state facility or a municipal jail is a judgment in favor of the state or the municipal corporation, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of reimbursement imposed upon an offender pursuant to this section for costs incurred by a private provider of sanctions is a judgment in favor of the private provider, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of a mandatory fine imposed under division (B) (10) of this section that is required under that division to be paid to a law enforcement agency is a judgment in favor of the specified law enforcement agency, and the offender subject to the financial sanction is the judgment debtor. A financial sanction of restitution imposed pursuant to division (A) (1) or (B)(8) of this section is an order in favor of the victim of the offender's criminal act that can be collected through a certificate of judgment as described in division (D)(1) of this section, through execution as described in division (D)(2) of this section, or through an order as described in division (D)(3) of this section, and the offender shall be considered for purposes of the collection as the judgment debtor. Imposition of a financial sanction and execution on the judgment does not preclude any other power of the court to impose or enforce sanctions on the offender. Once the financial sanction is imposed as a judgment or order under this division, the victim, private provider, state, or political subdivision may do any of the following:

(1) Obtain from the clerk of the court in which the judgment was entered a certificate of judgment that shall be in the same manner and form as a certificate of judgment issued in a civil action;

(2) Obtain execution of the judgment or order through any available procedure, including:

(a) An execution against the property of the judgment debtor under Chapter 2329. of the Revised Code;

(b) An execution against the person of the judgment debtor under Chapter 2331. of the Revised Code;

(c) A proceeding in aid of execution under Chapter 2333. of the Revised Code, including:

(i) A proceeding for the examination of the judgment debtor under sections 2333.09 to 2333.12 and sections 2333.15 to 2333.27 of the Revised Code;

(ii) A proceeding for attachment of the person of the judgment debtor under section 2333.28 of the Revised Code;

(iii) A creditor's suit under section 2333.01 of the Revised Code.

(d) The attachment of the property of the judgment debtor under Chapter 2715. of the Revised Code;

(e) The garnishment of the property of the judgment debtor under Chapter 2716. of the Revised Code.

(3) Obtain an order for the assignment of wages of the judgment debtor under section 1321.33 of the Revised Code.

(E) A court that imposes a financial sanction upon an offender may hold a hearing if necessary to determine whether the offender is able to pay the sanction or is likely in the future to be able to pay it.

(F) Each court imposing a financial sanction upon an offender under this section or under section 2929.32 of the Revised Code may designate the clerk of the court or another person to collect the financial sanction. The clerk or other person authorized by law or the court to collect the financial sanction may enter into contracts with one or more public agencies or private vendors for the collection of, amounts due under the financial sanction imposed pursuant to this section or section 2929.32 of the Revised Code. Before entering into a contract for the collection of amounts due from an offender pursuant to any financial sanction imposed pursuant to this section or section 2929.32 of the Revised Code, a court shall comply with sections 307.86 to 307.92 of the Revised Code.

(G) If a court that imposes a financial sanction under division (A) or (B) of this section finds that an offender satisfactorily has completed all other sanctions imposed upon the offender and that all restitution that has been ordered has been paid as ordered, the court may suspend any financial sanctions imposed pursuant to this section or section 2929.32 of the Revised Code that have not been paid.

(H) No financial sanction imposed under this section or section 2929.32 of the Revised Code shall preclude a victim from bringing a civil action against the offender.

Amended by 131st General Assembly File No. TBD, HB 60, §1, eff. 9/13/2016.

Amended by 131st General Assembly File No. TBD, HB 359, §1, eff. 9/8/2016.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No. 25, HB 5, §1, eff. 9/23/2011.

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