

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 2018-0705
Plaintiff-Appellee,	:	On Appeal From the
vs.	:	Franklin County Court of Appeals
	:	Tenth Appellate District
ZACHARY ALLEN,	:	Court of Appeals Case No.
Defendant-Appellant.	:	17AP-296

MERIT BRIEF OF APPELLEE ZACHARY ALLEN

Yeura Venters (0014879) – Franklin County Public Defender

-and-

Robert D. Essex 0061661
373 South High Street/12th Floor
Columbus, Ohio 43215
Office: (614) 525-8799
E-mail: rdessex@franklincountyohio.gov

Attorney for Defendant-Appellee

Ronald O'Brien (0017245) – Franklin County Prosecuting Attorney

-and-

Barbara Farnbacher 0036862
373 South High Street/14th Floor
Columbus, Ohio 43215
Office: (614) 525-3555

Attorney for Plaintiff-Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF FACTS1

LAW AND ARGUMENT2

STATE’S 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

Response to Proposition of Law: A bank which cashes a forged check and reimburses the account holder is not a victim under R.C. 2929.18 and is therefore not entitled to an order of restitution.

CONCLUSION.....12

CERTIFICATE OF SERVICE12

TABLE OF AUTHORITIES

CASES

Allen v. Totes/Isotoner Corp., 123 Ohio St.3d 216, 2009-Ohio-4231, 915 N.E.2d 622.....11

Cafaro Leasing Co., v. K-M I Assocs., 11th Dist. Trumbull No. 2006-T-0115, 2007-Ohio-672311

Fortner v. Thomas, 22 Ohio St.2d 13, 257 N.E.2d 371 (1970)11

In re M.A., 2016-Ohio-1161, 61 N.E.3d 630 (11th Dist.).....8

Shaw v. United States, ____ U.S. ____, 137 S.Ct. 462, 196 L.Ed.2d 373 (2016)6

State v. Abdullah, 2nd Dist. Montgomery No. 24503, 2012-Ohio-54058

State v. Allen, 10th Dist. No. 17AP-296, 2018-Ohio-1529..... passim

State v. Bartholomew, 119 Ohio St.3d 359, 2008-Ohio-40809

State v. Christian, 2d. Dist. Montgomery No 25256, 2012-Ohio-2672.....8

State v. Christian, 143 Ohio St.3d 417, 2015-Ohio-3374, 38 N.E.3d 8888

State v. Colon, 185 Ohio App.3d 671, 2010-Ohio-492, 925 N.E.2d 212 (2nd Dist.)3

State v. Estes, 3d Dist. Seneca No. 13-11-14, 2011-Ohio-57407

State v. Gunnell, 10th Dist. No. 13AP-90, 2013-Ohio-392810

State v. Harris, 6th Dist. Wood No. WD-14-069, 2015-Ohio-4412.....4,6,10

State v. Hinson, 8th Dist. No. 87132, 2006-Ohio-38318

State v. Johnson, 10th Dist. 14AP-336, 2014-Ohio-4826.....3

State v. Kanniard, 3d Dist. Marion No. 9-07-21 , 2008-Ohio-518.....2

State v. Kiser, 2d Dist. Montgomery No. 24419, 2011-Ohio-55513,4,8

State v. Labiaux, 7th Dist. Harrison No. 16 HA 0016, 2017-Ohio-7760.....10

State v. Matthews, 2nd Dist. Greene No. 2015-CA-73, 2016-Ohio-5055.....10

<i>State v. Maurer</i> , 8 th Dist. Cuyahoga No. 103162, 2016-Ohio-1380	4
<i>State v. Perkins</i> , 190 Ohio App.3d 328, 2010-Ohio-5058, 941 N.E.2d 1227 (3d. Dist.)	3
<i>State v. Radebaugh</i> , 3d Dist. Marion No. 9-14-13, 2015-Ohio-1186.....	2
<i>State v. Samuels</i> , 4 th Dist. Washington No. 03CA8, 2003-Ohio-6106	7
<i>State v. Stump</i> , 4 th Dist. Athens No. 13CA10, 2014-Ohio-1487.....	4
<i>State v. Wickline</i> , 3 rd Dist. Logan No. 8-10-20, 2011-Ohio-3004	3

STATUTES

R.C. 1301.103(A).....	10
R.C. 1304.30(A).....	10
R.C. 2929.18	passim
18 U.S.C. 1344.....	7

OTHER AUTHORITIES

Ohio Constitution, Article I, Section 10a.....	11
--	----

STATEMENT OF FACTS

The appellee accepts the state's Statement of Facts with the following addition. The state notes that Mr. Allen was indicted for seven counts of forgery in violation of O.R.C. 2913.31 and seven counts of possession of criminal tools in violation of O.R.C. 2923.24. Mr. Allen pled guilty to the seven forgery counts. None of these counts contained a "victim" in the language of the indictment. (Trial Rec. # 4)

LAW AND ARGUMENT

Response to Proposition of Law: A bank which cashes a forged check and reimburses the account holder is not a victim under R.C. 2929.18 and is therefore not entitled to an order of restitution.

The State of Ohio in its merit brief initially argues that the United States Supreme Court has recognized the importance of restitution as a criminal sanction. (State’s brief at 3) This case is not about policy arguments. This case is about whether a bank qualifies as a victim under R.C. 2929.18. The Tenth District found in *State v. Allen*, 10th Dist. No. 17AP-296, 2018-Ohio-1529 that a bank is not a “victim” under R.C. 2929.18 as have numerous other Ohio courts.

Ohio law allows the court to order restitution to the victim of the crime, or any survivor of the victim, for the amount of the victim’s economic loss. R.C. 2929.18(A)(1). “Although the former version of the statute permitted restitution to third-parties, that language was removed by the Ohio Legislature from the current version. *State v. Dull*, 3d Dist. Seneca No. 13-12-33, 2013-Ohio-1395. ‘Pursuant to the plain language of R.C. 2929.18(A)(1), restitution may not be ordered payable to a third party.’ *Id.* at ¶11. See also *State v. Didion*, 173 Ohio App.3d 130, 2007-Ohio-4494, 877 N.E.2d 725 (3d Dist.) at ¶29.” *State v. Radebaugh*, 3d Dist. Marion No. 9-14-13, 2015-Ohio-1186, ¶7; *State v. Kanniard*, 3d Dist. Marion No. 9-07-21, 2008-Ohio-518, ¶16-17. Interestingly, the prior version of R.C. 2929.18 that was replaced on June 1, 2004 specifically distinguished between victims and third parties. R.C. 2929.18(A)(1) effective as of January 1, 2004 provided, in pertinent part, that financial sanctions could include

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. 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. ***The order may include a requirement that reimbursement be made to third parties for amounts paid to or on behalf of the victim or any survivor of the victim for economic loss resulting from the offense...***

(Emphasis added) The above section clearly indicates the legislative intent was that third parties were separate entities and were not “victims.” The current version of the statute is substantially similar to the previous version except for the removal of the emphasized portion. R.C. 2929.18(A)(1) There certainly was nothing in the new version that somehow indicated a legislative intent to make third parties “victims.”

The state asks this Court to take the position that the banks were victims because they suffered economic losses as a result of the defendant’s conduct. (State’s brief at 4) This is simply not the case. While certainly true that more than one person can suffer losses as a result of a defendant’s actions, the mere fact that restitution to third parties was removed from the restitution statute is indicative of the legislature’s intent that not everyone who sustains a loss is entitled to restitution. Ohio law simply does not permit restitution to every entity who has suffered a loss as a result of a crime. If every entity that suffered a loss as a result of a defendant’s conduct were entitled to restitution, insurance companies would still be entitled to restitution when they pay out monies pursuant to an insurance contract. It is well established that this is not the case. *State v. Johnson*, 10th Dist. 14AP-336, 2014-Ohio-4826, ¶ 7; *State v. Wickline*, 3rd Dist. Logan No. 8-10-20, 2011-Ohio-3004, ¶ 10; *Didion*, *supra*, at ¶ 29, *State v. Perkins*, 190 Ohio App.3d 328, 2010-Ohio-5058, ¶ 19, 941 N.E.2d 1227 (3d. Dist.); *State v. Colon*, 185 Ohio App.3d 671, 675, 2010-Ohio-492, 925 N.E.2d 212 (2nd Dist.).

In *State v. Kiser*, 2d Dist. Montgomery No. 24419, 2011-Ohio-5551, the defendant pled no contest to one count of theft and one count of forgery over the fraudulent use of a PNC Bank card. Kiser’s attorney objected to the court’s ordering restitution to PNC Bank. The Second District ruled

The victim’s in the instant case are Hargrove and Sorrell. While it is

undisputed that PNC reimbursed Sorrell for the amount that was unlawfully charged to her credit card, PNC was not identified in the indictment as the victim of Kiser's crimes. Moreover, PNC is a third-party who is not statutorily entitled to recover the costs of its decision to reimburse [the victim] for the loss she suffered as a result of Kiser's crimes. Moreover, PNC was not the object of Kiser's offenses. Simply put, the victims of the thefts are the people named in the indictment whose money Kiser stole. Accordingly, PNC is a third-party who is not statutorily entitled to recover the costs of its decision to reimburse Sorrell for the loss she suffered as a result of Kiser's crimes.

Id. at ¶ 16.

In *State v. Stump*, 4th Dist. Athens No. 13CA10, 2014-Ohio-1487, Community Bank inadvertently sent another customer's banking information to the appellant. Stump then used that information to make an online funds transfer to her own account and subsequently withdrew those funds from an ATM machine. The Fourth District stated

In the case sub judice, the victim is not Community Bank. Rather the victim is the individual from whose account appellant transferred money into her account. Community Bank is a third-party that reimbursed its customer the money stolen from his account. Ohio courts have consistently held that under the current version of R.C. 2929.18(A)(1), third-parties are not "victims" for whom restitution can be ordered. *State v. Dull*, at 3rd Dist. Seneca No. 13-12-33, 2013-Ohio-1395, ¶11; *State v. Crum*, 5th Dist. Delaware No. 12CAA080056, 2013-Ohio-903, at ¶12; *State v. Kelly*, 4th Dist. Pickaway Nos. 10CA28 & 10CA29, 2011-Ohio-4902, at ¶7. A bank that reimburses a customer who has been a victim of a crime is a third party. As such, the bank cannot be awarded restitution from a defendant who stole from that bank's customer. See *Crum*, supra at ¶12; *Kiser*, supra at ¶17.

Id. at ¶ 12. It is important to note that the neither the bank nor the accountholder are actually listed in the indictment as victims. (Trial Rec. # 4) "[W]here a bank reimburses a customer-victim but the bank is not named in the indictment, it is not a 'victim' under R.C. 2929.18(A)(1)." *State v. Maurer*, 8th Dist. Cuyahoga No. 103162, 2016-Ohio-1380, ¶ 25; *State v. Harris*, 6th Dist. Wood No. WD-14-069, 2015-Ohio-4412, ¶ 8.

The state incorrectly analyzes the Tenth District's opinion by stating "[t]he 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." (State's brief at 7) Clearly, this is not the case and the court of appeals opinion holds nothing of the sort. Multiple people can be victims of a robbery or burglary. Joint account holders can be victims of a forgery. This returns to the state's incorrect premise that every person/entity harmed by an offense is a "victim" within the meaning of R.C. 2929.18. Ohio courts have consistently held this is not the case.

The state has interpreted the Court of Appeals decision as acknowledging "that a 'victim' is someone harmed by a crime or wrong." (State's brief at 6) This is an incomplete reading of the opinion. The court initially noted that R.C. 2929.18 does not define "victim."

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 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 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.

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).

Allen at ¶ 14-15. The Court of Appeals only recognized that that was the definition in Black's Law Dictionary. It did not accept that as a definition for "victim" in this case and most certainly, given the holding, did not find that every person or entity who has suffered a loss is a "victim" for purposes of R.C. 2929.18(A)(1).

The court in *State v. Harris, supra*, did use the definition of "victim" found in R.C. 2930.01(H)(1) yet still came to the conclusion that a bank which reimburses a customer is not a "victim."

The question of who constitutes a "victim" under the statute is a question of law that is reviewed de novo. *State v. Hunter*, 2d Dist. Montgomery No. 25521, 2013-Ohio-3759, ¶ 7. A "victim" is defined by R.C. 2930.01(H)(1) 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 or delinquency proceeding and subsequent proceedings to which this chapter makes reference.

Therefore, the victim is only the person named in the indictment as the victim. *Hunter*. If the named victim has been reimbursed, he has not suffered an economic loss and, therefore, is not entitled to reimbursement. *State v. Crum*, 5th Dist. Delaware No. 12 CAA 08 0056, 2013-Ohio-903, ¶ 12. Furthermore, a bank which reimburses a customer/victim is not a "victim" of the crime and, therefore, the trial court cannot require restitution to be paid to the bank. [Citations omitted]

Id. at ¶ 8. Again, neither the bank nor the accountholder were listed as victims in the indictment. (Trial Rec. # 4)

The state argues in its brief that a bank is a victim because a bank retains a property interest in customer's deposit accounts based on *Shaw v. United States*, ____ U.S. ____, 137 S.Ct. 462, 196 L.Ed.2d 373 (2016), a case interpreting the federal bank fraud statute. This argument was not raised in the court of appeals. *Shaw* has not been cited by *any* state court and has only been cited by Federal Courts of Appeals. The very text of the federal bank fraud statute

shows why *Shaw* is inapplicable to this case. 18 U.S.C. 1344 provides that

Whoever knowingly executes, or attempts to execute, a scheme or artifice –

(1) to defraud a financial institution; or

(2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;

Shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

This text of this statute specifically makes the bank an “object” of the crime. This is not the case with R.C. 2929.18. This argument also ignores many Ohio cases and the state’s own suggestion that the victim is the “object of the crime.” (State’s brief at 6) “A ‘victim’ is generally defined as the person who was ‘the object’ of the crime – e.g. the victim of the robbery is the person who was robbed.” *State v. Samuels*, 4th Dist. Washington No. 03CA8, 2003-Ohio-6106, ¶ 5.

The state has consistently relied on *State v. Estes*, 3d Dist. Seneca No. 13-11-14, 2011-Ohio-5740 as support for its position that a bank that cashes a forged check is the victim of an offense. *Estes* is inapposite to this case and the Court of Appeals recognized as such. *Estes* involved a defendant who used his ex-wife’s information to obtain two credit cards in her name. He used these cards to make purchases. He also wrote checks on his ex-wife’s existing line of credit to deposit money into his bank account. The Court of Appeals distinguished this case by noting that the banks were victims because they directly suffered the economic loss. No money was withdrawn from any account held by Estes’ ex-wife nor was there any indication she actually had to pay the credit cards. *Allen* at ¶ 15. As such, the bank could not be argued to be a third-party as is the case here.

Many of the cases cited by the state certainly show what is not in dispute, that multiple entities may suffer losses as a result of a defendant’s criminal conduct. However, many are

inapposite to this matter in that the bank or other entity a court awarded restitution to was actually an “object” of the defendant’s offenses. The state cites *State v. Hinson*, 8th Dist. No. 87132, 2006-Ohio-3831 for the proposition that an insurance company can be awarded restitution. *Hinson* is inapplicable to the case at hand at it was an insurance fraud case and the insurance company was in fact a victim. The court held that restitution was proper as “the insurer was not merely a third party seeking reimbursement for its payment on Hinson’s behalf, but it was also a victim of the insurance fraud.” *Id.* at ¶ 53. The Montgomery County Prosecutor actually asked the Second District to apply the *Hinson* reasoning in the *Kiser, supra*, case. The Second District rejected the state’s analysis. *Kiser, supra*, at ¶ 15.

The state also cites to *State v. Christian*, 2d. Dist. Montgomery No 25256, 2014-Ohio-2672, vacated on other grounds, 143 Ohio St.3d 417, 2015-Ohio-3374, 38 N.E.3d 888, for the proposition that an insurance company may be a victim in an insurance fraud prosecution (State’s brief at 6) but fails to mention that the court stated “[w]e have held that insurance companies, banks, and other institutions are not proper third-party payees of restitution, because they are not ‘victims’ under R.C. 2929.18(A)(1).” *Id.* at ¶ 112.

In *State v. Abdullah*, 2nd Dist. Montgomery No. 24503, 2012-Ohio-5405, (State’s brief at 5), the Second District upheld an award of restitution to a Rite-Aid pharmacy and Key Bank. However, that case involved actual robberies of those entities. Clearly, Rite-Aid and Key Bank would be victims under R.C. 2929.18. The *Abdullah* court actually recognized *Kiser, supra*, and distinguished it by noting *Kiser* involved the reimbursement for amounts charged on a stolen card and how that situation was different from a robbery where the pharmacy and the bank were truly “victims.” *Abduallah, supra*, at ¶ 7-8.

In *In re M.A.*, 2016-Ohio-1161, 61 N.E.3d 630 (11th Dist.), cited by the state at page 6 of

its brief, the Lake County Juvenile Court ordered restitution to a school district, the police and fire departments for the costs incurred by M.A. calling in a bomb threat to a school. The state notes correctly that the restitution to the Wickliffe School District was upheld as it was the “object” of the bomb threat. However, the state fails to mention that the restitution orders to the police and fire departments were reversed even though they suffered losses as a result of the crime. The court found that the police and fire departments were not “victims” despite testimony from the fire chief and a detective from the police department regarding the expenses incurred by those departments. “Here, it cannot be said that the Police and Fire Departments were ‘victims.’ While they responded to the bomb threat, it was not made against them and was not the type of crime discussed above where actual harm was done to the Departments themselves, through damage or theft. They merely performed services in aiding the public and/or investigating crime, which is well within their ordinary duties.” *Id.* at ¶ 21. While counsel certainly acknowledges that the police and fire departments were not in a similar position as Huntington Bank was in this case, *M.A.* is further authority that not every entity that suffers a loss as a result of a crime is entitled to an order of restitution.

While it is certainly true that restitution was not barred to all third-parties when R.C. 2929.18 was amended in 2004 to remove restitution to third parties, eligible third parties are limited to those provided in 2929.18(A)(1). That section permits payments to the victim or any survivor of the victim and if the court imposes restitution, it may be ordered to be paid to the victim, the court’s adult probation department, the clerk of courts, or to another agency designated by the court. The state cites this court’s opinion in *State v. Bartholomew*, 119 Ohio St.3d 359, 2008-Ohio-4080 for the proposition that, even if the banks were third parties, not all third parties are barred from recovering restitution. (State’s brief at 11) *Bartholomew* dealt with

a court ordering payments to the victims of crime reparations fund created by R.C. 2743.191 and whether that fell under the other “agency designated by the court” in R.C. 2929.18(A)(1). This court, in upholding the order, did not create any new third parties to which a court could order restitution. The court simply found that the reparations fund fell under one of the specifically enumerated third parties in R.C. 2929.18(A)(1). *Id.* at 363-364. See also *Harris* at ¶ 9. (“[*Bartholomew*] found that the fund was a state ‘agency designated by the court’ and therefore was an eligible recipient for the payment of restitution under R.C. 2929.18(A).”) The state has not said which of the allowable third parties under R.C. 2929.18 the banks should fall under.

The state also now argues that this court should apply the provisions of Ohio’s Uniform Commercial Code. The state has suggested that because a bank is responsible under the U.C.C. and R.C. 1304.30(A) for reimbursing a customer’s account when an item is not properly payable, the bank is a victim under 2929.18(A). The state did not argue this in the Tenth District nor did it file a motion for reconsideration in that court on that basis. The state also did not argue this in its memorandum in support of jurisdiction in the Ohio Supreme Court.

Numerous courts have found that the U.C.C. has no relevance at least in the context of criminal subject matter jurisdiction. “Appellant’s case is criminal in nature. ‘The UCC has no bearing on criminal subject matter jurisdiction.’” *State v. Labiaux*, 7th Dist. Harrison No 16 HA 0016, 2017-Ohio-7760, ¶ 19; *State v. Matthews*, 2nd Dist. Greene No. 2015-CA-73, 2016-Ohio-5055, ¶ 8; *State v. Gunnell*, 10th Dist. No. 13AP-90, 2013-Ohio-3928, ¶ 7. The state cites no authority, because there appears to be none, that the Uniform Commercial Code and Ohio’s version located in Title 13 have any applicability to R.C. 2929.18. R.C. 1301.103(A) provides that the purposes and policies of the U.C.C. are

- (1) To simplify, clarify, and modernize the law governing commercial transactions;

- (2) To permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
- (3) To make uniform the law among the various jurisdictions.

Simply put, the Title 13 and the Uniform Commercial Code have no relevance to this court's determination of whether or not Huntington Bank is a "victim" under R.C. 2929.18(A).

Another argument made by the state that was not raised in the Court of Appeals is that somehow Marsy's Law (Ohio Constitution, Article I, Section 10a) should be a factor in this Court's decision. The state in its brief states "[a]s it stands, the appellate court decision contravenes Marsy's Law" which is in direct conflict with the state's own statement that "it is noteworthy that, while Marsy's Law is not binding on this case, because the offenses preceded the effective date of the amendment, it is binding moving forward." (State's brief at 13 and 12) Because Marsy's Law went into effect after these offenses took place, it is not applicable and has no bearing whatsoever in this matter. This Court does not issue advisory opinions which is essentially what the State is asking this Court to do. If the state is not asking this Court for an advisory opinion, it is unclear why the state has even raised the issue in a case where it is undisputed that Marsy's Law does not apply. "It has been long and well established that it is the duty of every judicial tribunal to decide actual controversies between parties legitimately affected by specific facts and to render judgments which can be carried into effect. It has become settled judicial responsibility for courts to refrain from giving opinions on abstract propositions and to avoid the imposition by judgment of premature declarations or advice upon potential controversies." *Fortner v. Thomas*, 22 Ohio St.2d 13, 14, 257 N.E.2d 371 (1970). See also *Cafaro Leasing Co., v. K-M I Assocs.*, 11th Dist. Trumbull No. 2006-T-0115, 2007-Ohio-6723, ¶ 27; *Allen v. Totes/Isotoner Corp.*, 123 Ohio St.3d 216, 218, 2009-Ohio-4231, ¶ 10, 915 N.E.2d 622 (O'Donnell, J. concurring). ("It is well-settled law that this court will not issue

advisory opinions.”)

The State has essentially asked this Court to adopt a position that any party who suffers an economic loss as a result of a crime is a victim and is entitled to an order of restitution. The numerous cases cited above show that it is well established law in Ohio that not every party who suffers an economic loss is entitled to restitution under R.C. 2929.18. As such, the decision of Tenth District reversing the trial court’s order of restitution should be affirmed.

CONCLUSION

For the foregoing reasons, Appellee respectfully urges this Court to affirm the decision of the Tenth District Court of Appeals.

Respectfully submitted,

Yeura Venters (0014879)
Franklin County Public Defender

BY: /s Robert D. Essex
Robert D. Essex 0061661
Counsel for Defendant-Appellant
373 South High Street/12th Floor
Columbus, Ohio 43215
Office: (614) 525-8799
rdessex@franklincountyohio.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Brief of Defendant-Appellee was served upon the following by Electronic Mail this 25th day October, 2018:

Barbara Farnbacher
Counsel for Plaintiff-Appellee
Assistant Franklin County Prosecuting Attorney
373 South High Street/14th Floor

Columbus, Ohio 43215

BY: /s Robert D. Essex
Robert D. Essex 0061661
Counsel for Defendant-Appellant