

IN THE SUPREME COURT
IN AND FOR THE STATE OF ARIZONA

STATE OF ARIZONA,

Respondent/Appellee,

v.

RICHARD ALLEN REED,

Petitioner/Appellant.

No. CR-20-0385-PR

Arizona Court of Appeals
No. 1 CA-CR 17-0620

Maricopa County Superior Court
No. CR2015-117844-001

PETITIONER'S SUPPLEMENTAL BRIEF

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ISSUE PRESENTED FOR REVIEW

Are a victim's private attorney fees recoverable as criminal restitution, particularly considering [A.R.S. § 13-4437\(A\)](#), and if so, to what extent?

STATEMENT OF FACTS AND THE CASE

The State's restitution request in advance of the hearing was for \$23,784,80. (I. 74, at 1, 5). The State's request also warned that the amount of restitution sought would increase if Mr. Reed asserted his (due process) right to a hearing. (*Id.* at 5). At the hearing, however, the prosecutor's request concerned only the amount requested by the victim compensation bureau, \$3,083.61, whereas victim's counsel sought additional restitution for moving expenses, lost wages, and attorney's fees. (R.T. 7/21/17 at 12, 30-36). The victim never alleged that she retained counsel to remedy a harm directly caused by the voyeurism offense outside the course of the criminal proceedings. Rather, the record establishes that the victim did not seek restitution for attorney's fees until November 2015, almost six months after the direct complaint was filed and over nine months after the date of the alleged offense. (I. 74, Ex. A; I. 1).

During the restitution hearing, Mr. Reed stipulated to \$3,083.61 in restitution. (I. 127 at 2). This stipulation was entered after Mr. Reed's counsel was provided with a "redacted packet from the victim's compensation bureau" from an email sent on July 19, 2017. (Ex. 6). The State failed to include that packet in its motion for restitution, originally filed on April 16, 2017. (R.T. 7/21/17 at 15-16).

The trial court requested that victim's counsel, Craig Keller, present additional evidence supporting the remainder of the State's request for restitution. (*Id.* at 18). But Keller did not have any additional evidence to present. (*Id.*).

Mr. Reed's counsel called Jesus Gonzalez to the stand. (*Id.* at 19-23). Jesus testified that the victim told him she was moving from the Wickenburg area after her granddaughter graduated from school. (*Id.* at 21-22).

Mr. Reed's counsel attempted to present Mr. Reed's testimony that Keller held a personal vendetta against Mr. Reed based on a prior conflict wherein Mr. Reed "assisted [a] 97-year-old woman" in a matter "which cost Mr. Keller a great deal of money." (*Id.* at 27). But the trial court cut the inquiry short, finding "things that the attorneys involved in this case may have been involved with" to be irrelevant to the restitution claims. (*Id.* at 29). Mr. Reed's counsel also argued that "the attorney fees are exorbitant, unrealistic, and as close to triple charging as I've ever seen." (*Id.* at 48).

Keller argued that he had no prior relationship with the victim, and he was dismissive of Mr. Reed's allegations that he took the case as a personal vendetta against Mr. Reed. (*Id.* at 41). Keller argued that his services were needed to develop a list of questions for all the witnesses, "preparing them for the trial," meeting with the victim and the prosecutor for strategy sessions at night, and "working to resolve

factual details in the various stories and the defenses that would come up” at trial. (*Id.* at 42-43).

Without citing authority, Keller asserted that Mr. Reed’s defense of the criminal charges at trial amounted to an “attack” on “the personal character of the victim in this case.” (*Id.* at 43). Keller also conceded that his bill of “nearly \$18,000” was for work that the “State’s lawyers are to do in this case,” “in terms of obtaining a conviction,” which “they did.” (*Id.*).

Mr. Reed’s counsel questioned the amount of time and money the victim’s counsel spent on trivial tasks such as writing emails, commenting on a plea offer, reviewing terms of the defendant’s probation, and a large amount of time on researching and drafting the State’s restitution motion. (*Id.* at 46).

Keller did not explain how he was qualified to charge \$400 per hour if he needed to spend nine hours to research and revise a simple restitution motion. (*Id.* at 49). Rather, Keller admitted that he was charging his normal rate as a construction-law partner at a large law firm so that he could research the law to ethically discuss the applicable law. (*Id.*).

The trial court ultimately found that the State had proven an additional economic loss of \$40. (I. 129 at 2). But the trial court found that the victim’s restitution claim for travel fees was supported by insufficient evidence since Mr.

Reed never threatened the victim and the victim's affidavit did not establish that the move was necessary to "address her mental health concerns following the crime." (*Id.* at 1).

The trial court similarly found that the claim for \$394.46 in lost wages was "not established by a preponderance of the evidence." (*Id.*). The trial court did not engage in any sort of analysis in examining whether the \$17,909.45 it awarded for the victim's attorney's fees were directly caused by the criminal conduct. (*Id.* at 3).

Mr. Reed's counsel challenged the restitution award on appeal. Eventually, the Court of Appeals issued a published opinion holding that victim's attorney's fees are recoverable as criminal restitution. [State v. Reed, 250 Ariz. 599 \(App. 2020\)](#). This Court granted Mr. Reed's petition for review to address whether "a victim's private attorney fees [are] recoverable as criminal restitution, particularly considering [A.R.S. § 13-4437\(A\)](#), and if so to what extent?"

ARGUMENT

The victim's attorney fees are not recoverable as criminal restitution in this case because [A.R.S. § 13-4437](#) requires that a victim bear the expense of counsel and implicitly recognizes that damages incurred to remedy the denial of a victim's rights are caused by a governmental entity, not a defendant's criminal conduct.

This Court and other courts have wisely held that criminal restitution must be limited to economic losses *directly caused* by a defendant's criminal conduct. This

limitation is reflected in the plain language of Arizona’s statutory criminal restitution scheme. Yet, the Court of Appeals affirmed an award of \$17,909.50 in attorney fees for Keller’s services performed months after the offense. Keller’s work concerned only the criminal proceedings against Mr. Reed—the prosecutor’s bailiwick—rather than any harm directly flowing from the conviction. This Court should reverse the lower court’s ruling and join other jurisdictions in concluding that a victim’s attorney’s fees which are not attributable to remedying a harm directly caused by the criminal offense are not compensable as criminal restitution.

A. Because prosecutors and other governmental entities are legally obligated to enforce a victim’s rights, [A.R.S. § 13-4437](#) requires a victim to bear the expense of counsel, unless the applicable governmental entity abdicates its obligation, in which instance the government is liable.

After a crime is committed, Arizona law does not leave victims stranded alone in a sea of confusing legal procedure with no governmental assistance to enforce the victim’s constitutional and statutory rights. The Arizona Legislature has created a robust regulatory scheme which ensures that law enforcement agencies, prosecutors, victim advocates, probation officers, and courts afford victims the rights guaranteed to them. *See* [A.R.S. §§ 13-4401-4443](#).

Arizona law also affords crime victims the right “to be represented by personal counsel at the victim’s expense” “to enforce any rights or to challenge any order denying any right guaranteed to victims.” [A.R.S. § 13-4437\(A\)](#). Yet, Arizona law

does not require victims to retain counsel to enforce their rights, as Arizona law also provides that prosecutors have standing to enforce victim rights. *Id.* Arizona law also provides that “a victim has the right to recover damages from a governmental entity responsible for the intentional, knowing or grossly negligent violation of a victim’s rights.” [A.R.S. § 13-4437\(B\)](#).

This scheme is designed to ensure that after a crime is committed, victims may be present at the criminal proceedings, heard on issues important to them, and assert their rights. *See State v. Lamberton*, 183 Ariz. 47, 48-51 (1995) (distinguishing between the rights a victim has standing to enforce and those reserved for parties).

Arizona’s scheme, including the right to recover damages from the governmental entity responsible for the violation of the victim’s rights stands in contrast from Rhode Island’s victims’ rights scheme at the time the Rhode Island Supreme Court decided *Badoni v. State*, 715 A.2d 580, 595-96 (R.I. 1998). In *Badoni*, the Rhode Island Supreme Court declined to find that its own state constitutional provision concerning the rights of victims to be self-executing because Rhode Island’s constitutional provisions merely state general principles concerning victims’ rights and did not “provide a procedural means by which crime victims may enjoy or protect their rights.” *Id.* at 587. The *Badoni* court contrasted the absence of the procedural mechanism for rights enforcement with Arizona’s scheme under

A.R.S. § 13-4437, which implements victims’ “rights constitutional mandate by enacting legislation that crime victims have a cause of action for damages.” *Id.* at 595-596. Notably, the victims in *Badoni* did not seek to hold criminal defendants liable for the violation of their rights; rather, the victims sought relief against the town, state, and agents of both governmental entities responsible for the violation. *Id.* at 583. Thus, *Badoni* supports the conclusion that criminal defendants are not responsible for a violation of a victim’s rights in criminal proceedings.

The Arizona Legislature’s decision to authorize victims to recover damages from governmental entities who violate their rights also reflects adherence to the “American Rule” concerning attorney’s fees. “Traditionally, under the ‘American Rule,’ the prevailing party in litigation is not entitled to recover his attorney’s fees. Rather, each party bears its own attorney’s fees regardless of who prevails.” *Marcus v. Fox*, 150 Ariz. 333, 334 (1986). Generally, the only exceptions to the “American Rule” are where a “specific statute” authorizes the recovery of attorney’s fees. *Id.*

The Legislature, with A.R.S. § 13-4437, adopted the “American Rule” and acknowledged that government entities, not criminal defendants, are responsible for violations of victims’ rights. Given the opportunity to make *defendants* liable for victims’ attorney’s fees, the Legislature did the opposite by stating clearly that a victim who chose to hire counsel did so at “the victim’s expense.” A.R.S. § 13-

4437(A). Overturning the Legislature’s will on this point would also require this Court to redefine the definition of criminal restitution, unfairly extend the causation analysis applicable to restitution issues, create a unique legal fiction wherein attorney’s fees are calculated as economic loss caused by criminal conduct, and infringe on the rights of defendants to due process, trial, and counsel.

B. Criminal restitution may only be awarded for a victim’s economic loss that flows directly from the defendant’s criminal conduct.

Victims have a constitutional right to prompt restitution. [Ariz. Const. art. II, § 2.1\(8\)](#). Courts are legally obligated to award victims the “full amount of the economic loss.” [A.R.S. § 13-603\(C\)](#). When ordering restitution, the courts are required to “consider all losses *caused by the criminal offense* or offenses for which the defendant has been convicted.” [A.R.S. § 13-804\(B\)](#) (emphasis added). Economic loss is defined as “any loss incurred by a person as a result of the commission of the offense,” and excludes “damages for pain and suffering, punitive damages, [and] consequential damages.” [A.R.S. § 13-105\(16\)](#).

In [State v. Wilkinson, 202 Ariz. 27 \(2002\)](#), this Court established a three-part test for determining which losses qualify for restitution. “First, the loss must be economic. Second, the loss must be one that the victim would not have incurred but for the defendant’s criminal offense.” [Wilkinson, 202 Ariz. at 29, ¶ 7](#). Third, “the *criminal conduct must directly cause the economic loss*.” *Id.* (emphasis added). “If

the loss results from the concurrence of some causal event other than the defendant's criminal conduct, the loss is indirect and consequential and cannot qualify for restitution under Arizona's statutes." *Id.* (internal citation omitted). The *Wilkinson* court noted that the statutory definition aligned with the "original conception of restitution" by "forcing the criminal to yield up to his victim *the fruits of the crime.*" *Id.* at 29, ¶ 9 (emphasis added) (internal citation omitted). By keeping restitution awards limited to losses directly caused by the criminal conduct, Arizona's restitution scheme does not conflict "with the right to a civil jury trial preserved by [Arizona Constitution Article II, Section 23](#). [Article II, Section 23](#) protects the right to a jury trial as it existed when Arizona's constitution was adopted." *Id.* at 29-30, ¶ 11. The *Wilkinson* court applied the test and rejected the claim that the defendant was liable for "the expenses the victims incurred because [the defendant] failed to complete the work he contracted to do or did so in a faulty manner." *Id.* at 29, ¶ 10. Although the defendant's "unworkmanlike performance" caused the loss, the *Wilkinson* court deemed it a concurrent or second causal event to crime of contracting without a license. *Id.*

Here, the crime of voyeurism bears no causal connection to Keller's fees, whereas in *Wilkinson*, the victims suffered a loss attributable to the defendant's

“unworkmanlike performance.” But in both cases the loss is not compensable as criminal restitution.

In *Town of Gilbert Prosecutor’s Office v. Downie ex rel. County of Maricopa* (“*Downie*”), 218 Ariz. 466, 472, ¶ 26 (2008), this Court held that the *Wilkinson* test meant reducing a restitution award by the amount of value conferred to the victim. To support its reasoning, this Court looked to the jurisprudence of other jurisdictions, the ABA Standards for Criminal Justice, and “decisions interpreting the Mandatory Victims Restitution Act of 1996.” *Id.* at 469, ¶¶ 12-17. Ultimately, this Court rejected the argument that unlicensed contractors should be subject to a rule of total disgorgement because it “would unnecessarily strain Arizona’s restitution scheme and may lead to absurd or troubling results.” *Id.* at 471, ¶ 24.

In *State v. Slover*, 220 Ariz. 239, 243, ¶ 8 (App. 2009), Division Two of the Court of Appeals applied the *Wilkinson* test in holding that a victim’s attorney’s fees incurred in the role as “adjunct prosecutor” “did not flow directly from the defendant’s criminal conduct.” The victim’s attorney in *Slover* was retained before criminal charges had been filed with the goals of convincing the county attorney to charge the defendant, ensuring that evidence was preserved, and “prodding the officer, and prodding the State.” *Id.* at 243, ¶ 7. But the *Slover* court found that the victim’s distrust of the prosecutor or the state’s inability to prosecute the case

independently to be concurrent causal events; the attorney's fees were not recoverable because they were, at best, consequential damages. *Id.*

Other jurisdictions have similarly held that attorney's fees not associated with remedying a harm directly caused by the defendant's criminal conduct are not recoverable as criminal restitution. In *Strout v. State*, 180 So.3d 1052, 1055 (Fla. 5th DCA 2015), a Florida appellate court distinguished between the victim's attorney fees which were "sufficiently causally connected to the charged crime" of removing or concealing a minor and those which were "not sufficiently causally connected to the charged crime." Florida law permits restitution awards for losses caused either "directly" or "indirectly" by the offense. Yet, the *Strout* court concluded that attorney fees to establish the victim's paternity of the minor were not recoverable whereas fees spent on German counsel to recover the minor in connection to a Hague Convention proceeding to be recoverable. *Id.* at 1055-56.

In *State v. Hunziker*, 274 Kan. 655, 664-668 (2002), the Kansas Supreme Court applied a test similar to Arizona's in a case where the victim hired an attorney to help prepare the state's case for restitution. The court concluded that the victim's private attorney's fees of \$700 "arose as an indirect or consequential result of [the] crime" and thus were not recoverable as criminal restitution. Because Kansas law limits restitution to "damages or loss depend[ent] on the establishment of a causal

link between the defendant's unlawful conduct and the victim's damages," the *Hunziker* court held that the victim's expenditures to have a private attorney bolster the state's restitution case were not recoverable, particularly given that the attorney was not retained to "trace embezzled funds, recreate destroyed data, or recover stolen property." *Id.* at 667-78.

In *People v. Lyon*, 49 Cal. App. 4th 1521, 1524 (1996), a California appellate court addressed the propriety of a restitution order concerning the victim's "attorney fees incurred in successfully resisting appellant's discovery in the criminal case of certain business records of the victim." The *Lyon* court noted that California law requires restitution "for every determined economic loss incurred as the result of the defendant's criminal conduct...." *Id.* (internal citation omitted). The *Lyon* court concluded that although the victim's expenses in retaining counsel to dispute the defendant's discovery requests may be an "economic loss," it was not "one that results from 'defendant's criminal conduct' but rather from defendant's defense of the criminal charges." *Id.* Thus, "such a loss, therefore is not included within the language of the statute (CA Penal § 1202.4)." *Id.*

The *Lyon* court explained to hold otherwise would have a "chilling effect on the exercise of a constitutional right" to counsel since defense attorneys need access to discovery in order to effectively advise their clients. *Id.* "Knowledge by counsel

that the client, if convicted, could be charged with the costs incurred by the victim in opposing discovery might well adversely affect the manner, extent, and degree of” counsel’s preparation. *Id.* Thus, restitution awards for a victim’s attorney’s fees would “conflict with a defendant’s constitutional right to prepare and present a defense by placing an undue burden on counsel’s efforts and obligation to provide effective assistance.” *Id.*¹

This Court should draw on its precedent established in *Wilkinson* and *Downie*, that of Division Two of the Court of Appeals in *Slover*, and that of other jurisdictions in concluding that a victim cannot recover attorney’s fees not attributable to the harm directly caused by the criminal offense. Where a victim hires counsel to get general assistance for duties which prosecutors and other governmental entities are legally required to perform, the victim’s *choice* to obtain redundant legal assistance is the sole cause of the “loss.”

¹ The *Lyon* court noted that nothing prevents trial courts from imposing sanctions for abuse of the discovery process, which the trial court had done in that case. *Id.* at fn. 4. Although the trial court awarded attorney’s fees incurred to prevent the sale of the defendant’s home, the award was not challenged on appeal, thus the appellate court had no opportunity to reverse it. *Id.* at 1525.

C. To extend criminal restitution to include attorney fees not directly attributable to harms directly caused by the criminal act would be bad public policy and violate a criminal defendant's due process rights.

In *State v. Johnson*, 167 Idaho 454 (App. 2020), the Idaho Court of Appeals explained why permitting counsel for a victim to file restitution motions and pursue restitution issues independent of the state's prosecutor is bad public policy and raises the potential to violate the due process rights of criminal defendants. The *Johnson* court explained that:

[I]t is generally recognized that “[a] private attorney who is paid by, or who has an attorney-client relationship with, an individual or entity that is a victim of the charged crime...should not be permitted to serve as prosecutor in that matter.” ABA Standard 3-2.1(c). This reflects a concern that self-serving motivations may underlie an attorney's pursuit of both a civil settlement and a criminal restitution order to compensate a client for the same economic loss, particularly where the attorney has a financial stake in the outcome of the proceedings.

167 Idaho at 460. The *Johnson* court also noted that “A defendant's right to due process may be violated when a person who is a victim of the crime or who has a personal, financial, or attorney-client relationship with the victim of the crime prosecutes the criminal case.” *Id.* at 459-60 (citing *People v. Calderone*, 573 N.Y.S.2d 1005, 1009 (N.Y. Crim. Ct. 1991)).

The *Johnson* court's analysis aligns with Arizona's jurisprudence, which in turn aligns with other jurisdictions. “Without question, certain prosecutorial conflicts may implicate due-process concerns.” *Villalpando v. Reagan*, 211 Ariz.

305, ¶ 8 (App. 2005). “Any interest that is inconsistent with the prosecutor’s duty to safeguard justice is a conflict that potentially could violate a defendant’s right to fundamental fairness.” *Id.* at ¶ 12.

The Tennessee Court of Criminal Appeals has noted that “Numerous cases have either found express due process violations or due process implications relating to the participation of an interested prosecutor.” *State v. Eldridge*, 951 S.W.2d 775, 782, 784 (Tenn. Crim. App. 1997) (gathering cases).

If this Court expands criminal restitution to include a victim’s attorney’s fees incurred during the course of the criminal proceedings, the victim’s attorney will undeniably have a financial incentive in the case which would be unconstitutional if the victim’s attorney is properly recognized as a “special prosecutor.” But if this Court follows its own precedent and the holdings of other jurisdictions to prohibit restitution for the costs of a victim’s private counsel incurred during the criminal proceedings, this due process concern can be obviated.

D. The restitution award here is improper because the victim did not retain counsel to remedy a harm directly caused by the criminal conduct that the prosecutor was unauthorized by law to address.

The lower court asserted that the restitution award for nearly \$18,000 in attorney fees was recoverable as criminal restitution merely because the representation occurred during the course of representing a victim in a criminal

proceeding. The lower court noted that previous cases permitted restitution awards for a victim's attorney fees to stand. *Reed*, 250 Ariz. at ¶¶ 8-12.

But each of the cases is distinguishable from this case. *State v. Leteveh*, 237 Ariz. 516, 530, ¶ 58 (2015), “did not decide whether attorney fees incurred to enforce a victim's rights is compensable as restitution.” Both *State v. Spears*, 184 Ariz. 277, 292 (1996) and *State v. Batzell*, 175 Ariz. 437, 439 (1993) involved attorney fees to close a victim's estate, an economic loss directly flowing from a homicide.

Nothing in the record before this Court establishes that the victim retained private counsel to remedy a harm directly caused by the crime of voyeurism. Rather, the record shows that counsel did not start billing for services performed until November 2015 despite the offense having been committed in January and the case initiated in April. Keller's billing records show that his services were wholly redundant to the prosecutor's work. Indeed, Keller conceded his bill of “nearly \$18,000” was for work that the “State's lawyers are to do in this case,” “in terms of obtaining a conviction,” which “they did.” (R.T. 7/21/17 at 43).

But victims have no “authority to direct the prosecution of the case.” *State v. Superior Court (Flores)*, 181 Ariz. 378, 382 (App. 1995) (citing A.R.S. § 13-4419(C)). Thus, the record does not establish that the victim was required to retain counsel to enforce her rights. But even if the record did support such a contention,

criminal restitution would nonetheless be improper because the need for counsel would flow from the prosecutor's dereliction of duty rather than the defendant's criminal conduct. *See Slover, 220 Ariz. at 243, ¶ 8.* The Legislature provided the remedy for the State's dereliction of duty: Sue the State. [A.R.S. § 13-4437\(B\)](#).

Even if this Court ignores the due process concerns regarding the propriety of allowing financially motivated parties to prosecute criminal cases, the record before this Court also establishes that – outside the claim for attorney's fees – the victim's counsel failed in his efforts to obtain more restitution than sought by the prosecutor. After Mr. Reed's counsel was given the documentation from the victim's compensation, he stipulated to the requested amount of \$3,083.61. However, the victim's counsel presented no evidence in support of the remaining moving cost claim or the lost wages claim, leading to the trial court's denial of the claims due to insufficient evidence. (R.T. 7/21/17). The only additional amount awarded (absent the attorney's fees) was \$40 for the cost of the process server in obtaining the order of protection. Thus, the amount awarded was less than either of the offers to settle. (I. 74 at 8, 21) (exhibits offering to settle for \$7,564.73 and \$5,885.30 wherein disputed amount concerned travel costs for relocation). This record establishes that the victim's attorney's fees were incurred independent of the defendant's crime, and

thus the criminal restitution award was illegal under the three-part test set forth by this Court in *Wilkinson*, 202 Ariz. at 29, ¶ 7.

If left to stand, such a rule would obliterate the *Wilkinson* test, violate the canons of statutory construction, violate a defendant's constitutional rights, and depart from other jurisdictions that have held that attorney's fees incurred during the course of a criminal prosecution are unrecoverable as criminal restitution.

E. To the extent that victims may recover attorney fees incurred during the course of a criminal proceeding as criminal restitution, courts must carefully assess whether there was an economic loss directly caused by the criminal conduct and whether the award amounts to a windfall.

This Court has previously noted that:

The profession's ethical requirements do not permit an attorney to extract unreasonable fees simply because those who must bear the ultimate loss are not in a lawyer/client relationship with the attorney. The axiom that a lawyer's duty is owed to his client does not support the corollary that all others are fair game.

Matter of Swartz, 141 Ariz. 266, 274 (1984). This Court should apply the same principle to criminal cases if it concludes attorney fees are recoverable for costs incurred to enforce a victim's rights during a criminal proceeding. This Court should bar awards where the incurred attorney's fees were based on inaccurate legal advice, inadequate or misrepresentations of law, obtaining a restitution award less than the amount originally sought, providing services duplicative of the work of the prosecutor or other governmental entities, or billing beyond what is reasonable for

an attorney with competent experience in the same field. *See* [AZ ST S CT RULE 42 RPC ER 1.5](#); [A.R.S. § 12-341.01](#). Otherwise, restitution awards would amount to a windfall because the amount of the victim's loss was caused by the victim's choice to engage incompetent or deficient counsel rather than directly flowing from the defendant's conduct. *See* [Downie, 218 Ariz. at 469, ¶ 14 \(2008\)](#) (holding that limitation of criminal restitution to economic loss directly caused by criminal conduct prevents a windfall).

Ultimately, such considerations will prove to be too time-consuming and beyond the rehabilitative and reparative purpose of Arizona's restitution scheme. *See, e.g.,* [Lagos v. United States, 138 S.Ct. 1684, 1689 \(2018\)](#) (declining to award private attorney fees due, in part, to the complicated nature of the issue). Thus, this Court should decide against rendering Arizona's criminal restitution scheme unconstitutional, and it should instead limit any award of a victim's attorney fees to those incurred as a direct result of the criminal conduct.

Given that the law concerning the reasonableness of attorney's fees under the ethical rules or applicable statutory or contractual provisions has never been extended to criminal restitution cases, it is evident that the trial court did not apply it here. If this Court departs from the *Wilkinson* test and the plain language of [A.R.S. § 13-4437](#) to extend to a victim's attorney fees incurred during the course of the

criminal proceedings, this Court should remand to the trial court and direct it to apply the existing law concerning the ethical and statutory limitations on the recovery of attorney's fees to ensure the award is reasonable. *See, e.g., American Civil Liberties Union of Arizona v. Arizona Dep't of Child Safety*, 51 Arizona Case Digest 56 (2021) (discussing "substantially prevailed" requirement of a statute authorizing the recovery of attorney's fees).

CONCLUSION

For the reasons stated in this Supplemental Brief and all other briefs submitted on behalf of Mr. Reed and his estate to this Court and that of the Court of Appeals, this Court should reverse the opinion below and hold that a victim's attorney's fees incurred during the course of a criminal proceeding are not compensable under Arizona's criminal restitution scheme.

Respectfully submitted September 14, 2021.

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