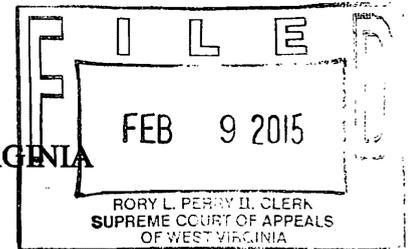


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



STATE OF WEST VIRGINIA,
Plaintiff Below, Respondent,

v.

DOCKET NO.: 14-0950
(Berkeley County Case No.: 13-F-213)

TAYLOR R. WASSON,
Defendant Below, Petitioner.

RESPONDENT STATE OF WEST VIRGINIA'S BRIEF

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PETITIONER'S ASSIGNMENTS OF ERROR

- I. **WHETHER THE CIRCUIT COURT COMMITTED REVERSIBLE ERROR BY ORDERING THE PETITIONER TO PAY RESTITUTION TO THE VICTIMS' INSURANCE COMPANY PURSUANT TO W.VA. CODE §61-11A-4(e) AS A PERSON WHO COMPENSATED THE VICTIMS FOR THEIR LOSS?**

STATEMENT OF THE CASE

In the morning hours of May 10, 2013, 67-year old Betty Lou Boynton left her home in order to go to a church function. Sometime after she left, the Petitioner and his then-girlfriend broke into the home and stole several items including nine (9) firearms that were in a locked gun cabinet. Based thereon, the Petitioner was indicted by a Berkeley County Grand Jury in October of 2013 for one (1) felony count of Burglary, one (1) felony count of Grand Larceny, one (1) felony count of Conspiracy to Commit Burglary, and one (1) misdemeanor count of Unlawful Possession of a Firearm. [Appendix Record, hereinafter referred to as AR, 3-5.] On or about January 6, 2014, the Petitioner entered a knowing, voluntary, and intelligent counseled plea of guilty to one (1) felony count of Burglary. [AR, 6-7.]¹ As a part of that plea, the remaining counts of the indictment were dismissed. [Id.] Sentencing, which was not binding to the court under the plea agreement of the parties, was rescheduled in order for the court to obtain a presentence investigation report. [Id.]

On March 17, 2014, in consideration of the presentence investigation report and the presentation of counsel, the court sentenced the Petitioner to serve the statutory sentence of not less than one (1) nor more than fifteen (15) years in the penitentiary pursuant to his conviction for Burglary under **W.Va. Code §61-3-11(a)**. [AR, 9-12.]² The Petitioner's payment of

¹ The Petitioner was also indicted in Berkeley County case number 13-F-215 with one (1) felony count of Gross Child Neglect Creating a Substantial Risk of Bodily Injury and in Berkeley County case number 13-F-216 with one (1) felony count of Robbery in the First Degree to which he also entered knowing, voluntary, and intelligent counseled pleas of guilty at his January 6, 2014, hearing. [AR, 6-7.]

² The Petitioner's sentence was ordered to run consecutively to the consecutive sentences ordered in cases number 13-F-215 and 13-F-216, and the Petitioner was ordered to pay an agreed amount of restitution in

restitution was contemplated and agreed to by the parties in the plea agreement but no amount was specified. [Id.] It was agreed that a separate hearing be conducted in order for the court to determine the amount of restitution owed. [Id.]

Following a series of three hearings conducted by the circuit court on the issue of restitution, the circuit court found that the total amount of loss to the victims as a result of the defendant's criminal conduct (after depreciation costs and before receiving partial compensation from State Farm) was \$11,218.73. [AR, 40-45, 50-58, 59-110, 111-119.] The Petitioner was ordered to pay the victims, Samuel and Betty Lou Boynton, restitution in the amount of \$5,739.80 pursuant to **W.Va. Code §61-11A-4(a)**, and to pay \$5,478.93 to State Farm Insurance Company as a third party who compensated the victims in that amount for their losses pursuant to **W.Va. Code §61-11A-4(e)**. [Id.] The Petitioner does not dispute the amount or payment of restitution to the victims, Samuel and Betty Lou Boynton. The Petitioner also does not factually dispute the amount of money that State Farm Insurance Company paid to the victims. The Petitioner's sole allegation of error is that an insurance company is not a third party which may be paid restitution under **W.Va. Code §61-11A-4(e)** following compensation of loss to a victim.³

SUMMARY OF ARGUMENT

W.Va. Code §61-11A-4(e) specifically allows for the payment of restitution in the interests of justice to any person who has compensated the victim for loss to the extent that the person paid compensation. For the purposes of statutory construction, **W. Va. Code §2-2-10** provides that the word "person" shall include corporations, societies, associations and partnerships. Therefore, an insurance company shall be considered a person under **W.Va. Code §61-11A-4(e)**, and the plain language of **W.Va. Code §61-11A-4(e)** allows a court to order

13-F-216. [AR, 9-12.]

³ The Petitioner does not appeal his conviction or sentence, only this limited legal issue regarding restitution.

payment to an insurance company that has compensated a victim for loss. Furthermore, it is absolutely in the interests of justice to allow for payment of restitution to an insurance company for its compensation to a victim for the victim's loss sustained as a result of a defendant's criminal acts. To hold otherwise would defeat the rehabilitative and punitive aims of payment of restitution for a criminal defendant and allow a financial windfall to convicted criminals.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The State avers that the facts and legal arguments are adequately presented in the briefs and record on appeal and that the decisional process would not be significantly aided by oral argument. As such, oral argument would be unnecessary in this matter pursuant to Rule 18. However, this case presents an issue of first impression before this Court and one involving inconsistencies and conflicts among the decisions of the lower tribunals.⁴ Therefore, if the Court deems oral argument in this case necessary, argument pursuant to Rule 20 would be appropriate.

ARGUMENT

I. THE CIRCUIT COURT PROPERLY ORDERED RESTITUTION PURSUANT TO W.Va. CODE §61-11A-4 TO BOTH THE VICTIMS AND TO THE VICTIMS' INSURANCE COMPANY BECAUSE THE INSURANCE COMPANY COMPENSATED THE VICTIMS FOR PART OF THEIR LOSS.

A. Standard of Review

The Supreme Court of Appeals reviews sentencing orders, including orders of restitution made in connection with a defendant's sentencing, under a deferential abuse of discretion standard, unless the order violates statutory or constitutional commands.

Syl. Pt. 1, State v. Lucas, 201 W.Va. 271, 496 S.E.2d 221 (1997). However, the Court has stated that "where the issue on an appeal from the circuit court is clearly a question of law or involving

⁴ 23rd Judicial Circuit Judge John C. Yoder recently entered an order in Berkeley County case number 13-F-22, State of West Virginia v. Matthew Killian, in direct conflict with the order issued in this matter by 23rd Judicial Circuit Judge Michael D. Lorensen.

an interpretation of a statute, we apply a *de novo* standard of review.” Syl. Pt. 1, Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995). Importantly, “a statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect.” Syl. Pt. 2, State v. Epperly, 135 W. Va. 877, 877, 65 S.E.2d 488, 489 (1951) Syl. Pt. 2, State Farm Mutual Insurance Company v. Rutherford, 229 W.Va. 73, 726 S.E.2d 41 (2011).

B. Discussion

1. An Insurance Company is a Proper Recipient of Restitution under W.Va. Code §61-11A-4(e).

The circuit court properly ordered the Petitioner to pay restitution in the amount of \$5,739.80 to the victims Samuel and Berry Lou Boynton and in the amount of \$5,478.93 to State Farm insurance company for its partial compensation to Samuel and Betty Lou Boynton. The Petitioner does not dispute the amount or payment of restitution to the victims, Samuel and Betty Lou Boynton. The Petitioner also does not factually dispute the amount of money that State Farm insurance company paid to the victims. The Petitioner’s sole allegation of error is that an insurance company is not a person which may be paid restitution under **W.Va. Code §61-11A-4(e)** following compensation of loss to a victim.

W.Va. Code §61-11A-4(e) states:

The court shall not impose restitution with respect to a loss for which the victim has received or is to receive compensation, except that the court may, in the interest of justice, order restitution to any person who has compensated the victim for loss to the extent that the person paid the compensation. An order of restitution shall require that all restitution to victims under the order be made before any restitution to any other person under the order is made.

W.Va. Code §61-11A-4(e).

While the Victim Protection Act does not define the term “person” as used therein, the rules for construction of statutes provides that “the word ‘person’ or ‘whoever’ shall include corporations, societies, associations and partnerships, if not restricted by the context.” **W.Va. Code §2-2-10(i)**. The circuit court found, and the State would ask this Court to similarly find, that “person” in the context of **W.Va. Code §61-11A-4(e)** includes an insurance company that has compensated the victim for their loss as a result of the defendant’s criminal actions.

The State asserts that the language of this statute is clear and unambiguous and is plainly meant to include payment to insurance companies. Insurance companies are the most typical entities that reimburse victims for such losses. The Petitioner points out that there are other situations where a victim could be reimbursed by “neighbors, friends, family, charities, service providers, churches or the many other entities that could help the victim of a crime.”

[Petitioner’s brief, pg. 14] The State concurs with the Petitioner’s assessment that it is also possible that any of those persons may compensate a victim for a loss suffered at the hands of a criminal defendant. That is precisely why the language of **W.Va. Code §61-11A-4(e)** merely says “persons” rather than limiting its scope to any one source or any list of enumerated sources. The fact remains, however, that insurance companies are the most typical entities that compensate victims for these losses. Because the language of the statute is clear and unambiguous and because the legislature plainly meant to include “*any person*” who compensates a crime victim, this Court should give the statutory language its full force and effect and apply it to insurance companies. State v. Epperly, supra.; State Farm Mutual Insurance Company v. Rutherford, supra.

Should this Honorable Court nevertheless believe some interpretation of the statute necessary, it is clear considering the legislative intent, this Court’s precedent, and the precedent

of other states, that **W.Va. Code §61-11A-4(e)** should allow for restitution to be paid to an insurance company who compensates a victim for a loss sustained due to the criminal act of the defendant.

In examining this issue, the State finds it helpful for the Court to consider the cases of other jurisdictions, including those cases cited by the Petitioner in his brief. It is important to note that the cases cited by the Petitioner are cases from states that have markedly different statutes than West Virginia; however, none of them allow the defendant to be absolved of the responsibility of the financial effects of his crime just because he happened to victimize someone who happened to have insurance. In the cases cited by the Petitioner, the victim was allowed to receive an order of restitution from the defendant for the full and total amount of damage suffered whether or not insurance compensated the victim for all or part of that loss. (*See People v. O'Casey*, 106 Cal.Rptr.2d 263 (Cal.Ct.App. (2001), *citing People v. Birkett*, 21 Cal.4th 226, 87 Cal.Rptr.2d 205, 980 P.2d 912 (1999); *State v. Tuialii*, 121 Haw. 135, 214 P.3d 1125 (Ct. App. 2009); *Martinez v. State*, 115 Nev. 9, 12, 974 P.2d 133, 135 (1999); *State v. Alford*, 970 S.W.2d 944 (Tenn. 1998); *State v. Webb*, 151 Vt. 200, 200, 559 A.2d 658, 659 (1989).) This is because those states do not have a statutory provision like **W.Va. Code §61-11A-4(e)** which forbids the award of restitution to a victim if the victim has received compensation therefor. But for this statutory prohibition, West Virginia's statutory scheme could operate in a similar fashion.

However, **W.Va. Code §61-11A-4(e)**'s application to insurance companies fits squarely within the legislative intent for the Victim Protection Act and further protects the rights and interests of the victim by allowing a circuit court to order a defendant to pay restitution directly to an insurance company which has compensated the victim for their loss rather than ordering a

full award to the victim like in some other states. Such a full award to the victim puts the victim in danger of being sued civilly by their own insurance company for subrogation merely for being the victim of a crime. Ordering a defendant to pay the compensated portion directly to the insurance company alleviates this burden from the victim.

Furthermore, it is absolutely in the interests of justice to find **W.Va. Code §61-11A-4(e)** applicable to insurance companies who compensate victims in whole or in part for losses sustained as a result of the criminal actions of a defendant. If this Court does not, it will effectively disregard the rehabilitative and punitive aspects of the payment of restitution which are clear in West Virginia case law, unjustly enrich criminal defendants, and consequently encourage more crime.

The Petitioner discusses at length that insurance companies are for-profit businesses, may have civil rights of subrogation, among other things. These arguments are merely a smoke screen transparently used to argue that a defendant should not be forced to face the full and actual consequences of his criminal activity.

West Virginia law is clear that part of the rationale for ordering restitution is, of course, to restore the victim, as best as practicable, to the position the victim was in prior to the criminal conduct at issue; however, the other part, which the Petitioner neglects to discuss entirely, is the rehabilitative and punitive aspects that the payment of restitution has for the offender.

“Restitution can aid an offender's rehabilitation by strengthening the individual's sense of responsibility. The probationer may learn to consider more carefully the consequences of his or her actions. One who successfully makes restitution should have a positive sense of having earned a fresh start and will have tangible evidence of his or her capacity to alter old behavior patterns and lead a law-abiding life. Conditioning probation on making restitution also protects the community's interest in having the victims of crime made whole.” ...

Thus, “[r]estitution imposed in a proper case and in an appropriate manner may serve the salutary purpose of making a criminal understand that he has harmed not merely society in the abstract but also individual human beings, and that he has a responsibility to make them whole.”

State v. Lucas, 201 W. Va. at 280, 496 S.E.2d at 230 (*quoting* Fox v. State, 176 W.Va. 677, 347 S.E.2d 197 (1986)). This Court further discussed this important aspect of the rationale behind restitution in State v. Rebecca F., 223 W.Va. 354, 758 S.E.2d 558 (2014).

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 has caused. Similarly, the direct relation between the harm and the punishment gives restitution a more precise deterrent effect than a traditional fine.

Id. at 362, 566 (*quoting* Kelly v. Robinson, 479 U.S. 36, 49, fn. 10 (1986)).

If a defendant is automatically relieved in whole or in part from paying restitution due to having the good fortune of victimizing someone who has insurance (or potentially after having made the calculated choice to victimize someone whom he knew had insurance), the rehabilitative rationale behind restitution is completely defeated. On the other hand, if there is allowed an award of restitution to the victim and/or a compensating insurance company, a defendant is made to understand in concrete terms the true weight of a loss felt by a victim as a result of the defendant’s wrongdoing. It will give the defendant a realistic appreciation for the harm that he has done, hopefully enhancing his sense of personal responsibility and driving home the need for a change in behavior.

Stated conversely, a criminal defendant may have little incentive to change his behavior if he is allowed a financial windfall as a result of his crimes. If a defendant commits a larceny from a business he knows to be insured, he knows that if he is caught he could potentially spend

some time incarcerated. With just having committed a property crime, prison overcrowding, and little criminal history, he is likely to be admitted to probation by the court or likely to be paroled at first eligibility. Since the business was insured and was fully compensated by its insurance company, he cannot be ordered to pay restitution. So while the defendant's case is pending and while he is on probation or parole and beyond, the defendant is free to enjoy the fruits of his crime with little meaningful consequence and without a true appreciation for the victim's loss. This unjust enrichment of the criminal defendant not only does little to discourage criminal activity but actually encourages criminal activity by the system-savvy offender.

The out of state cases cited by the Petitioner in his brief and discussed by the State above recognize this very real problem. This is why those states allow for payment of full restitution to a victim regardless of whether the victim has been compensated by his insurance company. As held by two of those courts:

The interests of justice would *not* be served by allowing a thief to retain or otherwise benefit from the spoils of his crime simply because he picked a victim who was prudent enough to have obtained insurance.

State v. Tuialii, 121 Haw. 135, 142, 214 P.3d 1125, 1132 (Ct. App. 2009)(emphasis in original);
and,

A defendant's obligation to pay restitution to the victim may not, of course, be reduced because a victim is reimbursed by insurance proceeds.

Martinez v. State, 115 Nev. 9, 12, 974 P.2d 133, 135 (1999).

In sum, the language of **W.Va. Code §61-11A-4(e)** is clear and unambiguous. The court may not order restitution to a victim who has received compensation. The court may, however, order the payment of restitution to the person who compensated the victim in the interests of justice. Allowing the court to order restitution to insurance companies who compensate victims

for all or part of the losses suffered due to a defendant's criminal conduct fits soundly within both the legislative intent of the Victim Protection Act in insuring that state and local governments do all that is possible to assist victims of crime and the precedent of this Court regarding the rehabilitative and punitive aspects of an order of restitution for the defendant. As such, the plain language of the statute should be given its full force and effect. State v. Epperly, supra.; State Farm Mutual Insurance Company v. Rutherford, supra.⁵

2. Whether an Insurance Company is a Victim Pursuant to W.Va. Code §61-11A-4(a) was Never Ruled Upon by the Circuit Court.

The Petitioner also argues that an insurance company may not receive restitution as a "victim" of crime pursuant to **W.Va. Code §61-11A-4(a)** unless the insurance company is an intended direct victim of the defendant. This was not an issue argued by the parties below, nor was it ruled upon by the circuit court. As such, the State objects to the consideration of this argument not raised below.

If, however, this Honorable Court chooses to address the issue, the State asserts that it is not material to this case. In all due candor, the State thinks it makes little sense in light of the statutory structure of the Victim Protection Act and the precedent of this Court to advance this argument. If an insurance company or other person who compensates the victim for their loss was meant to be considered a victim under **W.Va. Code §61-11A-4(a)**, there would have been no need for the legislature to include **W.Va. Code §61-11A-4(e)**.

⁵ The State would also note that the Petitioner makes no argument with regard to his ability to pay the restitution ordered or that the amount of restitution is impractical. The State recognizes that any award of restitution under **W.Va. Code §61-11A-4** would be subject to the guidelines set forth by this Court in State v. Rebecca F., supra. and State v. Atwell, 765 S.E.2d 182 (2014) concerning the establishing of the amount of the victim's loss, the practicability of an award, and other factors to be considered by a court when ordering restitution. Following the Petitioner's plea of guilty to the offense in this matter, the circuit court heard evidence establishing the amount of the victims' loss, the amount compensated by State Farm, and other evidence and argument presented by counsel before issuing an order. The circuit court, therefore, did not abuse its discretion in this regard, and the Petitioner does not allege that it did.

The State notes, however, that this Honorable Court has never expressly determined whether or not an insurance company is included as a victim in the context of **W.Va. Code §61-11A-4(a)** under a circumstance where the insurance company was not the intended direct victim of the crime committed.

W.Va. Code §61-11A-4(a) states

The court, when sentencing a defendant convicted of a felony or misdemeanor causing physical, psychological or economic injury or loss to a victim, shall order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of the offense, unless the court finds restitution to be wholly or partially impractical as set forth in this article.

If the court does not order restitution, or orders only partial restitution, under this section, the court shall state on the record the reasons therefor.

The Petitioner cites the cases of State v. Lucas, 201 W.Va. 271, 496 S.E.2d 221 (1997) and State v. McGill, 230 W.Va. 85, 736 S.E.2d 85 (2012), as being instructive on the issue. The State agrees that these cases touch on that issue, but they are not dispositive of it.

As this Court pointed out in State v. Lucas, the term “victim” is not defined within the Victim Protection Act, **W.Va. Code §61-11A-1 et seq.**, outside of the specific section which delineates who may give a victim impact statement. Lucas, 201 W.Va. at 286, 496 S.E.2d at 236. In examining the express language of **W.Va. Code §61-11A-4(a)**, the statute provides that when there has been physical, psychological or economic injury or loss to *a* victim, the court shall order the defendant to make restitution to *any* victim of the offense. This language implies that there may be other indirect victims of a defendant’s criminal act that may receive restitution in addition to the direct victim. Furthermore, in the context of restitution ordered as a term and condition of probation, **W.Va. Code §62-12-9**, states that a defendant may be ordered to

“make restitution or reparation, in whole or in part, immediately or within the period of probation, to any party injured by the crime for which he or she has been convicted.” **W.Va. Code §62-12-9(b)(1)**. This language seems to include any party injured by the crime and not only the direct victim thereof.

In State v. Lucas, the Court considered restitution to an insurance company in the context of an arson case where it found that the defendant intended to and did obtain money or other benefit from the insurance company through his criminal conduct. Lucas, 201 W.Va. at 286-287, 496 S.E.2d at 236-237. The Court stated in dicta:

Lacking any statutory definition of the term “victim,” we must approach with some caution the question of whether a particular individual or entity may be awarded restitution under the Act. This caution comes from our perception that the direct and indirect effects of traumatic criminal acts can be widespread and severe. Where to draw the line of eligibility for restitution may be a difficult determination in some cases. However, this is not such a case.

State v. Lucas, 201 W. Va. 271, 286 fn. 17, 496 S.E.2d 221, 236 fn 17 (1997). The Court, therefore, only went as far as to conclude that under the facts and circumstances of that particular case the insurance company, as an intended and direct victim, was a clearly victim within the meaning of **W.Va. Code §61-11A-4(a)**. Id.

The Petitioner also discusses case law in other jurisdictions with respect to their treatment of insurance companies for restitution purposes; however, the Petitioner neglects to discuss the actual restitution statutes of those other jurisdictions. While it is true that the other jurisdictions cited by the Petitioner allow restitution orders to insurance companies only when said insurance companies are the intended or “direct” victims of the criminal conduct at issue, this is because the statutes in those jurisdictions carefully define the term victim and/or specifically exclude indemnitors from consideration under their statutes (*see* Cal. Penal Code §1202.4; Haw.Rev.Stat.

§706-646; Ky.Rev.Stat. §533.030; Nev.Rev.Stat. §176.015; N.C.Gen.Stat. §15A-1343; Tenn.Code §40-35-304; Vt.Stat. tit. 28, §252 and Vt.Stat. tit. 13, §7043).

In some states with statutes similar to **W.Va. Code §61-11A-4(a)**, insurance companies who reimburse victims for losses sustained by the criminal actions of the defendant are included as appropriate parties to receive restitution from a defendant. The Arizona Court of Appeals upheld restitution to an insurance company as a condition of probation under a statute that “mandates restitution where there is a victim who has suffered economic loss.” State v. Merrill, 136 Ariz. 300, 301, 665 P.2d 1022, 1023 (Ct.App.1983) (emphasis in original). The Arizona Court found that clearly the insurance company who reimbursed the owner of the property suffered an economic loss, making them “a victim” within the scope of the statute. Id. That court went on to find that limiting the payment of restitution to the property owner (the “direct” victim) improperly limited the rehabilitative and punitive purposes of requiring the payment of restitution. Id.

The Supreme Court of Utah also upheld restitution to insurance companies where the Utah statutes define “victim” as “a person who the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.” State v. Stayer, 706 P.2d 611, 613 (Utah 1985). The Michigan Court of Appeals likewise permitted restitution to an insurance company under a statute authorizing restitution to “the person or persons injured or defrauded.” People v. Bond, 99 Mich.App. 86, 88, 297 N.W.2d 620, 621 (1980). The Virginia Court of Appeals similarly decided that an insurance company who reimbursed a victim was “an individual” who suffered economic harm as a “direct result of the commission of a felony” by a defendant. Alger v. Commonwealth, 19 Va. App. 252, 255, 450 S.E.2d 765, 767 (1994). The Virginia Court indicated that “an insurance carrier that has paid a theft or casualty claim as a

result of the wrongdoing of a criminal defendant stands in the place of the victim.” Id. at 256, 767.

While this Court has not addressed the bounds of **W.Va. Code §61-11A-4(a)** in terms of insurance companies who compensate victims for the criminal actions of defendants, the Court did limit the reach of **W.Va. Code §61-11A-4(a)** in State v. McGill, 230 W.Va. 85, 736 S.E.2d 85 (2012), by specifically finding that “the restitution provisions of the Victim Protection Act of 1984, West Virginia Code §§ 61–11A–1 to 8, do not extend to recovery of costs or expenses incurred by governmental agencies in apprehending perpetrators of criminal acts.” McGill, 230 W.Va. at 85, 736 S.E.2d at 86. In so finding, the Court discussed that the express legislative intent of the Victim Protection Act relates to the rights of the direct victims of crime or “individuals harmed directly by the criminal acts at issue,” that the Act “consistently speaks of crime victims as a distinctly different group from state and local government and the criminal justice system,” and that the provisions of **W.Va. Code §61-11A-4** “infer that a crime victim is one who has been directly victimized by the perpetrator of a criminal act.” Id. at 89.

The language used by the Court in McGill certainly puts in doubt that this Court would interpret an insurance company to be a victim under **W.Va. Code §61-11A-4(a)** in circumstances where they were not the intended direct victim, and the State is not asking this Court to hold as such.

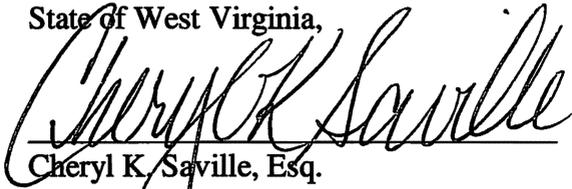
CONCLUSION

The circuit court properly ordered the Petitioner to pay restitution to State Farm to the extent that State Farm compensated the victims for their loss sustained as a result of the Petitioner’s criminal acts pursuant to **W.Va. Code §61-11A-4(e)** upon finding it was in the interest of justice to do so. The State did not advance the argument that the insurance company

was a victim under **W.Va. Code §61-11A-4(a)** below nor did the circuit court rule upon that issue.

For the foregoing reasons, this Court is respectfully requested to deny the relief requested in the Petition for Appeal and affirm the circuit court's order of restitution.

Respectfully submitted,
State of West Virginia,

A handwritten signature in cursive script, reading "Cheryl K. Saville", written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Cheryl K. Saville, Assistant Prosecuting Attorney, hereby certify that I have served a true and accurate copy of the foregoing Respondent State of West Virginia's Brief by mailing of the same, United States Mail, postage paid to the following on this 6th day of February, 2015:

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