

**IN THE SUPREME COURT**  
**IN AND FOR THE STATE OF ARIZONA**

STATE OF ARIZONA,

Respondent/Appellee,

vs.

RICHARD ALLEN REED,

Petitioner/Appellant,

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CAUSE NO. CR-20-0385-PR

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

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**INTERVENOR LANNA MESENBRINK'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?

## **NOTICE OF ADOPTION BY REFERENCE**

Intervenor, Lanna Mesenbrink, adopts by reference the Petition for Review and Supplemental Brief filed by Petitioner/Appellant, Richard Reed, as allowed by Rule 31.10(i) of the Arizona Rules of Criminal Procedure.

## **STATEMENT OF THE FACTS AND THE CASE**

Intervenor, Lanna Mesenbrink, adopts and relies upon the statement of facts and the case in the Supplemental Brief filed by Petitioner, Richard Reed, as allowed by Rule 31.10(i) of the Arizona Rules of Criminal Procedure.

## LEGAL ARGUMENT

**A spouse cannot be held responsible for the restitution judgment against a criminal defendant when the intent and purpose of the activity leading to the commission of the crime did not benefit the marriage.**

Any property acquired by either party during the marriage is the community property of both parties. *A.R.S. § 25-211*. Both parties to a marriage have equal rights to the management, control and disposition rights of the community property, as well as power to bind the community. *A.R.S. § 25-214*. Either spouse may act in the “benefit of the community”. Any debt or obligation which results from an action which benefits the community is satisfied “first, from the community property, and second, from the separate property....” *A.R.S. § 25-215*. Any debt or contractual obligation made by either party to a marriage is presumed to be a community debt. *Cosper v. Valley Bank, 28 Ariz. 373, 237 P. 175 (1925); McFadden v. Watson, 51 Ariz. 110, 74 P.2d 1181 (1938)*.

The law is settled in Arizona that the community property of both spouses may be liable for an *intentional* tort committed by one of the spouses where the *intent and purpose of the activity* leading to the commission of the tort was to *benefit the community interests*. *Rodgers v. Bryan, 82 Ariz. 143, 309 P.2d 773 (1957)*; and *McFadden v. Watson, 51 Ariz. 110, 74 P.2d 1181 (1938)*.”

*Garrett v. Shannon, 13 Ariz.App. 332, 333, 476 P.2d 538, 539 (1971)*,  
*emphasis added*.

“[T]he perpetrator of a criminal offense should be required to hold a nonparticipating party harmless with respect to the debts created by the perpetrator’s criminal acts in the absence of knowledge, consent or ratification by the nonparticipating spouse.” *Cadwell v. Cadwell*, 126 Ariz. 460, 463, 616 P.2d 920, 923 (1980). However, when a criminal action is found to support the community property or provide some benefit to the community, the party is not necessarily to be held harmless. *Id.* In *Cadwell*, the wife was convicted of embezzlement. As part of the criminal proceedings, restitution was agreed to in the amount of \$80,000 to the victims. The appellate court determined that the husband had benefited from the embezzlement. He had been unemployed at the time and the parties were able to keep the marital home with funds received as a result of her criminal acts. There is no such benefit for Ms. Mesenbrink in the instant case.

Mr. Reed was convicted of voyeurism. There was no benefit to the marriage for his convicted acts. The debt, if indeed it was legitimate, was Mr. Reed’s alone. Ms. Mesenbrink should not have been burdened by Mr. Reed’s convicted actions.



## **CONCLUSION**

Based on the arguments presented in this Supplemental Brief and all other briefs submitted on behalf of Petitioner/Appellant and Ms. Mesenbrink, this Court should find that there was no benefit to the marriage by Mr. Reed's criminal actions and therefore Ms. Mesenbrink cannot be held responsible and all judgments against the community property should be released.

Respectfully submitted,

**M. ALEX HARRIS, PC**

/s/ M. Alex Harris

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