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PEITION FOR REVIEW BY THE CALIFORNIA SUPREME COURT

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL DEAN RUNYAN,

Defendant and Appellant.

Court of Appeal Case No. B218863

Superior Court No. BA322080 (Los Angeles County)

SUPREME COURT
FILED

NOV 02 2010

Frederick K. Ohlrich Clerk

Deputy

PETITION FOR REVIEW OF DECISION OF THE COURT OF APPEAL SECOND
APPELLATE DISTRICT

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STATEMENT OF ISSUE PRESENTED FOR REVIEW

Whether this defendant, who has been convicted of vehicular manslaughter, is required to make restitution to the victim’s estate.

Appellant respectfully ask this Court to review the published decision of a panel of the Court of Appeal, Second Appellate District, affirming the judgment of the Los Angeles County Superior Court, which awarded the victim’s estate \$446,486.00 in restitution.

INTRODUCTION

Defendant and Appellant Paul D. Runyan (hereafter Mr. Runyan) appeals from the Court of Appeals opinion affirming the Superior Court’s order, directing him to pay restitution in the amount of \$446,486 to the Estate of Donald Eugene Bengé.

GROUND FOR REVIEW UNDER RULE 8.500(b)

Any time a court, for whatever reason, ignores the express language and intent of a statute and simply finds in favor of the more sympathetic party, an important question of law exists.

PROCEDURAL BACKGROUND

On October 31, 2007, the prosecution filed in Los Angeles County Superior Court an Information which charged Mr. Runyan with one count of Murder (California Penal Code § 187(a)) (Count 1), one count Gross Vehicular Manslaughter (California Vehicle Code § 191.5(a)) (Count 2), one count of Driving Under the Influence Causing Injury (California Vehicle Code § 23153(a)) (Count 3), and one count of Driving Under the Influence with a Blood Alcohol Content of .08% or Greater Causing Injury (California Vehicle Code § 23153(b)) (Count 4).

On November 4, 2008, a jury acquitted Mr. Runyan of Count 1 and convicted him of Count 2, Count 3 and Count 4.

The trial court conducted a restitution hearing on August 5, 2009 and subsequently ordered Mr. Runyan to pay \$446,486 to the Estate of Donald Bengé.

Mr. Runyan filed a notice of appeal on September 8, 2009 and on September 24, 2010, the California Court of Appeals, Second Appellate District, affirmed the Superior Court's Order.

A petition for rehearing could have been filed and was not filed.

FACTS

On April 6, 2007, Mr. Runyan was driving on the 134 Freeway in Glendale in his 2006 Honda Element. He had been drinking alcohol and was driving the wrong way (driving westbound in eastbound lanes). He then hit, almost head-on, Donald Eugene Benges's 1988 Chevy Cavalier. Donald Eugene Bengé (hereafter Mr. Bengé) died at the scene and Mr. Runyan was taken to the hospital. The sole victim in the case was Mr. Bengé. (CT 109-117.) Mr. Bengé was not survived by any family members.

ARGUMENT

- A. California Penal Code § 1202.4 Requires Restitution to be Paid to a Victim or Victims and Defines the term "Victim."

California Penal Code § 1202.4 outlines the procedures that guide the imposition of restitution, amounts, hearings, court orders and financial disclosures that are made in

post conviction criminal matters. Subdivision (f) of the aforementioned code section provides the language necessary to determine whether the question of restitution can be considered:

“(f) Except as provided in subdivisions (q) and (r), in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to § 11469 of the Health and Safety Code, be applied to the restitution order if the funds are not exempt for spousal or child support or subject to any other legal exemption.” California Penal Code § 1202.4(f)

Subdivision (f) above allows a victim or victims to be paid restitution by the defendant. Subdivision (k) of the code outlines who a victim is in a criminal matter:

“(k) For purposes of this §, "victim" shall include all of the following:

- (1) The immediate surviving family of the actual victim.
- (2) Any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.
- (3) Any person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions:
 - (A) At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.
 - (B) At the time of the crime was living in the household of the victim.
 - (C) At the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).
 - (D) Is another family member of the victim, including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime.
 - (E) Is the primary caretaker of a minor victim.
- (4) Any person who is eligible to receive assistance from the Restitution Fund pursuant to Chapter 5 (commencing with § 13950) of Part 4 of Division 3 of Title 2 of the Government Code.
- (5) Any governmental entity that is responsible for repairing, replacing, or restoring public or privately owned property that has been defaced with graffiti or other inscribed material, as defined in subdivision (e) of § 594, and that has sustained an economic loss

as the result of a violation of §§ 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code.” California Penal Code § 1202.4(k)

Because California Penal Code § 1202.4(f) specifies that restitution may be made to a “victim or victims,” it is clear that the Legislature mean to exclude non-victims from recovering money from convicted defendants in criminal cases. Further, because the Legislature defined the term victim, it is clear that the intent of the statute was to exclude individuals not described in the code from being considered victims.

B. Nowhere in the Record is any Victim, as Defined in California Penal Code § 1202.4, Identified in the Present Case.

Nowhere in the record, including at the restitution hearing conducted on August 5, 2009, is any individual identified as a victim under California Penal Code § 1202.4.

Further, Mr. Bengé’s estate cannot qualify as a victim because the code specifically mandates that an “estate” is only a victim if it is “the direct victim of a crime.” California Penal Code § 1202.4(k)(2).

Mr. Bengé himself, not his estate, was the victim of the crime. Courts have held that financial institutions and other non-human entities are entitled to restitution only if the crime was specifically directed at the entity in question.

In People v. O’Casey, a case where the defendant was convicted of fraud and perjury for filing a false worker’s compensation claim. The defendant was ordered to pay restitution (pursuant to California Penal Code § 1202.4) to the insurance company that paid her workers compensation claim. People v. O’Casey, 88 Cal. App. 4th 967 at 969.

“As explained in Birkett and other cases (People v. Birkett, supra, 21 Cal. 4th at p. 232), the victim is the object of the crime. In contrast to Birkett, in which the direct victims of the crimes were the automobile owners whose vehicles had been stolen to dismantle and sell the parts, and the only involvement of the insurers was to indemnify the owners for covered property losses under their insurance policies, in this case, the trial court reasonably viewed the insurance company as a direct crime victim, where, based upon appellant's fraud, it was induced to make payments directly to appellant and to medical providers on appellant's behalf. Thus, in this instance, the insurance company itself is the object of the crime.” O’Casey at 971.

The Court's language in O'Casey that "the victim is the object of the crime" is clear. The financial entity here, Mr. Bengé's estate, was not the direct victim of the crime. Mr. Runyan did not defraud or take any money from Mr. Bengé's estate. In fact, Mr. Bengé's estate did not even exist at the time Mr. Runyan committed the crimes he was convicted of. Mr. Runyan's crime was against Mr. Bengé himself, similar to the automobile owners who lost their cars in Birkett.

The convictions in this case were the result of Mr. Runyan driving a motor vehicle under the influence of alcohol, not any financial or related crimes against Mr. Bengé's estate. Mr. Runyan, unlike the defendant in O'Casey, did not contemplate, consciously or unconsciously, that Mr. Bengé's estate would ever be financially harmed by his actions.

The fact that the Legislature requires that the aforementioned entities be the "direct victim" of a crime in order to recover restitution obviously infers that substantial involvement by the entity in question is required before restitution is appropriate.

The Court of Appeals opinion relies heavily on the idea that Mr. Runyan concedes that if Mr. Bengé had survived the accident, Mr. Runyan would be required to provide Mr. Bengé considerable restitution and thus, Mr. Bengé and his estate are in a worse position because Mr. Bengé did not survive the accident. While Mr. Runyan concedes that Mr. Bengé is worse off, the opinion then simply makes the erroneous and incorrect assumption that the legislature never intended this result.

The language of the statute and cases are more than clear. The legislature could have easily inserted a provision allowing the estate to recover restitution if no other victim existed. However, that language is absent. The **only** language regarding the estate recovering restitution prohibits this in this case. To find otherwise means ignoring the intent of the legislature, ignoring the statute, ignoring controlling caselaw, and simply finding in favor of the more sympathetic party.

Mr. Bengé died tragically as a result of Mr. Runyan's actions. Because of Mr. Runyan's actions, he is currently serving a prison sentence. However, Mr. Runyan should not be punished in a manner beyond what California law allows. Mr. Bengé's estate is

not a victim pursuant to the code, and because no other victim allowed by California law has been identified, no judgment of restitution is appropriate in this matter.

CONCLUSION

The legislature clearly intended to exclude the estate of a victim from receiving restitution in cases like the one here, given the fact that the language of California Penal Code § 1202.4 could have easily included victim's estates in similar situations. If the judgment is affirmed, the purpose of the statute providing for and defining who a victim is would be futile. While Mr. Runyan's actions cannot be excused, punishing him beyond what California law allows is not an appropriate remedy.

For the foregoing reasons, Mr. Runyan respectfully asks that this Court to grant its Petition for Review.

TABLE OF AUTHORITIES

CASES

People v. Brickett, 21 Cal. 4th 226

People v. O'Casey, 88 Cal. App. 4th 967

STATUTES

California Penal Code § 1202.4(f)

California Penal Code § 1202.4(k)

California Penal Code § 187(a)

California Vehicle Code § 191.5(a)

California Vehicle Code § 23153(a)

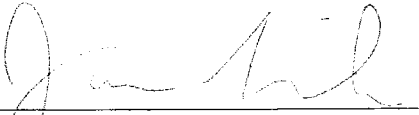
California Vehicle Code § 23153(b)

Dated: November 1, 2010.

JASON ANDREW LIEBER
ATTORNEY AT LAW
Attorney for Defendant and Appellant PAUL D. RUNYAN

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 2,027 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

By 
Jason Andrew Lieber

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PROOF OF SERVICE

I, the undersigned, declare:

I am a citizen of the United States and a resident of the County of Los Angeles; I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1680 N Vine Street #617, Los Angeles CA 90028. On November 1, 2010, I caused a copy of the within:

PEITION FOR REVIEW BY THE CALIFORNIA SUPREME COURT (Court of Appeal Case No. B218863; Los Angeles County Superior Court No. BA322080),
Via United States Mail, in sealed envelopes with proper postage on the following:

Los Angeles County Superior Court Clerk
210 West Temple Street
Los Angeles CA 90012

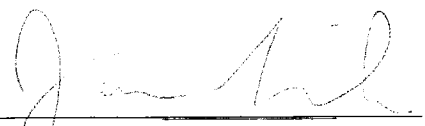
Los Angeles County District Attorney's Office
210 West Temple Street
Los Angeles CA 90012

California Attorney General's Office
300 South Spring Street
Los Angeles CA 90013

Clerk, California Court of Appeals
Second Appellate District
300 South Spring Street
Los Angeles CA 90013

I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 1, 2010, at West Hollywood, California.



Jason Lieber
Declarant

Filed 9/24/10

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL DEAN RUNYAN,

Defendant and Appellant.

B218863

(Los Angeles County
Super. Ct. No. BA322080)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Marcelita Haynes, Judge. Affirmed.

Lieber Williams & Labin and Jason Andrew Lieber, under appointment by the
Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Lawrence M.
Daniels and Lauren E. Dana, Deputy Attorneys General, for Plaintiff and Respondent.

Paul Dean Runyan collided head-on with Donald Benge's car while driving intoxicated on the wrong side of the freeway. As part of the judgment, Runyan was ordered to make restitution of \$446,486 to Benge's estate. Runyan contends the restitution order was improper because Benge's estate is not a "direct victim" of crime. We affirm the judgment.

FACTS

At approximately 4:30 a.m. on April 6, 2007, Runyan attempted to drive home from a nightclub while intoxicated. In the course of his attempt to drive home, Runyan entered the 134 Freeway travelling in the wrong direction and continued in the wrong direction for approximately one and one-quarter miles. Several motorists called the police.

California Highway Patrol Sergeant Peter Recato and his partner were patrolling the 134 Freeway that morning. From approximately 700 feet away, Sergeant Recato saw Runyan's vehicle coming towards them as it travelled in the wrong direction. Sergeant Recato braked, pulled over to the right shoulder of the freeway, and successfully avoided a head-on collision with Runyan's vehicle. Donald Benge, who was driving his vehicle behind Sergeant Recato's patrol vehicle, was unable to avoid colliding with Runyan's vehicle. Tragically, Runyan's vehicle collided head-on with Benge's vehicle, and Benge was killed. Runyan escaped with only minor injuries.

On October 31, 2007, Runyan was charged with murder (count 1), gross vehicular manslaughter (count 2), driving under the influence causing injury (count 3) and driving under the influence with a blood alcohol level of 0.08 percent or greater causing injury (count 4). On November 4, 2008, a jury acquitted Runyan of murder, but convicted him of the three other charges. The trial court conducted a restitution hearing and ordered Runyan to pay \$446,486 to the estate of Benge. Runyan filed a timely notice of appeal.

DISCUSSION

I. The Trial Court Properly Awarded Restitution to the Victim's Estate

Runyan argues that the trial court erred in ordering him to make restitution to the estate of Benge because Benge himself, not his estate, was the direct victim of the crime within the meaning of Penal Code section 1202.4.¹ As discussed below, Runyan's argument is without merit, and Benge's estate is entitled to restitution.

A. Standard of Review

"[W]hen the propriety of a restitution order turns on the interpretation of a statute, a question of law is raised, which is subject to de novo review on appeal." (*People v. Williams* (2010) 184 Cal.App.4th 142, 146, citing *In re Anthony M.* (2007) 156 Cal.App.4th 1010, 1016; see also *In re Tobacco II Cases* (2009) 46 Cal.4th 298, 311 [questions of law are reviewed de novo], citing *Jones v. Pierce* (1988) 199 Cal.App.3d 736, 741 ["Questions of statutory interpretation are, of course, pure matters of law upon which we may exercise our independent judgment."].) Accordingly, the standard of review is de novo.

B. Penal Code section 1202.4

In 1982, the voters of California adopted Proposition 8, an initiative that amended the California Constitution. (*People v. Martinez* (2005) 36 Cal.4th 384, 388 (*Martinez*)). In pertinent part, Proposition 8 established a constitutional right for crime victims to receive restitution from defendants who have been convicted of crimes that cause the victims to suffer economic loss. (*Ibid.*) Section 1202.4 was enacted by the Legislature to implement Proposition 8. (*Ibid.*)

Section 1202.4, subdivision (f) provides, in relevant part:

"[I]n every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court."

¹ All further statutory references are to the Penal Code, unless otherwise specified.

Section 1202.4, subdivision (k) defines the term “victim” as including:

“(1) The immediate surviving family of the actual victim.

“(2) Any corporation, business trust, *estate*, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a *direct victim* of a crime.” (Emphasis added.)

In *People v. Birkett* (1999) 21 Cal.4th 226 (*Birkett*), the California Supreme Court interpreted the meaning of the term “direct victim” under section 1202.4. In *Birkett*, the defendant stole multiple vehicles from their owners. (*Id.* at p. 229.) Because two of the stolen vehicles were covered by insurance, the insurance companies partially indemnified the owners of those vehicles. (*Id.* at pp. 229-230.) The trial court ordered the defendant to make restitution not only to the vehicle owners, but also to the insurance companies that had partially indemnified the vehicle owners. (*Id.* at p. 230.) The California Supreme Court reversed the restitution order as to the insurance companies because the insurance companies were not objects of the crimes and were not the direct victims of the crimes. (*See Id.* at pp. 233, 244.) The court stated: “both the plain language and the extensive background and history of the relevant statutes persuade us that the policy choice the *Legislature* made in 1994 was to grant only ‘direct’ crime victims and their immediate families a right to restitution . . . and otherwise to foreclose such entitlement by persons whose losses arose only as a result of crimes committed against others.” (*Id.* at p. 243.) The vehicle owners were the direct victims of the crimes, whereas the losses of the insurance companies only arose as a result of the crimes committed against the vehicle owners. (*Ibid.*)

Conversely, in *People v. O’Casey* (2001) 88 Cal.App.4th 967, 971, the court held that the insurance company was a direct victim where, based upon defendant’s fraud, it made payments directly to the defendant and to medical providers on the defendant’s behalf. The court held that the insurance company itself was the direct victim of the crime because it was the object of the crime. (*Ibid.*)

More recently, the California Supreme Court reversed a restitution award to a government department that cleaned up hazardous waste left behind by the defendant's manufacture of methamphetamine. (*Martinez, supra*, 36 Cal.4th at p. 395.) The court stated that the "defendant's attempt to manufacture methamphetamine was not an offense committed against the Department [of Toxic Substances Control that cleaned up the site], nor was the Department the immediate object of his crime. Therefore, the Department was not a direct victim entitled to recover its cleanup costs under . . . section 1202.4." (*Id.* at pp. 393-394.)

Here, unlike in *Birkett* or *Martinez*, Benge's estate did not merely indemnify or remediate the effects of a crime. Indeed, Benge's estate only existed because of the crimes of the defendant. By his own analysis, Runyan would be responsible for all of Benge's economic losses under section 1202.4 had he severely injured rather than killed Benge. (§ 1202.4, subs. (a) & (f).) It would reflect rather oddly inconsistent legislative priorities if the statutes implementing our state Constitution's Victims' Bill of Rights (Cal. Const. art. I, § 28) provided greater protection to those who survive criminal conduct than those who die from it. This same reasoning applies to Runyan's argument that Benge's estate is required to file a separate civil lawsuit to recover its economic losses when Benge himself would not have to, had he lived. As pointed out, the definition of "victim" in section 1202.4, subdivision (k)(1) includes "the immediate surviving family of an actual victim." This is a clear indication that the Legislature did not intend the right to restitution to terminate with a victim's death. In any event, "the term 'victim' has a broad and flexible meaning" (*People v. Saint-Amans* (2005) 131 Cal.App.4th 1076, 1084), and we will not construe it narrowly to exclude a gross vehicular manslaughter victim's estate from restitution where the vehicular manslaughter causes the victim's estate economic loss.

Moreover, *People v. Slattery* (2008) 167 Cal.App.4th 1091, 1097 (*Slattery*), a case relied upon by Runyan, clearly holds that when a defendant's criminal conduct causes the death of the actual victim, the actual victim's estate is entitled to restitution under section 1202.4. In *Slattery*, the defendant inflicted injury upon her dependant mother, who died

ten days later. The court ordered the defendant to make restitution to the mother's estate. (*Ibid.*) The court explained: "Section 1202.4, subdivision (f) explicitly requires that the immediate victim, [the] defendant's mother, be made whole for her economic losses, including medical expenses, resulting from defendant's criminal conduct. [Citation.] Because defendant's mother is deceased, the court must order the restitution to be paid to her estate." (*Ibid.*)

Similar to *Slattery*, Runyan's crimes caused Bengé's death, and therefore, restitution was properly ordered to be paid to his estate. Runyan has failed to reference any authority that holds that the estate of an actual victim is not entitled to restitution when the criminal actions of a defendant end the life of the actual victim.

DISPOSITION

The judgment is affirmed.

CERTIFIED FOR PUBLICATION

BIGELOW, P. J.

We concur:

RUBIN, J.

GRIMES, J.