

SUPREME COURT
FILED

In the Supreme Court of the State of California

AUG -6 2014

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

vs.

DENNIS TERRY MARTINEZ,

Defendant and Appellant.

Frank A. McGuire Clerk

Deputy

Case No. S219970

Fourth Appellate District, Division Two, Case No. E057976
San Bernardino County Superior Court, Case No. FMB1200197
The Honorable Dan Detienne, Judge

**APPELLANT'S ANSWER
TO RESPONDENT'S PETITION FOR REVIEW**

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Under the Appellate Defenders, Inc.
Independent Case System

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INTRODUCTION

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

In its Petition for Review, the government asserts that the Court of Appeal's Opinion "would preclude a victim from recovering any losses that flow from the collision itself in any hit and run case, *even if it is abundantly clear from the record that the defendant was at fault for the accident.*" (Pet. at 6, italics added.) To the contrary, however, the Opinion repeatedly draws a line between (1) accidental collisions and (2) those collisions where the defendant is at fault. And in the latter case, the Opinion strongly supports victim restitution for any losses suffered as a result of the collision.

As a result, the Opinion does not necessarily conflict with the decision in *People v. Rubics* (2006) 136 Cal.App.4th 452. Indeed, as shown below, the two cases occupy the opposite ends in the spectrum of culpability. In *Rubics*, restitution was affirmed where the defendant admitted to smoking marijuana and drinking five beers before driving, and the investigator determined that defendant was at fault for the collision. In the present case, by contrast, even the victim's mother acknowledged that the collision was an accident.

Because the two cases do not present a true split of authority, this Court should deny the Petition for Review.

STATEMENT OF FACTS AND CASE

Appellant Dennis Martinez adopts the Facts and Procedural History as presented in the Court of Appeal's Opinion, filed June 6, 2014. (*People v. Martinez* (2014) 226 Cal.App.4th 1156, 1159-1160.) Notably, there was no evidence that Martinez was responsible for the collision. As observed by the Court of Appeal: "Both defendant and the victim's mother described the collision as an accident." (*Id.* at p. 1163.)

ARGUMENT

I.

BECAUSE THE PRESENT CASE AND THE *RUBICS* DECISION DO NOT PRESENT A SPLIT OF AUTHORITY, THE PETITION FOR REVIEW SHOULD BE DENIED.

There is a striking contrast between the facts of the present case and those in *Rubics*. Here, Martinez was not at fault in the collision. There is no evidence that he violated any traffic laws or drove recklessly. Indeed, after taking the statements of two individuals who witnessed the accident – a bystander and the victim's mother – the government did not file any charges related to the nature of Martinez's driving. (*Martinez, supra*, 226 Cal.App.4th at pp. 1166-1167.) Even the victim's "mother indicated it was the victim who collided with defendant." (*Id.* at p. 1167.)

A very different story took place in *Rubics*. There, the defendant

smoked a “bowl” of marijuana and drank five beers before driving. (*Rubics, supra*, 136 Cal.App.4th at pp. 454-455.) Further, as established by an investigator’s reconstruction of the incident, the defendant rolled through a stop sign and “caused the accident by failing to yield before he turned.” (*Id.* at pp. 455, 462.) And based on this evidence that the defendant was at fault for the collision, the *Rubics* court held that the order of restitution was not an abuse of discretion. (*Id.* at p. 462.)

Importantly, in the present case, the Court of Appeal explicitly distinguished the *Rubics* decision on those facts. (*Martinez, supra*, 226 Cal.App.4th at p. 1162.) In particular, the court observed that “the defendant in *Rubics* effectively admitted culpability for the collision, and his responsibility had also been independently determined.” (*Ibid.*) Based on the clear contrast in culpability between the two defendants, therefore, the *Rubics* decision was deemed inapposite. (*Ibid.*)

The Petition overlooks how the Court of Appeal distinguished *Rubics* on the facts. And by doing so, the Petition frames the present case in absolutist terms and makes an erroneous claim regarding the scope of the Opinion’s holding:

Practically speaking this [holding] would preclude a victim from recovering any losses that flow from the collision itself in any hit and run case, *even if it is abundantly clear from the record that the defendant was at fault for the accident.*

(Pet. at 6, italics added.) But this bright-line rule ignores the plain language

of the Opinion's central holding:

[W]e hold that a court cannot order a defendant pay victim restitution when sentenced to prison for the effects of a collision, not exacerbated by his leaving, when the defendant is solely convicted of fleeing the scene *and no factual predicate for the defendant's responsibility for the accident can be found in the record.*

(*Martinez, supra*, 226 Cal.App.4th at p. 1161, italics added.) Thus, contrary to Petition's assertion, if the defendant is responsible for the accident, then the holding strongly suggests that the victim *is* entitled to recover restitution.

Similarly, the Petition misunderstands how the present holding would apply to the facts in *Rubics*:

If *Rubics* were governed by the opinion issued in the instant case, the victim could not recover any restitution because none of the economic losses his family suffered (i.e. funeral costs, etc.) flowed from *Rubics*' flight.

(Pet. at 7.) Again, this cannot be correct. The Court of Appeal conducted an exhaustive review of the record to confirm that Martinez "was not convicted of any offense involving responsibility for the collision" and "no evidence in the record appears to indicate any culpability on his part in the collision." (*Martinez, supra*, 226 Cal.App.4th at p. 1166.) By contrast, the court's review of the *Rubics* decision revealed that "there was a factual predicate for determining the defendant's fault in the accident at issue in *Rubics*." (*Id.* at p. 1162.) As applied to the facts in *Rubics*, therefore, the present holding would actually *support* victim restitution.

In sum, because Martinez was not at fault for the accidental collision – and because the defendant in *Rubics* was clearly at fault for striking and killing a motorcyclist – the two cases do not present a clear conflict in need of resolution. The Petition for Review should be denied.

CONCLUSION

Because the present case and the *Rubics* decision do not present a split of authority, the Petition for Review should be denied.

Respectfully submitted,



Dated: August 3, 2014

Thomas E. Robertson
(SBN 262659)
Attorney for Appellant Martinez

CERTIFICATION OF WORD COUNT

Appellate counsel certifies that this **APPELLANT'S ANSWER TO RESPONDENT'S PETITION FOR REVIEW** contains 990 words as calculated by the Microsoft Word software in which it was written.

I certify under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on August 3, 2014.



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Proof of Service
People v. Martinez
Supreme Court No.: S219970
Court of Appeal No.: E0057976

I, the undersigned, declare that I am over 18 years of age, residing or employed in the County of San Diego, and not a party to the instant action. My business address is listed above. I served the attached **APPELLANT'S ANSWER TO RESPONDENT'S PETITION FOR REVIEW** by placing true copies in a sealed envelope, with the correct postage, and depositing them in the United States Postal Service, to each of the following persons at the following addresses on August 4, 2014:

Meredith White, Esq. Office of the Attorney General <i>By electronic service at:</i> ADIEService@doj.ca.gov	Appellate Defenders, Inc. <i>By electronic service</i>
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I additionally declare that I electronically served a copy of the above document from my electronic service address, thomas@robertsonSDlaw.com, to the Office of the Attorney General's electronic service address, ADIEService@doj.ca.gov, by 5:00 p.m. on the date listed above. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 4, 2014.



Thomas E. Robertson