

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

PAUL DEAN RUNYAN,

Defendant and Appellant.

SUPREME COURT
Case No. B218863
FILED

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Second Appellate District, Division Eight, Case No. B218863-8
Los Angeles County Superior Court, Case No. BA322080
The Honorable Marcelita Haynes, Judge

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ISSUE PRESENTED

Whether appellant was properly ordered to pay restitution to the estate of his vehicular manslaughter victim where the economic losses were incurred as a result of appellant's criminal acts.

INTRODUCTION

Penal Code¹ section 1202.4 was enacted by the Legislature to implement Proposition 8, an initiative that gave crime victims a constitutional right to restitution. Section 1202.4, subdivision (a), provides that a victim of a crime shall receive restitution for any economic losses incurred as a result of the crime directly from the person convicted of the crime. Section 1202.4, subdivision (k), includes within the definition of "victim" any surviving family members and legal and commercial entities when those entities are the direct victims of crime. (§ 1202.4, subds. (k)(1)-(k)(3).) In 2008, the voters adopted Proposition 9, also known as The Victims' Bill of Rights Act of 2008: Marsy's Law ("Marsy's Law"), which mandated that convicted wrongdoers be ordered to pay restitution in all cases in which a crime victim suffers an economic loss. Marsy's Law also expanded the definition of victim to include, among others, "a lawful representative of a crime victim who is deceased." (Cal. Const, art. I, § 28, subd. (e).)

In this case, appellant was ordered to pay restitution for economic losses in the amount of \$446,486 to the estate of Donald Benge, the man he killed while driving intoxicated on the wrong side of the freeway. The trial court found that Mr. Benge's estate was a victim within the meaning of article I, section 28, subdivision (e), of the California Constitution and

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

ordered appellant to pay restitution to the estate pursuant to section 1202.4. (2RT 605-606, 611, 615-617.) On appeal, appellant claimed that the restitution award was improper because the actual victim was Mr. Bengé, and his estate did not qualify as a victim under section 1202.4, subdivision (k). (AOB 3-4.)² The California Court of Appeal disagreed and affirmed the restitution order.

As will be shown below, the trial court properly ordered appellant to pay restitution to Mr. Bengé's estate and the Court of Appeal correctly upheld the order. First, Mr. Bengé's estate qualified as a victim entitled to restitution under the expanded definition of "victim" approved by the People in Marsy's Law. Moreover, as the legal equivalent of the deceased, Mr. Bengé's estate was substituted for the victim within the meaning of section 1202.4, subdivisions (a) and (f), the moment Mr. Bengé died. For these reasons, the judgment should be affirmed.

STATEMENT OF THE CASE

On April 6, 2007, appellant narrowly missed colliding with a California Highway Patrol vehicle while driving intoxicated for over three miles on the wrong side of the freeway. When the California Highway Patrol vehicle swerved to avoid a collision, appellant collided head-on with Donald Bengé, who was driving his car directly behind the patrol car. (1CT 109-115; 3CT 501-504, 560-561; 2RT 310, 319.) Mr. Bengé was pronounced dead at the scene. (3CT 560-561.) He was not survived by any family. (2RT 604-605.)

² On March 24, 2011, appellant simultaneously filed a motion for relief from default and notice of his intent to rely on his Appellant's Opening Brief filed in the Court of Appeal. Appellant's motion was granted on April 4, 2011. Accordingly, references to Appellant's Opening Brief refer to his Court of Appeal brief.

Following a jury trial, appellant was acquitted of murder (count 1; § 187, subd. (a)), but was convicted of gross vehicular manslaughter while intoxicated (count 2; § 191.5, subd. (a)), driving under the influence causing injury (count 3; Veh. Code, § 23153, subd. (a)), and driving with a .08% blood alcohol causing injury (count 4; Veh. Code, § 23153, subd. (b)). (2CT 200-203, 339-340; 3CT 475-478.)

Appellant was sentenced to a total of six years in state prison. (3CT 554-558; 2RT 329.) A restitution hearing was held on August 5, 2009. The trial court ordered appellant to pay restitution to the victim's estate in the amount of \$446,486, including \$256,696 in net losses on Mr. Bengé's business and assets, \$189,745 in probate-related costs, and \$45 in funeral costs. (3CT 554-558, 582-585; 2RT 616-617.) In doing so, the trial court noted that the constitutional definition of "victim" includes a "lawful representative of [a] crime victim who is deceased," which, in this case, was Mr. Bengé's estate. (2RT 605-606; see Cal. Const., art. I, § 28, subd. (e).)

On appeal, appellant argued that the restitution order was improper because a "victim" capable of collecting restitution under section 1202.4, subdivision (k), was not identified at the restitution hearing. (AOB 3.) He further argued that the award to Mr. Bengé's estate was improper because it did not qualify as a "direct victim" of the crime under section 1202.4, subdivision (k)(2). (AOB 3-4.) On September 24, 2010, the Court of Appeal issued a published decision in this case, finding that Mr. Bengé's estate was entitled to restitution. (Opinion at p. 6.) The court reasoned that appellant was properly ordered to pay restitution to Mr. Bengé's estate because the "estate did not merely indemnify or remediate the effects of" appellant's crime. (Opinion at p. 5.) The court noted that the estate only existed because of appellant's criminal actions and it would be unreasonable to interpret that restitution statute to provide greater

protection to those crime victims “who survive criminal conduct than those who die from it.” (Opinion at p. 5.) The court also noted that the restitution order in this case was consistent with the Legislature’s intent that the right of restitution not terminate with the death of the victim. (Opinion at pp. 5-6.) Accordingly, the court affirmed the judgment. (Opinion at p. 6.)

SUMMARY OF ARGUMENT

Marsy’s Law amended the California Constitution so that restitution is mandated in every case where a crime victim incurs an economic loss. (Cal. Const., art. I, § 28, subd. (b)(13).) Marsy’s Law also expanded the constitutional definition of “victim” to include “a lawful representative of a crime victim who is deceased[.]” (Cal. Const., art. I, § 28, subd. (e).) In this case, the lawful representative of the victim was the administrator or executor of the victim’s estate. Therefore, appellant was properly ordered to pay restitution to Mr. Bengé’s estate pursuant to Marsy’s Law.

Moreover, because Mr. Bengé’s estate was the legal equivalent of the deceased victim, it was the “victim” under section 1202.4 as soon as Mr. Bengé died. Thus, appellant was properly ordered to pay restitution to the crime victim’s estate for the economic losses the estate incurred from the victim’s death as a result of appellant’s criminal acts.

ARGUMENT

THE TRIAL COURT PROPERLY ORDERED APPELLANT TO PAY RESTITUTION TO THE VICTIM’S ESTATE

Appellant claims the estate of the victim, Donald Bengé, was improperly awarded restitution because the victim of his crime was Mr. Bengé himself, and because his estate does not qualify as a victim entitled to recoup restitution under section 1202.4, subdivision (k). (AOB 2-4.) To the contrary, Mr. Bengé’s estate had a constitutional right to recover

restitution from appellant under Marsy's Law. In addition, as the Court of Appeal correctly concluded, the estate of a victim whose death was caused by the wrongdoer's criminal conduct is entitled to receive restitution pursuant to section 1202.4.

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. [Citations.]” (*People v. Williams* (2010) 184 Cal.App.4th 142, 146; see *Regents of University of California v. Superior Court* (1999) 20 Cal.4th 509, 531, superseded by statute on other grounds.) As the issue in this case is whether Mr. Bengé's estate qualifies as a victim capable of recouping restitution under Marsy's Law and section 1202.4, subdivision (k), questions of constitutional and statutory interpretation, the case is subject to independent review. (See *People v. Saint-Amans* (2005) 131 Cal.App.4th 1076, 1084.)

“‘The principles of constitutional interpretation are similar to those governing statutory construction.’ [Citation.]” (*Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 444 (*Silicon Valley*)). The plain meaning of clear and unambiguous language must be followed, unless doing so would lead to absurd results that could not have been intended. (*Ibid.* [constitutional interpretation]; *People v. Birkett* (1999) 21 Cal.4th 226, 231-232 [statutory interpretation] (*Birkett*)). If the language is ambiguous, this Court may consider extrinsic evidence in determining voter and Legislative intent. (*Silicon Valley, supra*, at pp. 444-445 [extrinsic evidence includes Legislative Analyst's analysis and ballot arguments for and against initiative]; *Birkett, supra*, at pp. 231-232 [extrinsic evidence includes history and background of statute].)

B. The Victim's Estate Was Properly Awarded Restitution Under The Victims' Bill of Rights Act of 2008: Marsy's Law

In 1982, the voters of California adopted Proposition 8, an initiative that added article I, section 28, former subdivision (b), to the California Constitution. In relevant part, that section established a constitutional right for crime victims to receive restitution directly from defendants convicted of crimes causing the victims to suffer an economic loss. The provision, which was “not self-executing, directed the Legislature to adopt implementing legislation.” (*People v. Giordano* (2007) 42 Cal.4th 644, 652 (*Giordano*)). Thereafter, the Legislature enacted section 1202.4 to implement this mandate. (*People v. Anderson* (2010) 50 Cal.4th 19, 27-28, fn. omitted (*Anderson*); see also *Giordano, supra*, at pp. 651-654 [comprehensive history of the evolution of the restitution scheme].)

In 2008, the voters of California adopted Marsy's Law, an initiative that further amended the California Constitution.³ (See *Anderson, supra*, 50 Cal.4th at p. 28, fn. 7.) As described in the ballot materials, Marsy's

³ As Marsy's Law went into effect on November 5, 2008, and appellant was ordered to pay restitution on August 5, 2009, the law applies to this case. (See Voter Information Guide, General Election (November 4, 2008) text of Proposition 9, § 10, p. 132 [“[t]he provision of this act shall apply in all matters which arise and to all proceedings held after the effective date of this act”] <<http://www.voterguide.sos.ca.gov/past/2008/general/title-sum/prop9-title-sum.htm>> [as of May 4, 2011]; cf. *People v. Millard* (2009) 175 Cal.App.4th 7, 19, 24 [applying language of art. I, § 28, former subd. (b), to review victim restitution order made before passage of Marsy's Law].) Indeed, without defense objection, the trial court relied on the language of Marsy's Law in finding that Mr. Benge's estate qualified as a victim. (2RT 605-606.) Moreover, the application of Marsy's Law to this case would not implicate ex post facto principles because direct victim restitution, as opposed to a restitution fine, is not punishment. (*People v. Kunitz* (2004) 122 Cal.App.4th 652, 657, citing *People v. Harvest* (2000) 84 Cal.App.4th 641, 645-647.)

Law “expand[s] the legal right of crime victims and the payment of restitution by criminal offenders[.]” (Voter Information Guide, General Election (November 4, 2008) analysis of Proposition 9, p. 58 [Criminal Justice System. Victims’ Rights. Parole. Initiative Constitutional Amendment and Statute.] <<http://www.voterguide.sos.ca.gov/past/2008/general/analysis/prop9-analysis.htm>> [as of May 3, 2011].) Under Proposition 8, restitution was to be ordered “unless compelling and extraordinary reasons exist to the contrary.” (Cal. Const. art. I, § 28, former subd. (b).) As applicable to this case, Marsy’s Law amended the Constitution to delete the qualifying language, thus making restitution mandatory in every case where “a crime victim suffers a loss.” (Cal. Const., art. I, § 28, subd. (b)(13)(B); see Voter Information Guide, *supra*, text of Proposition 9, § 28, subd. (b)(13)(B), p. 130 [deleting “unless compelling and extraordinary reasons exist to the contrary”].) The right to restitution may be enforced by “[a] victim, the retained attorney of a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the victim[.]” (Cal. Const., art. I, § 28, subd. (c)(1).) Marsy’s Law also specifically defined the term “victim” to include “a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime” as well as “the person’s spouse, parents, children, siblings, or guardian” and “*a lawful representative of a crime victim who is deceased[.]*” (Cal. Const., art. I, § 28, subd. (e), emphasis added.) Critically, unlike Proposition 8, which directed the Legislature to adopt implementing legislation, Proposition 9 was self-executing. (See Voter Information Guide, *supra*, text of Proposition 9, § 28, subd. (b)(13)(B), p. 130 [deleting directive to Legislature to “adopt provisions to implement this section”].)

In this case, the administrator of Mr. Bengé's estate was the lawful representative of the victim, Mr. Bengé.⁴ (See, e.g., *Davis v. Davis* (1864) 26 Cal. 23, 37 [“representative,” as used in the 1863 amendment to the California Practice Act, “was intended by the Legislature to designate the executor or administrator of a deceased person, and also the person or party who had succeeded to the right of the deceased”]; see generally Prob. Code, §§ 58 [defining “personal representative”], 9820, subd. (a) [personal representative of an estate may “[c]ommence and maintain actions and proceedings for the benefit of the estate”]; Code Civ. Proc., §§ 377.20 [survival of cause of action for or against decedent], 377.30 [who can commence action when cause of action survives death], 377.40 [cause of action against decedent who survives can be asserted against estate].) The prosecution was able to enforce the restitution rights of Mr. Bengé's estate under article I, section 28, subdivision (c)(1), of the Constitution. Thus, the trial court in this case correctly found that Mr. Bengé's estate, as a lawful representative of the deceased crime victim, qualified as a victim entitled to receive restitution from appellant under the California Constitution. (2RT 605-606.) Accordingly, the restitution order should be upheld.

C. The Victim's Estate Was Properly Awarded Restitution Under Section 1202.4

Appellant contends that Mr. Bengé's estate does not qualify as a victim entitled to restitution, as defined in section 1202.4, subdivision (k). Specifically, he argues that Mr. Bengé's estate is not a “direct victim” within the meaning of section 1202.4, subdivision (k)(2), because the crime was directed at Mr. Bengé himself, and not his estate. (AOB 3-4.) Citing

⁴ It appears that a Mr. Rawson originally acted as the administrator of Mr. Bengé's estate before Farmers and Merchants Trust Company of Long Beach took over. (2RT 612.)

the language of section 1202.4, subdivision (k), appellant asserts that the Legislature intended “to exclude individuals not described in the code from being considered victims.” (AOB 3.) Respondent submits that, legally speaking, Mr. Bengé’s estate became the “victim” the moment Mr. Bengé died. Accordingly, the estate was entitled to restitution under section 1202.4, subdivisions (a) and (f).

As noted above, the Legislature enacted section 1202.4 to implement the constitutional mandate of Proposition 8. (*People v. Martinez* (2005) 36 Cal.4th 384, 388 (*Martinez*)). Section 1202.4, subdivision (a)(1), provides: “It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.” Subject to exceptions that are not relevant here, “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.” (§ 1202.4, subd. (f).)

Here, Mr. Bengé was the actual crime victim. It is clear that the actual crime victim is entitled to restitution under section 1202.4, subdivisions (a) and (f). However, in cases, such as this one, where the crime victim dies, the deceased victim’s estate steps into the deceased’s shoes and becomes the victim under section 1202.4, subdivisions (a) and (f). *People v. Slattery* (2008) 167 Cal.App.4th 1091 (*Slattery*) supports this interpretation. In that case, the defendant injured her dependant mother, who died 10 days later in the hospital. (*Id.* at pp. 1093-1094.) The defendant was ordered to pay restitution to the hospital for \$876 in unpaid medical expenses pursuant to section 1202.4. (*Id.* at p. 1094.) The court held that the restitution award was improper because the hospital was not a

“direct victim” under section 1202.4, subdivision (k)(2). (*Id.* at pp. 1095-1096.) The court reasoned that the “immediate object” of the defendant’s crime was her deceased mother, and thus “the hospital incurred its economic loss indirectly from” the defendant’s conduct. (*Id.* at p. 1097.) Significantly, the court stated that “[b]ecause defendant’s mother is deceased, the court must order the restitution to be paid to her estate.” (*Ibid.*)

As the Court of Appeal in this case observed, “[*Slattery*] 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.” (Opinion at p. 5.) This interpretation of the statute is sound. Indeed, this Court recently noted that restitution may properly be paid to a deceased crime victim’s estate under section 1203.1, even though the broad authority to order restitution pursuant to that section also allowed a restitution order paid directly to a third-party hospital. (*Anderson, supra*, 50 Cal.4th at p. 32 [holding that the trial court did not abuse its broad discretionary power to order restitution as a condition of probation pursuant to section 1203.1 by ordering defendant to pay restitution for victim’s medical costs directly to hospital].) The *Anderson* Court noted that a third-party restitution award would be impermissible under section 1202.4 because “[w]hen section 1202.4 imposes its mandatory requirements in favor of a victim’s right to restitution, the statute is explicit and narrow.” (*Id.* at p. 29 [comparing section 1203.1 with 1202.4].) Nonetheless, the basic premise that restitution may be ordered paid to a deceased crime victim’s estate applies with equal force to the more narrow provisions of section 1202.4, even if restitution ordered to a hospital would be foreclosed under that section. Appellant provides no explanation as to why a different conclusion should be reached. And it would contravene a central goal of restitution - to make those that suffer from crimes whole - if restitution to a

deceased crime victim's estate is precluded when the person causing the death receives a prison sentence, but not when the person is given probation.

Moreover, interpreting section 1202.4 to allow restitution to a deceased victim's estate when the estate incurs an economic loss as a result of the victim's death does not expand the definition of victims entitled to restitution beyond what the Legislature contemplated in enacting the statute. Indeed, as the Court of Appeal observed, by allowing "the immediate surviving family of an actual victim" to recover restitution under section 1202.4, subdivision (k)(1), the Legislature clearly indicated that it "did not intend the right to restitution to terminate with a victim's death." (Opinion at p. 5.)

Adopting appellant's interpretation of the term "victim" to exclude Mr. Bengé's estate also "would lead to absurd results the Legislature could not have intended." (*Birkett, supra*, 21 Cal.4th at p. 231; see also *People v. Broussard* (1993) 5 Cal.4th 1067, 1077 [interpreting statute to provide restitution for economic losses only to those victims who suffer physical injury "would lead to arbitrary and capricious results"]; *People v. Morris* (1988) 46 Cal.3d 1, 15 ["[i]n construing legislative intent, it is fundamental that a statute should not be interpreted in a manner that would lead to absurd results"], disapproved on other grounds in *In re Sassounian* (1995) 9 Cal.4th 535, 543, fn. 5.) For example, a defendant who murders a victim with surviving family members would be required to pay restitution (§ 1202.4, subds. (f), (k)(1), (k)(3)), whereas a defendant who murders a victim who does not have any identifiable relatives at the time of the restitution hearing, like Mr. Bengé, would not have to pay for the economic losses incurred as a result of his criminal actions under section 1202.4. (See, e.g., *People v. Hove* (1999) 76 Cal.App.4th 1266, 1272 ["fortuity that the victim here was over age 65, and thus covered by Medicare, should not

shield defendant from a restitution order which requires him to pay the full amount of the losses caused by his crime”].) Appellant’s interpretation of the law would also perversely reward those offenders who kill their victims. Indeed, had appellant simply injured Mr. Bengé instead of killing him, appellant unquestionably would have been required to pay restitution to Mr. Bengé. (§ 1202.4, subds. (a), (f).) As the Court of Appeal rightly noted, “[i]t would reflect rather oddly inconsistent legislative priorities if the statutes implementing our state Constitution’s Victims’ Bill of Rights [citation] provided greater protection to those who survive criminal conduct than those who die from it.” (Opinion at p. 5, referencing Cal. Const, art. I, § 28, former subd. (b).)

The fact that restitution orders are “enforceable as if the order were a civil judgment” further supports that the Legislature contemplated restitution being paid to an estate of a deceased crime victim. (§ 1202.4, subds. (a)(3)(B), (i).) If Mr. Bengé had been alive at the time of the restitution hearing, but died even minutes after appellant was ordered to pay restitution, Mr. Bengé’s estate would presumably be able to enforce the restitution order. It is illogical to interpret section 1202.4 to allow a deceased crime victim’s estate to collect restitution if the victim takes his last breath after the restitution hearing, but not if he dies a minute before.

Interpreting section 1202.4 to allow an estate to become the victim for purposes of section 1202.4 when the actual crime victim dies is not foreclosed by this Court’s opinion in *People v. Giordano*. In that case, this Court stated that the widow of a crime victim does not “step into the shoes of [the] decedent to recover his economic losses.” (*Giordano, supra*, 42 Cal.4th at p. 657.) The Court explained that “section 1202.4 does not provide that a surviving spouse, or other family member or heir, may recover losses on behalf of a deceased victim. Instead, it provides only that a victim may recover economic losses that he or she incurred personally: ‘a

victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.’ ([§ 1202.4], subd. (a), italics added.)” (*Giordano, supra*, at p. 657.) Accordingly, *Giordano* stands for the proposition that the amount of restitution is limited to the losses personally incurred by the victim as opposed to the losses the decedent would have been able to recover had he survived the crime. *Giordano* therefore limits the calculation of restitution, but not who may qualify as a victim.

Moreover, the restitution award was also authorized under section 1202.4, subdivision (k)(2). With this separate provision, an estate qualifies as a victim if it is the “direct victim” of a crime. (See *Martinez, supra*, 36 Cal.4th at p. 393.) This Court has explained that, under subdivision (k)(2), entities, such as an estate, are “direct victims” if the crime was “committed against” the entity or if the entity was the “immediate object” of the crime. (*Martinez, supra*, at p. 393; *Birkett, supra*, 21 Cal.4th at pp. 232-233.) This Court has therefore reversed restitution awards to business and governmental entities that were not the immediate objects of a crime. (See *Martinez, supra*, at pp. 386, 393-394 [reversing restitution award to California Department of Toxic Substances Control because it was not a “direct victim” entitled to restitution for its costs in cleaning up waste material from a defendant who attempted to produce methamphetamine]; *Birkett, supra*, at pp. 229-230, 243, 245-247 [insurance companies that reimbursed car theft victims were not “direct victims” entitled to restitution].) Conversely, courts have upheld restitution awards to business and governmental entities where the entity was the object of the crime. (See *People v. Crow* (1993) 6 Cal.4th 952, 954-955, 957-958 [restitution properly ordered paid to government where defendant committed welfare fraud]; *People v. Saint-Amans, supra*, 131 Cal.App.4th at pp. 1084-1086 [restitution properly awarded to bank where defendant was convicted of

commercial burglary]; *People v. O'Casey* (2001) 88 Cal.App.4th 967, 971 [insurance company properly awarded restitution as direct victim where defendant defrauded company]; *People v. Moloy* (2000) 84 Cal.App.4th 257, 260-261 [insurance companies properly awarded restitution as direct victims where defendant deceived companies into settling false claims].)

Mr. Bengé's estate is not a business or governmental entity that merely indemnified or remediated the effects of a crime. (See Opinion at p. 5; cf. *Martinez, supra*, 36 Cal.4th at pp. 393-394; *Birkett, supra*, 21 Cal.4th at p. 229.) Instead, as explained above, Mr. Bengé's estate, as the equivalent of the deceased, became the victim the moment Mr. Bengé died. The estate suffered economic losses as a direct result of Mr. Bengé's death, including funeral expenses and probate costs. (2RT 616-617; see *People v. Rubics* (2006) 136 Cal.App.4th 452, 461 [trial court properly ordered restitution to be paid to victim's mother for the victim's funeral expenses].) Indeed, it was only because of appellant's criminal actions that the estate existed in the first place. (Opinion at p. 5.) Because appellant caused Mr. Bengé's death, and because the estate stepped into the shoes of Mr. Bengé, the estate should be considered the object of appellant's crime, just as Mr. Bengé would have been had he survived.

Appellant argues that Mr. Bengé's estate is not a direct victim because he did not contemplate that the "estate would ever be financially harmed by his actions." (AOB 4.) But it is irrelevant whether criminals that commit vehicular manslaughter contemplate that someone will be financially harmed by their actions. The restitution award compensates Mr. Bengé's estate for the losses it incurred as a result of Mr. Bengé's death, and forces appellant to confront the harm he inflicted when he collided head-on with Mr. Bengé's car while driving drunk on the wrong side of the freeway. In this regard, the purpose of the restitution statutes is not only to compensate the victim, but to deter future criminality and rehabilitate the offender.

(*Anderson, supra*, 50 Cal.4th at p. 29; *People v. Crow, supra*, 6 Cal.4th at pp. 957-958; see also *People v. Vasquez* (2010) 190 Cal.App.4th 1126, 1131 [“[j]ust as a restitution order does not fully replicate a civil judgment, so too the judgment obtained in a civil action does not completely satisfy the purpose of an order of restitution entered in a criminal case”].)

“Restitution is an effective rehabilitative penalty because it forces the defendant to confront, in concrete terms, the harm his actions have caused.’ [Citation.] Restitution ‘impresses upon the offender the gravity of the harm he has inflicted upon another, and provides an opportunity to make amends.’ [Citation.]” (*Anderson, supra*, at p. 27.) Thus, allowing the estate of a deceased crime victim to recover restitution for the economic losses it incurs as a result of the criminal actions of a defendant furthers the compensatory, rehabilitative, and deterrent purposes of the restitution statutes.

Finally, “[t]he term ‘victim’ has a broad and flexible meaning” (*People v. Saint-Amans, supra*, 131 Cal.App.4th at p. 1084), and there is no reason to believe that the Legislature intended to exclude defendants from paying restitution for the economic losses their victims’ estates incur when their criminal conduct causes death. Any other conclusion would be at odds with article I, section 28, subdivision (e), of the California Constitution, which now clearly states that “[t]he term ‘victim’ . . . includes a lawful representative of a crime victim who is deceased[.]” (Cf. *Birkett, supra*, 21 Cal.4th at p. 243 [“[n]othing in the language or history of [Proposition 8] compels the conclusion that persons other than the real, actual, immediate, and direct victims of crime have a constitutional right to restitution from the offenders”].) Therefore, section 1202.4 should be interpreted to include the deceased crime victim’s estate, particularly in light of the expanded constitutional definition of “victim” under Marsy’s Law.

Read together, or independently, the language in Article I, section 28, subdivision (e), and section 1202.4, subdivisions (a), (f), and (k), authorize a restitution order to the victim's estate. Therefore, the restitution order should be upheld.

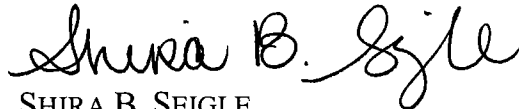
CONCLUSION

For the foregoing reasons, respondent respectfully requests that this Court affirm the Court of Appeal's decision upholding the restitution order.

Dated: May 4, 2011

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S BRIEF ON THE MERIT** uses a 13 point Times New Roman font and contains 4,658 words.

Dated: May 4, 2011

KAMALA D. HARRIS
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A handwritten signature in black ink, reading "Shira B. Seigle". The signature is written in a cursive, flowing style.

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DECLARATION OF SERVICE BY U.S. MAIL

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Case No.: **S187804**

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I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 4, 2011, at Los Angeles, California.

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Declarant


Signature