

In the Supreme Court of the State of California

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

PAUL D. RUNYAN,

Defendant and Appellant.

Case No. S187804

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

APPELLANT'S SUPPLEMENTAL BRIEFING

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SUPREME COURT
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INTRODUCTION

This case arises out of an appeal by Defendant and Appellant Paul D. Runyan (“Runyan” or “Appellant”) from the Court of Appeals decision affirming the Superior Court’s order, directing Mr. Runyan to pay restitution in the amount of \$446,486 to the Estate of Donald Eugene Benge (“Donald” or “Decedent”). The issue was again appealed and the petition for review by the California Supreme Court was granted.

Accordingly, two questions by the Court have been posed in regards to the present case: 1) Were the various categories of restitution, and each of the, assessed against defendant, intended to represent economic loss directly and personally incurred by the decedent as a result of the defendant’s criminal conduct?; and 2) Does Penal Code section 1202.4 require, or permit, restitution for direct and personal loss ostensibly incurred by the victim *at or after the time of the victim’s death*, and, *as a consequence of the victim’s death*?

Appellant respectfully and substantially responds in the negative to each respective inquiry because Penal Code section 1202.4 (and its progeny in the form of case law), in its unequivocal and express language, does not permit restitution for the direct and personal loss incurred by the victim at or after the time of death and as a consequence of the victim’s death to an estate that is *not* the direct victim of the conduct. Further, even if restitution to the victim’s estate is allowed in this matter, the categories of restitution assessed against Appellant did not represent economic loss directly and personally incurred by the decedent as a result of Appellant’s conduct, with one exception: \$45 in funeral costs assessed by the court.

LEGAL ARGUMENT

A. Penal Code Section 1202.4 Does Not Permit Restitution for Direct and Personal Loss Incurred by the Victim at or After the Time of the Victim’s Death or as a Consequence of the Victim’s Death

Because Appellant believes the answer to the second question concerning whether Penal Code section 1202.4 allows for restitution incurred by the victim at or after the time

of the victim's death, and as a consequence of a victim's death is "no," this Brief respectfully addresses the second question posed by the Court first. If the Court disagrees with the analysis in part "A" of this brief, a discussion regarding the Court's first question then admittedly becomes relevant.¹

"In ascertaining the Legislature's intent, we turn first to the language of the statute, giving the words their ordinary meaning. [Citations] We must follow the statute's plain meaning, if such appears [...] [Citations] If our examination of the statutory language leaves doubt about its meaning, we may consult other evidence of the Legislature's intent, such as the history and background of the measure. [Citations]." *People v. Birkett*, (1999), 21 Cal. 4th 226, 231-32. Further, our Supreme Court has noted: " 'If the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute)...' " (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798, 268 Cal.Rptr. 753, 789 P.2d 934.)." *People v. Mearns*, 97 Cal.App.4th 493, 499-500 (Ct. App. 2002). In confining Penal Code section 1202.4 to "actual" and "direct" victims rather than just any person who has incurred crime-related losses, the Legislature clearly sought to limit and specifically define those individuals who legitimately qualify for such restitution payments. As the court in *Birkett* correctly held, "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." *Birkett*, 21 Cal.4th at 243. In that case, the court denied restitution payments to the insurance companies which partially indemnified the owners of the stolen vehicles, holding that the vehicle owners were the direct victims

¹ As discussed in part "B" of this brief, the issues the Court requested be addressed in its first question have not been previously addressed by Appellant because Appellant is of the opinion that the answer to the Court's second question renders the first question moot. However, if the Court disagrees with Appellant's analysis in response to the second question in whole or in part, Appellant respectfully requests that the Appellate record be augmented (specific items requested to be augmented are discussed below) to allow the Court to adequately reach a final determination on all issues.

of the crimes and the losses suffered by the insurance companies only arose as a result of the crimes committed against the vehicle owners. *Id* at 243.

1. The Lower Court's Decision in *Slattery* Is Partially Flawed and the Court Can and Should Disregard that Part of Its Decision

In the present case, the language of the statute is clear and the intent of the Legislature is undeniable: only *direct* victims of the crime may collect restitution payments from the defendants. A lower court in *People v. Slattery* (2008) 167 Cal.App.4th 1091, made an error when taking an unwarranted logical leap in awarding restitution to the victim's estate, denying it to the Hospital, and directing the Hospital to then collect from the estate. *Id.* at 1097.²

Slattery, in part, was decided in error and contrary to the express language in the code when awarding damages to the victim's estate, which was not a direct victim of the crime. *That lower court decision is by no means binding on this Court.* While correctly holding that the Hospital was not a direct victim for the purpose of receiving restitution payments, the mother's estate was given restitution in order to pay out that same debt. *Id.* This decision not only contradicts the express language of the Penal Code, but it contradicts *Birkett* and its line of cases which correctly hold that only direct victims of the defendant's conduct can collect restitution damages. *See People v. Martinez* (2005) 36 Cal.4th 384, 393-394 (holding that the "defendant's attempt to manufacture methamphetamines was not an offense committed against the Department [of Toxic

² In *People v. Slattery*, the defendant called 911 in regards to the deteriorating health of his mother and due to her poor condition she was taken to Marshall Hospital. *Slattery*, 167 Cal.App.4th at 1094. The Hospital treated the mother for ten days until her death left them with \$876.00 in unpaid medical bills. *Id.* The trial court awarded restitution to be paid to the Hospital pursuant to section 1202.4, but the Court of Appeal reversed, holding that the Hospital was not a "direct victim" under the definition of the code. *Id.* at 1096. The court noted that, defendant's "criminal conduct consisted of inflicting injury upon an elder adult [, thus] Marshall Hospital is not a "direct victim" because it was not the " 'immediate object[]' " of the conduct, nor the entity " 'against which the ... crimes had been committed.' " [Citations] [...]. Rather, defendant's mother was the " 'immediate object []' " of the offense [...and] the hospital incurred its economic loss indirectly from defendant's conduct." *Id.* at 1096-97. The court awarded restitution to the mother's estate so that Marshall Hospital could bring a civil claim against the estate and ensure payment of the debt. *Id.* at 1097.

Substances Control that cleaned up the site], nor was the Department the immediate object of his crime [...] the Department was not a direct victim entitled to recover its cleanup costs under section 1202.4”).

2. The Legislature Surely and Clearly Contemplated the Issue of Whether Criminal Restitution Should Be Awarded in the Same Manner as a Civil Awards for the Same Act and Strategically Voted That It Should Not

The Legislature so obviously contemplated the issue of including the victim’s estate, and to what degree, in the Penal Code, because otherwise, the victim’s estate would have simply constituted its own category, without the qualifying term “direct.” However, while the intentions behind the Legislature’s intentions are left with them, the meaning of such wording and its enactment is nonetheless, completely clear to us all. The victim’s estate was intentionally placed into the category with corporations and other indirect entities (which sometimes strive to collect restitution payments, but are not permitted to in most cases), so that the “direct” connection requirement would supersede any non-qualifying estate from collecting. This was done because even in death scenarios such as this one, the Legislature restricted that restitution be permitted *only* for estates which are the direct victim of the loss occurred at, after, or as a consequence of death.

3. The Code of Civil Procedure, As Well As the Holding in *Pease*, Covered Civil Proceedings Which Are Distinguishable From the Present Case, but Are Relevant Here, in that the Legislature Chose Not to Enact the Same Standards in Criminal Cases

The fundamental distinction between the Code Sections cited by the Court in making this inquiry, specifically Code of Civil Procedure 334.30 and 337.60, along with the case *Pease v. Beech Aircraft Corp.* (1974) 38 Cal.App.3d 450, 460, fn.1, is that they deal with *civil* matters. As with all the regulations and requirements differentiating the criminal and civil realm, criminal proceedings are much more fundamental to the life and liberty of the defendant and as such, require strict compliance with the language deliberately in the code. The Legislature conspicuously drafted a distinct statute

regarding the criminal victim's collection scheme, when simply copying the civil intestate succession would have been much easier. The reason for our appearance before this Court is to abide by the Legislature's language in Penal Code section 1202.4, and to follow the line of succession specifically laid out there, leaving the civil line of succession for matters involving only such transactions, *civil*. There was clear motive in the line of succession drafted in section 1202.4 and that motive mandates that the Penal Code be precisely followed so that *only* direct victims of the crime collect restitution from the defendant.

B. The Various Categories of Restitution, and Each of Them, Assessed Against Appellant, Were Not Intended to Represent Economic Loss Directly and Personally Incurred by the Decedent as a Result of Appellant's Conduct

1. The Financial Breakdown of Restitution Expenses Was Not Contemplated on Appeal and Is Absent from the Record

In the instant action, the restitution claims made by Respondent are beyond speculative. More importantly, however, the transcript and moving papers that were utilized in properly responding to this inquiry, namely the financial breakdown that Art Olson prepared, appears nowhere in the Appellate Record. This issue was not contemplated or discussed on appeal because Appellant believed that the issue surrounding the definition of the term "victim," under Penal Code 1202.4, made the breakdown of such expenses moot. Thus, if the Court wishes to contemplate this issue, Appellant respectfully requests that the Court augment the records to include the transcript of the proceeding from August 05, 2009. Additionally, Appellant respectfully requests that the Court include the documents placed in the court file by the District Attorney's Office which were utilized by the lower court in rendering their judgment.

In the event that this Court wishes to accept the conclusion expressed in *Slattery*, although Appellant does not concede that it should, and a more in-depth analysis of such reasoning is provided below, then Appellant kindly requests that this Court to augment

the record, so that Appellant is able to fully discern how Respondent obtained the restitution figures that it did.

2. Restitution Cannot be Speculative and Must be Reasonably Connected to the Crime Committed

Section 1202.4 states that “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.” Pen.Code, § 1202.4, subd. (f). As the court in *People v. Mearns* held, and *People v. Phu* corroborated, restitution, though due to a victim in an amount which will fully reimburse the victim for his/her loss, cannot be one that is “arbitrary and capricious.” *People v. Phu*, 179 Cal.App.4th 280, 283 (Ct. App. 2009) (quoting *Mearns*, 97 Cal.App.4th at 498. Both *Mearns* and *Phu* indicated that the trial court must use a “rational method” of calculation when determining restitution due to the victim under Section 1202.4, stating that although “the trial court has broad discretion in making a restitution award, that discretion is not unlimited. [...] the trial court must use a rational method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious.” [Citations].” *People v. Mearns*, 97 Cal.App.4th at 498-99.

3. In the Present Case, the Restitution Awarded, With the Exception of Funeral Costs, Are Entirely Speculative

a. Appellant’s Admittedly Abhorrent Conduct Were Not the Proximate or Cause and Were Not Rationally Related to the Contents of Residence, Rare Coin Collection and Fencing Equipment Business to Be Sold For Less Than Adequate Value

In the present case, the Restitution expenses asserted by Respondent are wholly speculative. Given the specific inquiry posed by this Court, regarding restitution categories that represented economic loss directly and personally incurred by the Decedent as a result of the defendant’s criminal conduct, the categories of: “Some contents of residence,” “Rare Coin Business,” and “Fencing Equipment Business” listed

in Respondent's Restitution demands, pose a substantial issue. These expenses do not represent economic losses that were directly and personally incurred by the Decedent as a result of Appellant's conduct. The executor of the victim's estate failed to obtain the full value for the victim's residence, coin collection and fencing equipment. However, such an omission on the part of the estate does not justify, nor should it allow, Art Olson ("Mr. Olson") to arbitrarily assess and assign "actual" values to each respective category.

The justifications for the sums in each such category remain so capricious that Appellant, to this day, lacks a clear understanding of the origin of those figures. The fact that the actual sale price of the coin business, for example, was \$807,000 and the net loss on coins equated to \$229,721 is all *but* the proximate cause of Appellant's actions. While Appellant remains the cause-in-fact of such a loss, there is no proximate cause to the net loss on the coins, the fencing inventory nor the contents of the residence. The actual sale price of each such respective category, too, remains anything but the proximate cause of Appellant's conduct in the incident addressed here. The tragic and untimely passing of the victim did not devalue the cost of the coins, the fencing equipment or the content of the residence; it was the inattentive selling of these items for an improper amount that caused such devaluation, if such a devaluation actually occurred.

b. The Probate Costs Cited Are Far Too Speculative To Hold Appellant Accountable for Them

Furthermore, assuming that the record will be augmented, the Probate costs remain far too capricious to justify a restitution award. Probate costs "that would have had to be paid if Donald died with a Revocable Trust as he had planned" are speculative in their very title, let alone in their amount. Holding Appellant responsible for such expenses would be akin to requiring him to pay restitution for stock that the Mr. Bengel wished to have purchased before he passed (that eventually increased in value), but did not get a chance to. It is unreasonable to hold Appellant responsible for the lost profits of something that was not even in effect during the Decedent's lifetime. Planning to take a course of action is far different than actually having taken one, and who is to say that what the Decedent told Art Olson was *actually* what he had planned to do? Perhaps,

even the Decedent changed his mind about creating a revocable trust. Without delving into the regulations on the matter, who is to say that a Revocable Trust was even a legal option that the Decedent would have been allowed to pursue? Accordingly, because such assumptions leave logical gaps in the analysis, holding Appellant responsible for such unpredictable and speculative expenses is not rational. It is not even an economic loss that was directly and personally incurred as a result of Appellant's conduct.

c. David Rawson's Services Were Not, Per Se, an Extra Expense

In terms of the expenses relating to "David Rawson, estate advisor, long time close friend of Donald Benge," it was never established that Mr. Rawson actually was paid any money, and the calculations concerning the value of his time was never addressed by the court. The trial court awarded that figure based on the amount of hours Mr. Rawson articulated he spent. Further, while it is undeniable that the victim in this case went through a very unfortunate event, it is one that each of us will eventually have to undergo in our respective lifetime. Unfortunately and sadly, because all people do eventually pass, this \$36,000 was not an *extra* expense that was caused by Appellant's conduct, it was one that would be paid at one point or another simply due to the natural course of events and not due to a superseding factor.

d. Art Olson's Travel Expenses Were Not a Direct and Personal Loss Incurred As a Result of Appellant's Conduct

Art Olson's travel expenses and time spent in regards to this suit were similarly speculative and more importantly, irrational. The choices to fly and travel were personal on the part of Art Olson and could not be further from the direct and personal loss incurred by the victim as a result of Appellant's conduct.

e. Biblical Calculations Are Not Covered by Restitution Awards

In the record that Appellant hopes will be augmented, Mr. Olson asked for an increase in restitution from 20% to double, based on biblical standards. The "[a]dditional

values for restitution as suggested biblically” are, in their very assertion, capricious and not covered by restitution awards. While restitution is determined by figures that will make the victim whole, mandating payment of expenses that are “suggested biblically” is contrary to the code, case law and to the rational calculation test that such awards must abide by. In addition to Mr. Olson’s arbitrary numbers for the aforementioned categories, he demanded an increased award due to these “biblically” suggested figures. Such expenses should not only be avoided in restitution awards as whole, but they were in no way economic losses incurred by the Decedent as a result of Appellant’s conduct. Any reliance on these factors addressed by Mr. Olson obviously violates Appellant’s First Amendment rights.

f. Funeral Expenses

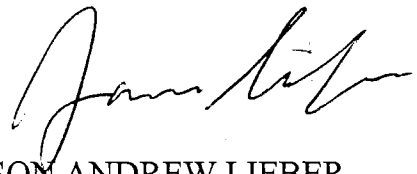
While Appellant does not concede that such restitution expenses flowed from his conduct as a direct and personal loss incurred by the Decedent, Appellant will concede that if, and only if, the Court chooses to follow *Slattery*, the \$45 funeral expenses do filter in as such a direct cause. Nonetheless, Appellant respectfully requests that this Court deny an order mandating payment of the aforementioned restitution charges as they were neither assessed against Appellant nor do they represent direct and personal loss that the Decedent incurred as a result of Appellant’s actions.

CONCLUSION

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

Dated: March 2, 2012

Respectfully submitted,



JASON ANDREW LIEBER

ATTORNEY AT LAW

Attorney for Defendant and Appellant PAUL D. RUNYAN

CERTIFICATE OF COMPLIANCE

I certify that the attached **APPELLANT'S SUPPLEMENTAL BRIEFING** uses 13 point Times New Roman font and contains 3, 454 words. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: March 2, 2012

Respectfully submitted,



JASON ANDREW LIEBER

ATTORNEY AT LAW

Attorney for Defendant and Appellant PAUL D. RUNYAN

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 22130 Clarendon Street, Woodland Hills, California 91367. On March 2, 2012, I caused a copy of the within;

APPELLANT'S SUPPLEMENTAL BRIEFING (Supreme Court of the State of California Case No. S187804; Court of Appeal Case No. B218863; Los Angeles County Superior Court No. BA322080),

To be delivered via Fed Ex, in sealed envelopes with proper postage on the following:

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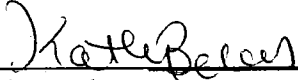
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I declare under penalty of perjury that the foregoing is true and correct.

Executed: March 2, 2012, at Los Angeles County, California.



Kathy Belous
Declarant