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March 2, 2012

Frederick K. Ohlrich
Clerk of the Supreme Court
Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102-4797

SUPREME COURT
FILED

MAR - 5 2012

RE: *People v. Paul Dean Runyan*
Supreme Court of the State of California, Case No. S187804

Frederick K. Ohlrich, Clerk
Deputy

Dear Clerk of the Court:

On February 22, 2012, this Court requested supplemental letter briefing to address the following questions: “(1) Were the various categories of restitution, and each of them, 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?”

As to the first question, it appears that the various categories of restitution assessed against appellant were not intended to represent economic losses directly and personally incurred by the decedent, but rather were intended to represent economic losses directly incurred by the victim, here, the estate. As to the second question, Penal Code¹ section 1202.4 requires restitution for direct and personal losses incurred by the victim at and after the time of the actual victim’s death, and as a consequence of the actual victim’s death.²

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

² Respondent notes that the vehicular manslaughter victim in this case was Mr. Donald Bengé and submits that the victim for restitution purposes is Mr. Bengé’s estate. Thus, respondent will refer to Mr. Bengé by name or as the decedent to avoid any confusion surrounding the word “victim.”

I. THE RESTITUTION ASSESSED AGAINST APPELLANT REPRESENTS THE ECONOMIC LOSSES DIRECTLY INCURRED BY THE VICTIM, THE DECEDENT'S ESTATE, AS A RESULT OF APPELLANT'S CRIMINAL CONDUCT

At the August 5, 2009, restitution hearing, the trial court ordered appellant to pay restitution to Donald Bengé's estate in the amount of \$446,486, consisting of \$229,721 in net losses to Mr. Bengé's rare coin business, \$9,764 in net losses to Mr. Bengé's fencing equipment, \$17,211 in net losses to Mr. Bengé's residence, \$36,000 to be paid to David Rawson, \$5,100 to be paid to Art Olson, \$148,645 in probate costs, and \$45 in funeral costs. (2RT 616-617.)

The various categories of restitution assessed in this case were not "intended to represent economic loss directly and personally incurred by the decedent as a result of the defendant's criminal conduct" because these losses were suffered after the decedent had passed. The restitution assessed in this case, rather, was intended to represent the economic losses directly incurred by the victim, here, Mr. Bengé's estate, as a result of appellant's criminal conduct. (See § 1202.4, subd. (f)(3).)

Specifically, the estate suffered a \$256,696 net loss on Mr. Bengé's rare coin business, his fencing equipment, and items from his residence when it was forced to sell those items as a result of Mr. Bengé's death. (See 2RT 305-306, 616-617; § 1202.4, subd. (f)(3) & (f)(3)(D); see also People's Points and Authorities in Support of Restitution to the Estate of Donald Bengé³ ("People's Memorandum") at p. 6 & Attachments.) The estate also suffered a \$36,000 economic loss to the extent it paid David Rawson for his services in gathering the necessary paperwork and acting as the "de facto executor" immediately after Mr. Bengé died and until the Trust Company could take over. (2RT 612, 616-617; see § 1202.4, subd. (f)(3); People's Memorandum at p. 6 & Attachments.) Similarly, the estate suffered a \$5,100 economic loss to the extent it paid Art Olson to travel to the sentencing and restitution hearings to speak on behalf of Mr. Bengé, present the itemized list of economic losses incurred by the estate, and to urge the trial court to order restitution for the economic losses to Mr. Bengé's estate as a result of appellant's criminal conduct. (2RT 305-306, 611-614, 616-617; see § 1202.4, subd.

³ As noted by appellant in his Reply Brief (Appellant's Reply Brief at p. 7, fn. 2), the People's memorandum supporting the restitution award in this case is not a part of the record on appeal. (See 1RT 601 [trial court read and considered People's memorandum of points and authorities in support of restitution].) However, as it appears the specific calculation of the restitution assessed against appellant may be relevant to the disposition of this case, respondent has filed a Motion to Augment the record with the People's memorandum concurrently with the instant supplemental letter brief.

(f)(3)(E); People's Memorandum at p. 6 & Attachments.) Finally, as a result of Mr. Bengé's death, the estate sustained \$148,645 in probate costs and \$45 in funeral costs. (2RT 616-617; see § 1202.4, subd. (f)(3); People's Memorandum at p. 6 & Attachments.) Those costs would not have been incurred by the estate but for appellant's criminal conduct resulting in Mr. Bengé's death. To that end, respondent submits that the trial court properly ordered appellant to pay for the aforementioned economic losses incurred by the victim-estate as a result of Mr. Bengé's untimely death.

II. SECTION 1202.4 REQUIRES RESTITUTION FOR DIRECT AND PERSONAL ECONOMIC LOSSES INCURRED BY A VICTIM AT OR AFTER THE TIME OF THE DECEDENT'S DEATH AND AS A CONSEQUENCE OF THE DECEDENT'S DEATH

"[W]hen a defendant is convicted of a crime involving a victim who 'has suffered economic loss as a result of defendant's conduct' (Pen. Code, § 1202.4, subd. (f)), the court must require the defendant to pay full restitution directly to the victim or victims of the crime 'unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.' (*Id.*, subd. (g).)" (*People v. Giordano* (2007) 42 Cal.4th 644, 651-652 (*Giordano*)). "To the extent possible, the restitution order . . . shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct[.]" (§ 1202.4, subd. (f)(3).)

Although a personal representative may commence a surviving cause of action on behalf of a decedent (Civ. Code Proc., § 337.30), the recoverable damages are limited to those incurred by the decedent prior to his death (Code Civ Proc., § 337.34). Conversely, a victim for purposes of section 1202.4 does not "step into the shoes of [the] decedent to recover his economic losses." (*Giordano, supra*, 42 Cal.4th at p. 657.) Instead, section 1202.4 provides that a victim may recover only those economic losses incurred directly and personally, as opposed to those incurred directly and personally by the decedent. (*Ibid.*) Thus, for purposes of calculating restitution pursuant to section 1202.4, it is irrelevant when the victim incurred the economic loss in relation to the actual crime victim's death. (See, e.g., *Giordano, supra*, 42 Cal.4th at pp. 657-658 [rejecting argument that section 1202.4 only authorizes restitution for economic losses incurred prior to date of restitution hearing]; *People v. Phelps* (1996) 41 Cal.App.4th 946, 950 ["[n]othing in the language of the Constitution suggests an intent to limit the right to restitution for financial losses occurring within a particular time frame, or restitution to expenses incurred before sentencing"]; see generally *Pease v. Beech Aircraft Corp.* (1974) 38 Cal.App.3d 450, 460, fn. 1 [noting that a personal representative would have a cause of action for damage to personal property regardless of whether the damage

occurred prior to, at the same time as, or after the death of the owner].) Rather, the limiting factor for purposes of section 1202.4 is whether the economic loss has a causal relationship to the defendant's criminal conduct and whether the victim directly and personally incurred the economic loss. (See *People v. Woods* (2008) 161 Cal.App.4th 1045, 1049 ["Courts have interpreted section 1202.4 as limiting restitution awards to those losses arising out of the criminal activity that formed the basis of the conviction"]; *People v. Jones* (2010) 187 Cal.App.4th 418, 424-427 [holding that tort principles of causation apply to victim restitution claims in criminal cases].)

Indeed, cases analyzing the propriety of restitution orders under section 1202.4 have upheld restitution awards for economic losses incurred prior to and after the death of the actual crime victim. For example, in *People v. Slattery* (2008) 167 Cal.App.4th 1091, 1097, the Court of Appeal ordered restitution paid to the estate of a deceased assault victim for unpaid medical expenses incurred prior to the crime victim's death. In *People v. Rubics* (2006) 136 Cal.App.4th 452, 454, 461, the Court of Appeal held that the defendant was properly ordered to pay restitution to the decedent's family for the amount of the decedent's funeral costs where the defendant's criminal act of felony hit and run (Veh. Code, § 20001, subds. (a), (b)(2)) resulted in the actual crime victim's death. And in *Giordano*, this Court found that a widow of a crime victim could recover restitution for the amount of lost economic support incurred due to a criminal act that resulted in the death of her husband. (*Giordano, supra*, 42 Cal.4th at p. 662.)

Distinguishing between those economic losses sustained prior to the actual crime victim's death and those economic losses sustained after the actual crime victim's death would contravene the purposes of the restitution scheme, which is to make the victim whole, to deter future criminality, and to rehabilitate the offender. (See *People v. Crow* (1993) 6 Cal.4th 952, 957 [restitution serves a rehabilitative purpose and acts as a "deterrent to future criminality"]; *People v. Vasquez* (2010) 190 Cal.App.4th 1126, 1133 ["In addition to compensating the victim, a restitution order is intended to rehabilitate the defendant and to deter the defendant and others from future crimes"]; see, e.g., *Giordano*, 42 Cal.4th at p. 658 ["In order to restore the economic status quo, to the extent that it is possible when a criminal act has injured a victim, restitution orders must not be limited to the amount of money that has been paid or lost prior to the restitution hearing"].)

Further, in cases, such as this one, where the homicide victim dies at the scene, a rule limiting the estate's recovery to that restitution which a decedent himself may have been awarded would severely restrict what economic losses the victim-estate would be able to recoup. Indeed, allowing a victim-estate to recover all economic losses incurred as a result of a defendant's criminal conduct resulting in the actual crime victim's death makes sense when considering the criminal conduct at issue in this case. Appellant was

convicted of vehicular manslaughter. As with any homicide, an element of that crime is that the actual crime victim dies. Accordingly, the economic losses incurred as the result of appellant's criminal conduct include those incurred by the estate, which came into being as a result of appellant's criminal conduct. Indeed, any other interpretation would preclude the estate from recovering such things as funeral and probate costs, economic losses incurred directly by the estate in this case because appellant caused Mr. Bengé's death.

Finally, it should be noted that "[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." (*People v. Vasquez, supra*, 190 Cal.App.4th at 1133; see also *People v. Clifton* (1985) 172 Cal.App.3d 1165, 1168 ["Just as a restitution order pursuant to the criminal law is not a substitute for a civil action to recover damages [citation], a partial civil settlement is not a substitute for restitution in a criminal proceeding".]) Indeed, "[a] victim's right to sue a defendant for tortious conduct amounting to a crime and the state's right to impose a restitution order on a criminally convicted defendant are independent of one another." (*Vigilant Ins. Co. v. Chiu* (2009) 175 Cal.App.4th 438, 445; see also *People v. Bernal* (2002) 101 Cal.App.4th 155, 162 & fn. 5 [noting that the amount of restitution awarded "need not mirror what a victim might obtain in a civil action" and comparing and contrasting what economic losses can be recovered under section 1202.4 with what damages can be recovered in a civil tort action].) As such, the ability of the victim-estate to recover all of the economic losses it incurred as a result of appellant's criminal conduct should be considered without regard to the fact that the estate may be able to pursue a civil claim against appellant. Instead, allowing the victim-estate to recover any and all economic losses incurred as a result of the criminal conduct causing the actual crime victim's death will further the compensatory, rehabilitative, and deterrent purposes of the section 1202.4 restitution scheme and "'impress[] upon the offender the gravity of the harm he has inflicted upon another[.]' [Citation.]" (*People v. Anderson* (2010) 50 Cal.4th 19, 27; see also *People v. Moser* (1996) 50 Cal.App.4th 130, 136 ["the direct relation between the harm and the punishment gives restitution a more precise deterrent effect than a traditional fine"].)

This Court should find that section 1202.4 requires a defendant who causes the actual crime victim's death to pay restitution for any and all economic losses incurred by the victim-estate as a result of the defendant's criminal act. Further, this Court should affirm the restitution order in this case because all of the economic losses by the victim-estate were incurred because of appellant's criminal conduct which killed Mr. Bengé.

Respectfully submitted,

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Paul D. Runyan**
No.: **S187804**

I declare:

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.

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On **March 2, 2012**, I served the attached **SUPPLEMENTAL LETTER BRIEFING** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

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The one copy for the California Appellate Project was placed in the box for the daily messenger run system established between this Office and California Appellate Project (CAP) in Los Angeles for same day, personal delivery.

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 **March 2, 2012**, at Los Angeles, California.

Lupe Zavala
Declarant


Signature