

*In the Supreme Court of the State of
California*

SUPREME COURT
FILED

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Frederick K. Ohlrich Clerk

Deputy

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 REPLY TO RESPONDENT'S SUPPLEMENTAL BRIEFING

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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 Bengé (“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*?

Both Respondent and Appellant have submitted their arguments to the aforementioned questions and the response to Respondent’s contentions are written herein. Appellant submits that because the language of Penal Code section 1202.4 is clear and unambiguous, there is no need to resort to the indicia of the Legislature’s intent. Although Legislative regulations may not always square with every individual, such express language is nonetheless unequivocally followed. Furthermore, Appellant respectfully contests that a sufficient casual connection exists between the restitution claims made by Respondent and the conduct of Appellant. While the cases cited by Respondent reference victims expressly provided for in Penal Code section 1202.4, the estate in this case was not a *direct* victim of Appellant’s conduct and accordingly, awarding any restitution damages would be improper.

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

1. Despite Respondent's Argument, In the Case of a Statute, There Is No Need To Resort to Indicia of the Intent of the Legislature When the Language is Clear and Unambiguous

“In ascertaining the Legislature's intent, we turn first to the language of the statute, giving the words their ordinary meaning [*People v. Broussard*, (1993) 5 Cal.4th 1067, 1071; *People v. Morris*, (1988) 46 Cal.3d 1, 15]. We must follow the statute's plain meaning, if such appears [...] [(*Broussard, supra*, 5 Cal.4th at 1071–1072; *Lungren v. Deukmejian*, (1988) 45 Cal.3d 727, 735; *Younger v. Superior Court*, (1978) 21 Cal.3d 102, 113] 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. [*Delaney v. Baker*, (1999) 20 Cal.4th 23, 29–30; *Watts v. Crawford*, (1995) 10 Cal.4th 743, 751].” *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).

Accordingly, Respondent's contention that “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,” is nothing other than an attempt to forego the express language in the statute and jump to the indicia of, what Respondent believes to be, the Legislature's intent. Respondent's Supplemental Briefing at p. 4.

However, when construing a statute, and attempting to “ascertain the intent of the Legislature so as to effectuate the purpose of the law (*DuBois v. Workers’ Comp. Appeals Bd.*, (1993) 5 Cal.4th 382, 387),” the words of the statute are [always] the starting point. *Wilcox v. Birtwhistle*, 21 Cal.4th 973, 977 (1999). Essentially, “[w]ords used in a statute ... should be given the meaning they bear in ordinary use [Citations.]” as opposed to resorting to personal interpretations that most often stand in contrast to what is already clearly expressed. *Wilcox v. Birtwhistle*, 21 Cal. 4th 973, 977 (1999).

2. As With the Contradiction in Sentencing Requirements for Criminal Defendants, For Example, the Express Language of the Statute Controls and Is Unquestionably Followed, Even if One Side Disagrees with the Public Policy Behind that Language

Although Respondent alleges that “allowing a victim-estate to recovery all economic losses incurred as a result of a defendant’s criminal conduct resulting in the actual crime victims death makes sense when considering the criminal conduct at issue in this case,” such conclusions directly contradict the express and unequivocal language of the Penal Code. Respondent’s Supplemental Briefing at p. 4. While Legislative intent is not always clear, prior to even addressing such inferences, the express language of the statute must first be assessed.

3. Although Vehicular Manslaughter Results in the Unfortunate Death of the Victim, it is *Not* Subject to the Sentencing Restrictions that a DUI with Great Bodily Injury Is, Even Though the Victim Remains Alive

The present case is not the only example in which the Legislature has codified regulations that may not square with every individual. For example, persons who are serving a term in state prison may earn credit against their term if they participate in qualifying work or training programs (Cal. Penal Code § 2933). *In re Pope*, 50 Cal. 4th 777, 779 (2010). Pursuant to Penal Code section 2933.1, subdivision (a), persons who have been convicted of qualifying *violent* felonies may earn credit against their term of no more than 15 percent, however. *Id.* Accordingly, while vehicular manslaughter is considered a serious crime, it is nonetheless considered *non-violent*. Cal. Penal Code §

191.5.¹ Thus, it is not affected by the restrictions imposed by section 2933.1(a) and a defendant is only required to serve 50% of his sentence.

On the other hand, a count of driving under the influence of alcohol or drugs (“DUI”), causing great bodily injury case, qualifies as both serious *and violent*, mandating an 85% sentencing servitude even though the victim remains alive. *See* Penal Code § 667.5, subd. (c)(8) (Classifying as violent any felony as to which specific enhancements, including those imposed for infliction of great bodily injury, have been charged and proved.) Thus, although vehicular manslaughter under section 191.5 results in the unfortunate death of the victim, it is *not* subject to the sentencing restrictions that a DUI with great bodily injury is, even though the victim remains alive. Penal Code § 2933.1. While this distinction, created by the Legislature, may pose a contradiction in the mind of some individuals, such regulations are nonetheless followed by the People without objection. It is the Legislature’s responsibility to determine the appropriate sentences and punishments and accordingly, the express language of the code is strictly abided by.

In the present case, preventing the estate from recovering restitution damages when it is not the direct victim of the crime was similarly strategic on the part of the Legislature. Accordingly, as seen with the example above, the express language of section 1202.4 should similarly be followed without question.

4. The Cases Cited by Respondent Are In Line With the Express Language of Penal Code Section 1202.4, In that, they All Deal with Persons who Expressly Qualify as Victims, While the Present Case Poses a Critical Distinction

Respondent’s Supplemental Briefing cites authority in support of its contention that defendants in prior cases were properly ordered to pay restitution for loss incurred by the victims as a result of the defendant’s conduct. Respondent’s Supplemental Briefing

¹ Penal Code section 2933.1(a) states “[n]otwithstanding any other law, any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent of worktime credit, as defined in Section 2933.”

p. 4. However, there is a critical factor present in those cases which happens to be absent here. Respondent stated that in *People v. Rubics*, (2006) 136 Cal.App.4th 452, 454, 461, the defendant was ordered to pay restitution to the decedent's family for the amount of funeral costs that were incurred as a result of defendant's felony hit and run, resulting in the victim's death. Respondent's Supplemental Briefing p. 4. Further, Respondent cited *People v. Giordano*, (2007) 42 Cal.4th 644, 662, where this Court held that a widow of a crime could recover restitution for the amount of lost economic support incurred as a result of the defendant's criminal act which killed her husband. Penal Code section 1202.4 (f) expressly provides for restitution to be paid to a victim and specifically, in subsection (k), which defines the term "victim," "the immediate *surviving family* of the actual victim" [subsection (k)(1)(*emphasis added*)] and "the parent, grandparent, sibling, spouse, child, or grandchild of the victim" [subsection (k)(3)(A) (*emphasis added*)] unequivocally qualify as such under the Code. However, the issue, which brought us before this Court is that an estate is not given its own such category, and thus does not qualify as a victim here. The estate is coupled with corporations, business trusts, partnerships, associations, etc. and preceded by the qualifying terms "when the entity is a *direct* victim of a crime."

The construction of this code section was strategically contemplated by the Legislature, indicating that, in situations such as these, the Legislature restricted restitution payments *only* for estates that are the direct victim of the defendant's criminal conduct. The Legislature so clearly wanted to prevent just *any* estate from recovering restitution because otherwise, such an intention would be clearly laid out in the statute as are the categories covering family, spouses and the like. Limiting an estate's ability to recover based on the direct impairment caused by the defendant's conduct ties directly into the causation analysis discussed above. Again, while it is true that crime victims have a right to restitution, "the right to recover from any given defendant is not unlimited." *People v. Woods*, (2008) 161 Cal.App.4th 1045, 1049.

B. The Restitution Claims Made by Respondent Were Not the Direct and Personal Loss Incurred by the Victim, As Causation Cannot Properly Be Established

“Our Supreme Court has explained in the context of tort law, “[t]o simply say ... that the defendant’s conduct was a necessary antecedent of the injury does not resolve the question of whether the defendant should be liable.” *People v. Jones*, 187 Cal.App.4th 418, 425 (2010). In the words of Prosser and Keeton: “‘[T]he consequences of an act go forward to eternity, and the causes of an event go back to the dawn of human events, and beyond. But any attempt to impose responsibility upon such a basis would result in infinite liability for all wrongful acts, and would “set society on edge and fill the courts with endless litigation.’ ” *Id.* Therefore, the law must impose limitations on liability other than simple causality. *Id.* As stated in the governing statute of this action, “[t]o the extent possible, [a] 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.” Pen.Code, § 1202.4, subd. (f)(3) (emphasis added).

1. Restitution Recovery is Not Unlimited: Only Losses that Were *the Result of the Criminal Activity* Can Legally Be Recovered and Because the Coins, Fencing Equipment and Residential Contents Were Not In the Case at the Time of the Incident, Their Devaluation Was the Result of an Independent Factor

“While it is true that crime victims in California have a right to restitution, the *right to recover from any given defendant is not unlimited*. [...] 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.” *Woods*, 161 Cal.App.4th at 1049 (*emphasis added*). In the present case, it was not the Appellant’s conduct that caused the net loss of the restitution categories submitted by Respondent. Furthermore, said losses were not the result of the criminal activity that formed the basis of Appellant’s conviction. The devaluation of the coins, fencing equipment and content in the residence

stood independent from the incident at hand, as the sale of such items, at a lower cost, was a result of an independent and superseding factor.

In *Giordano*, 42 Cal.4th at 657, the court states that the victim does not “step into the shoes of [the] decedent to recover his economic loss,” instead section 1202.4 provides that a victim may recover only the loss that was directly and personally incurred by that victim. Accordingly, since the estate in the present case does not qualify as a victim under the express and unequivocal language of section 1202.4, no restitution is due on the part of Appellant. Furthermore, the loss is, again, limited to one that is incurred *as a result of* the commission of the crime not any independent, superseding factors. In *Giordano*, the court allowed the widow to recover lost profits of her desist husband because she was dependent on them from the date of marriage and a termination of such earnings would amount to a loss incurred by her. In the instant action, however, the coins, fencing, and household items claimed by Respondent are not profits upon which another was dependent on, there are chattels.

2. The Sale of the Coins, Fencing Equipment, and Contents of Residence at a Value that Was Less than Appraisal Is An Independent Factor that Degraded the Status Quo, Entirely Independent of Appellant’s Conduct

In *People v. Phelps*, (1996) 41 Cal.App.4th 946, 950 the court held that medical expenses may be included in a restitution order even after the sentencing hearing. The court found “that [the word loss] refers to a victim’s injuries, requiring restitution for all expenses necessary to treat those injuries.” *Id.* The medical expenses in that case directly flowed from the loss that resulted from the defendant’s conduct; however, the present case lacks such a rational connection. Seeing as how restitution orders are granted in order to restore the status quo for the victim, any intervening and superseding causes, such as the choice on the part of Art Olson to incur the travel expenses or the sale of the coins, fencing equipment and residence content at a lower value, do not constitute a loss that flowed directly from Appellant’s conduct. *Giordano*, 42 Cal.4th at 658. In fact, the sale of such commodities at a value that is less than appraisal is not a restoration

of the status quo, it is an independent factor that degraded the status quo, but one that was entirely sovereign from Appellant's conduct.

3. Proximate Cause, Similar to Tort Cases, Is Required in Criminal Restitution Cases

Penal Code Section 1202.4(f) 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." Cal. Penal Code § 1202.4 (*emphasis added*). As Respondent's Supplemental Briefing correctly points out, the causation principals of tort law also apply to victim restitution claims in criminal cases. *Jones*, 187 Cal.App.4th at 424-427; Respondent's Supplemental Briefing at p. 4. Thus, just as the principals of tort law dictate, there are two concepts at play when making a causation determination: cause in fact, or direct causation, and proximate cause. *Jones*, 187 Cal.App.4th at 424. "An act is a cause in fact if it is a necessary antecedent of an event. (*PPG Industries, Inc. v. Transamerica Ins. Co.* (1999) 20 Cal.4th 310, 315, 84 Cal.Rptr.2d 455, 975 P.2d 652.)" *Id.* at 425.

In *Jones*, the defendant was convicted of driving under the influence and ordered to pay restitution. *Id.* at 420. Later, during one of the hearings regarding the case, Shipman – Townsend (the victim), tore off her bumper on a "little steel thing" out of the concrete curb in the front of the parking space at the courthouse. *Id.* at 421. The court held that there was no questions as to whether or not the defendant's driving under the influence was a cause in fact of the damage to Shipman's bumper, because, as the court notes, "but for the fact that defendant ran into and damaged Shipman–Townsend's camper while driving with in excess of .20 percent blood-alcohol concentration, Shipman–Townsend would not have been trying to park at the court on the day the bumper of her car was pulled off." *Id.* at 425. The question defendant's argument actually raises was whether there was a *proximate* causal connection between the defendant's criminal conduct and the damage to the bumper. *Id.* at 425. Similarly, in the

instant action, little inquiry needs to be made into the direct causation aspect because the real issue lies with proximate cause, or better yet, lack thereof.

a. As the Court in *Jones* Correctly Delineates, Despite the Fact that No Published Opinion Has Yet Addressed the Application of Proximate Cause, the Principals Do Nonetheless Apply to Victim's Restitution Claims

The court in *Jones* correctly points out that despite the fact that no published opinion has yet addressed the application of proximate cause to victim's restitution claims, the principals do nonetheless apply to such cases. *Jones*, 187 Cal.App.4th at 426.

The causal connection embodied in the words "as the result of" is certainly indicative of direct causation, however, just as in tort law, the *law must impose limitations on liability for victim restitution* other than simple direct causality or else a defendant will face infinite liability, no matter how remote the consequence. *Jones*, 187 Cal.App.4th at 42.

Here, there is no rational connection between the losses claimed by Respondent and Appellant's conduct. Although the incident of this case is beyond unfortunate, the facts in regards to an appropriate restitution amount require an objective filter through which calculations should be made. Specifically, the net loss of \$229,721 for the rare coin business, the net loss of \$9,764 on the fencing inventory and the net loss of \$17, 211 on the contents of Donald Bengé's residence, are not at all rationally connected to Appellant's conduct. (Numbers obtained from Respondent's Motion to Augment p. 15). The heartbreaking passing of the decedent undoubtedly caused tragedy for his friends; however, this passing did not somehow devalue any of the aforementioned categories claimed in Respondent's restitution expenses.

Furthermore, the Probate Costs are far too speculative to hold Appellant accountable for them. 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. 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 there is no rational connection between the Decedent's desire to abstain from creating a revocable trust and Appellant's conduct.

4. Had the Coins, Fencing Equipment or Any Other Valuables Been Lost with the Decedent in the Accident, then Such Losses Would Be the Proximate Cause of Appellant's Conduct, If the Estate Were Considered to Be a Direct Victim of the Crime

Had the coins, fencing equipment or any other valuables been lost with the decedent in the accident, such losses would then be covered, if the estate were considered to be a direct victim of the crime. However, because the sale was done in a manner that was independent of Appellant's conduct, the Code does not permit recovery for it. The only loss that was directly caused by Appellant's conduct, if the estate is found to qualify as a victim, is the \$45 funeral expenses.

None of the coins, fencing equipment or contents of the residence were destroyed in the accident and their net loss, when sold, was not proximately linked or rationally connected to Appellant's conduct. Respondent relies on unsubstantiated emails as their "formal" appraisal of such commodities. Respondent's Motion to Augment p. 18. Regardless of these facts, the chattels' absence in the accident, or in the car, only points to the conclusion that their sale at a net loss was not the result of Appellant's conduct.

The standard of care generally applicable to executors is "that degree of prudence and diligence which a man of ordinary judgment would be expected to bestow upon his own affairs of a like nature." *Estate of Barbikas*, (1959) 171 Cal.App.2d 452, 457—458 (citing *Estate of Moore*, (1892) 96 Cal. 522, 525). A primary duty of the executor is to take reasonable steps to preserve the assets of the estate [Citations]. *Estate of Beach*, (1975) 15 Cal. 3d 623, 639. The duty of preservation may require the executor to take affirmative steps to prevent deterioration in value. *Id.* As such, an executor may be held liable to the estate for losses proximately resulting from his failure to exercise the requisite

duty to prevent the deterioration in the value of assets sold. *Id.* at 630.² Thus, although such loss may eventually be recovered, holding Appellant responsible for expenses that were neither a direct or personal loss incurred as a result of his conduct will bring about the exact result that courts cautioned against: holding a defendant responsible for restitution consequences too remote to his actions.

² Since a representative is accountable for all of the decedent's estate that comes into his or her possession, the representative is liable for any losses that are caused by his or her neglect of, or default with respect to, any assets of the estate. See *In re Roberts' Estate*, 27 Cal. 2d 70 (1945); *In re Pease's Estate*, 149 Cal. 167 (1906); *Estate of Spirtos*, 34 Cal. App. 3d 479 (2d Dist. 1973).

CONCLUSION

Accordingly, Penal Code section 1202.4 does not permit restitution for economic loss incurred by a victim at or after the time of the decedent's death, or as a consequence of the decedent's death, *when there is no proximate cause linking the restitution claimed and the conduct of the defendant*. The net losses of the aforementioned categories, as well as the remaining ambitious and capricious expenses noted by Respondent, refer precisely to the remote losses that the courts cautioned against. Holding Appellant responsible for such expenses would not only contradict the case law and public policy behind Penal Code section 1202.4, but it would contravene the express language of the Section 1202.4 itself.

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

Dated: March 11, 2012

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

I certify that the attached **APPELLANT'S REPLY TO RESPONDENT'S SUPPLEMENTAL BRIEFING** uses 13 point Times New Roman font and contains 3,922 words. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: March 11, 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 Orange County, California; 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 11, 2011, I caused a copy of the within;

APPELLANT'S REPLY TO RESPONDENT'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),

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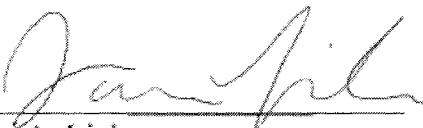
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I declare under penalty of perjury that the foregoing is true and correct.

Executed: March 11, 2012, at Orange County, California.



Jason A. Lieber
Declarant