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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Appellant,

v.

MARGUERITE DAO VUONG,

Defendant and Respondent.

B269700

(Los Angeles County
Super. Ct. No. SA087516)

APPEAL from an order of the Superior Court of Los Angeles County, Kathryn A. Solorzano, Judge. Reversed and remanded.

Jackie Lacey, District Attorney of Los Angeles County, Phyllis Asayama and Cassandra Thorp, Deputy District Attorneys, for Plaintiff and Appellant.

Law Offices of David M. Murphy, David M. Murphy, for Defendant and Respondent.

Defendant and appellant Marguerite Vuong was involved in a hit and run accident that resulted in David Pregerson's death. Defendant pleaded no contest to leaving the scene of an accident. (Veh. Code, § 20001, subd. (a).) The trial court sentenced defendant to three years in state prison and ordered her to pay \$59,800 in restitution to Pregerson's father.¹ The trial court ruled that the gravamen of the offense is the "running" and not the "hitting." Thus, its restitution award under Penal Code section 1202.4 (section 1202.4) consisted of amounts it attributed to damage defendant caused by leaving the scene of the accident, but did not include any amount for damages resulting from the collision.²

The People appeal, contending the trial court erred in ruling that restitution may not be awarded for damages resulting from the accident in a hit and run case.³ Because the impact in a hit and run accident is an element of the criminal offense of leaving the scene of an accident, we hold that restitution may be

¹ The award included \$50,000 for a reward paid to an informant for information leading to defendant's identity, \$2,500 for attorney fees in connection with seeking restitution, and \$7,300 for grief counseling.

² The trial court denied the People's request for an award of restitution for Pregerson's medical and funeral expenses.

³ Whether a defendant who has been convicted of hit and run and sentenced to prison rather than placed on probation can be required to pay restitution for the injuries the victim suffered in the collision is pending before the California Supreme Court. (*People v. Martinez* (2014) 226 Cal.App.4th 1156, review granted Sept. 10, 2014, S219970.)

awarded for damages resulting from it. Accordingly, we reverse that part of the trial court's restitution order that denied restitution for loss resulting from the accident and remand the matter for a hearing to determine defendant's responsibility, if any, for the accident and to order defendant to pay restitution for any related damages.

BACKGROUND⁴

Around 3:00 a.m. on December 27, 2013, defendant struck Pregerson, a pedestrian, with her car as he walked on Chautauqua Boulevard in the community of Pacific Palisades. Defendant left Pregerson in the road. A motorist who subsequently came upon Pregerson contacted a local security patrol officer. Another motorist pulled Pregerson from the road. Pregerson sustained catastrophic injuries as a result of the accident and was taken to the UCLA Medical Center where he was treated and died four days later. Defendant went to great lengths to avoid culpability for her actions, including having her car repaired, lying to law enforcement about her actions, and convincing her husband to take responsibility for the accident when law enforcement focused its attention on her.

DISCUSSION

When a defendant convicted of a crime is sentenced to prison, any restitution under section 1202.4 "must be for

⁴ Because our determination that the trial court erred in ruling that restitution may not be ordered for damages resulting from the collision in a hit and run offense is based on our interpretation of section 1202.4, and does not depend on the facts of this case, we set forth an abbreviated factual background.

economic damages resulting from the crime of which [the defendant] was convicted, not merely those ‘reasonably related’ to the crime.” (*People v. Rubics* (2006) 136 Cal.App.4th 452, 460 (*Rubics*).) The People contend that because involvement in a collision that resulted in injury or death is an essential element of the crime of hit and run, the impact necessarily occurred during the commission of the crime. Accordingly, the People contend, if the defendant in a hit and run accident was responsible for the accident, the trial court may order restitution for damages resulting from the collision pursuant to section 1202.4. We agree.

I. Standard of Review

“In construing a statute, we seek “to ascertain the intent of the enacting legislative body so that we may adopt the construction that best effectuates the purpose of the law.” [Citations.] Our analysis starts with the statutory language because it generally indicates legislative intent. [Citations.] If no ambiguity appears in the statutory language, we presume that the Legislature meant what it said, and the plain meaning of the statute controls. [Citations.]” (*People v. Stanley* (2012) 54 Cal.4th 734, 737.)

II. Application of Relevant Principles

Article I, section 28, subdivision (b) of the California Constitution provides in part: “It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer. [¶] Restitution shall be ordered

from the convicted wrongdoer in every case, regardless of the sentence or disposition imposed, in which a crime victim suffers a loss.”

The Legislature implemented the constitutional right to restitution in section 1202.4. (*Rubics, supra*, 136 Cal.App.4th at p. 457; *People v. Lai* (2008) 138 Cal.App.4th 1227, 1247.) A victim’s right to restitution under section 1202.4 is to be broadly and liberally construed. (*People v. Beaver* (2010) 186 Cal.App.4th 107, 127; *People v. Saint-Amans* (2005) 131 Cal.App.4th 1076, 1084.)

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.” “[T]he reimbursable loss identified by section 1202.4, subdivision (a)(1) is the loss resulting from the crime of which the defendant was convicted.” (*People v. Lai, supra*, 138 Cal.App.4th at p. 1247.)

Vehicle Code section 20001, subdivision (a) provides, “The driver of a vehicle involved in an accident resulting in injury to a person, other than himself or herself, or in the death of a person shall immediately stop the vehicle at the scene of the accident and shall fulfill the requirements of Sections 20003 and 20004.”⁵ CALCRIM No. 2140 sets forth the elements of a violation of Vehicle Code section 20001 in part as follows:

⁵ Vehicle Code sections 20003 and 20004 require a driver involved in an accident resulting in injury or death to provide identifying information and to render reasonable assistance to persons injured in the accident.

“To prove that the defendant is guilty of this crime, the People must prove that:

“1. While driving, the defendant was involved in a vehicle accident;

“2. The accident caused (the death of/ [or] [permanent, serious] injury to) someone else;

“3. The defendant knew that (he/she) had been involved in an accident that injured another person [or knew from the nature of the accident that it was probable that another person had been injured];

“AND

“4. The defendant willfully failed to perform one or more of the following duties”

Rubics addressed the scope of restitution in a hit and run case. *Rubics* pleaded guilty to one count of violating Vehicle Code section 20001, subdivision (a). (*Rubics, supra*, 136 Cal.App.4th at p. 454.) He also admitted the allegation that the accident resulted in death. (Veh. Code, § 20001, subd. (b)(2).) (*Rubics, supra*, 136 Cal.App.4th at p. 454.) The trial court sentenced *Rubics* to a term of three years in state prison and ordered him to pay \$44,414 to the victim’s family as restitution for funeral expenses. (*Ibid.*)

On appeal, *Rubics* argued the trial court erred in ordering restitution because the economic loss the victim’s family suffered—i.e., the funeral expenses—resulted from the accident, and not from his criminal conduct in leaving the scene of the accident. (*Rubics, supra*, 136 Cal.App.4th at p. 456.) In support of his argument, *Rubics* cited *People v. Escobar* (1991) 235 Cal.App.3d 1504 and *People v. Wood* (2000) 83 Cal.App.4th 862 for the proposition that “[t]he gravamen of a section 20001

offense . . . is not the initial injury of the victim, but leaving the scene without presenting identification or rendering aid.”

(*Rubics, supra*, 136 Cal.App.4th at pp. 458-459.)

The Court of Appeal rejected Rubics’s argument, reasoning, “That may be a true statement, as far as it goes. However, Rubics reads section 20001, for restitution purposes, too narrowly. . . . [A] necessary element of section 20001 is that Rubics was involved in an accident that caused serious injury or death. Thus, although a primary focus of section 20001 may be the act of leaving the scene, a conviction also acknowledges the fleeing driver’s responsibility for the damages he or she has caused by being involved in the accident itself.” (*Rubics, supra*, 136 Cal.App.4th at p. 459.) Accordingly, the Court of Appeal ruled that “because an element of the crime of felony hit and run under section 20001, subdivisions (a) and (b)(2) is a defendant’s involvement in an accident resulting in the injury or death of another, restitution is proper in such a situation because the loss was incurred as a result of the commission of the crime.” (*Id.* at p. 454.)

We agree with *Rubics*. Because an accident resulting in injury or death is an integral element of the hit and run offense and thus an integral part of defendant’s criminal conduct, the trial court erred in ruling that any loss resulting from the collision that caused Pregerson’s death was not subject to a restitution award under section 1202.4. (*Rubics, supra*, 136 Cal.App.4th at pp. 454, 458-459.)

Defendant argues that even if we determine the trial court erred in denying restitution for loss resulting from the accident, we should not remand for a hearing to determine her responsibility for that loss because the People could have

presented evidence of her responsibility in the trial court, but did not. In light of the trial court's error in ruling that loss resulting from the accident was not subject to a restitution award under section 1202.4, remand for a hearing to determine defendant's culpability is appropriate.

DISPOSITION

The portion of the restitution order that denied restitution for loss resulting from the accident in which defendant's vehicle struck Pregerson is reversed. The matter is remanded to the trial court for a hearing to determine defendant's responsibility, if any, for the accident and to order defendant to pay restitution for damages attributable to her.

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KUMAR, J.*

We concur:

TURNER, P. J.

KRIEGLER, J.

* Judge of the Superior Court of the County of Los Angeles, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.