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CALIFORNIA SUPREME COURT

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

PAUL D. RUNYAN,

Defendant and Petitioner.

Supreme Court Case No. S187804

Court of Appeal Case No. BA 322080 (Second Appellate District)

Superior Court No. BA322080 (Los Angeles County)

SUPREME COURT
FILED

APR - 4 2011

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Deputy

NOTICE OF INTENT TO RELY ON PETITIONER'S APPELLATE COURT
OPENING BRIEF IN THE CALIFORNIA SUPREME COURT

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CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT
DIVISION EIGHT

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

PAUL D. RUNYAN,
Defendant and Appellant.

No. B218863

Superior Court No. BA322080 (Los Angeles County)

Appeal from Superior Court of California, County of Los Angeles, Hon. Marcelita V.
Haynes, Judge Presiding

APPELLANT'S OPENING BRIEF

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STATEMENT OF THE CASE

I. Introduction

Defendant and appellant Paul D. Runyan (hereafter Mr. Runyan) appeals from the Superior Court's order directing him to pay restitution in the amount of \$446,486 to the Estate of Donald Eugene Bengé.

II. Statement of Appealability

The judgment appealed from is final.

III. Procedural History

On October 31, 2007, the prosecution filed in Los Angeles County Superior Court an Information which charged Mr. Runyan with one count of Murder (California Penal Code § 187(a)) (Count 1), one count Gross Vehicular Manslaughter (California Vehicle Code § 191.5(a)) (Count 2), one count of Driving Under the Influence Causing Injury (California Vehicle Code § 23153(a)) (Count 3), and one count of Driving Under the Influence with a Blood Alcohol Content of .08% or Greater Causing Injury (California Vehicle Code § 23153(b)) (Count 4). (CT 200-203.)

On November 4, 2008, a jury acquitted Mr. Runyan of Count 1 and convicted him of Count 2, Count 3 and Count 4. (CT 475-478.)

The trial court conducted a restitution hearing on August 5, 2009 and subsequently ordered Mr. Runyan to pay \$446,486 to the Estate of Donald Bengé. (RT 616.)

Mr. Runyan filed a notice of appeal on September 8, 2009. (CT 586.)

IV. Facts

On April 6, 2007, Mr. Runyan was driving on the 134 Freeway in Glendale in his 2006 Honda Element. He had been drinking alcohol and was driving the wrong way (driving westbound in eastbound lanes). He then hit, almost head-on, Donald Eugene Bengé's 1988 Chevy Cavalier. Donald Eugene Bengé (hereafter Mr. Bengé) died at the

scene and Mr. Runyan was taken to the hospital. The sole victim in the case was Mr. Bengé. (CT 109-117.) Mr. Bengé was not survived by any family members.

ARGUMENT

I. The Order Made as to Restitution was Improper.

A. California Penal Code § 1202.4 Requires Restitution to be Paid to a Victim or Victims and Defines the term "Victim."

California Penal Code § 1202.4 outlines the procedures that guide the imposition of restitution, amounts, hearings, court orders and financial disclosures that are made in post conviction criminal matters. Subdivision (f) of the aforementioned code section provides the language necessary to determine whether the question of restitution can be considered:

“(f) Except as provided in subdivisions (q) and (r), 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. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record. The court may specify that funds confiscated at the time of the defendant's arrest, except for funds confiscated pursuant to § 11469 of the Health and Safety Code, be applied to the restitution order if the funds are not exempt for spousal or child support or subject to any other legal exemption.” California Penal Code § 1202.4(f)

Subdivision (f) above allows a victim or victims to be paid restitution by the defendant. Subdivision (k) of the code outlines who a victim is in a criminal matter:

“(k) For purposes of this §, "victim" shall include all of the following:

- (1) The immediate surviving family of the actual victim.
- (2) Any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.
- (3) Any person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions:
 - (A) At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) At the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime.

(E) Is the primary caretaker of a minor victim.

(4) Any person who is eligible to receive assistance from the Restitution Fund pursuant to Chapter 5 (commencing with § 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

(5) Any governmental entity that is responsible for repairing, replacing, or restoring public or privately owned property that has been defaced with graffiti or other inscribed material, as defined in subdivision (e) of § 594, and that has sustained an economic loss as the result of a violation of §§ 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code.” California Penal Code § 1202.4(k)

Because California Penal Code § 1202.4(f) specifies that restitution may be made to a “victim or victims,” it is clear that the Legislature meant to exclude non-victims from recovering money from convicted defendants in criminal cases. Further, because the Legislature defined the term victim, it is clear that the intent of the statute was to exclude individuals not described in the code from being considered victims.

B. Nowhere in the Record is any Victim, as Defined in California Penal Code § 1202.4, Identified in the Present Case.

Nowhere in the record, including at the restitution hearing conducted on August 5, 2009, is any individual identified as a victim under California Penal Code § 1202.4.

Further, Mr. Bengé’s estate cannot qualify as a victim because the code specifically mandates that an “estate” is only a victim if it is “the direct victim of a crime.” California Penal Code § 1202.4(k)(2).

Mr. Bengé himself, not his estate, was the victim of the crime. Courts have held that financial institutions and other non-human entities are entitled to restitution only if the crime was specifically directed at the entity in question.

People v. O’Casey is a case where the defendant was convicted of fraud and perjury for filing a false worker’s compensation claim. The defendant was ordered to pay

restitution (pursuant to California Penal Code § 1202.4) to the insurance company that paid her workers compensation claim. People v. O'Casey, 88 Cal. App. 4th 967 at 969.

“As explained in Birkett and other cases (People v. Birkett, supra, 21 Cal. 4th at p. 232), the victim is the object of the crime. In contrast to Birkett, in which the direct victims of the crimes were the automobile owners whose vehicles had been stolen to dismantle and sell the parts, and the only involvement of the insurers was to indemnify the owners for covered property losses under their insurance policies, in this case, the trial court reasonably viewed the insurance company as a direct crime victim, where, based upon appellant's fraud, it was induced to make payments directly to appellant and to medical providers on appellant's behalf. Thus, in this instance, the insurance company itself is the object of the crime.” O'Casey at 971.

The Court's language in O'Casey that “the victim is the object of the crime” is clear. The financial entity here, Mr. Bengé's estate, was not the direct victim of the crime. Mr. Runyan did not defraud or take any money from Mr. Bengé's estate. In fact, Mr. Bengé's estate did not even exist at the time Mr. Runyan committed the crimes he was convicted of. Mr. Runyan's crime was against Mr. Bengé himself, similar to the automobile owners who lost their cars in Birkett.

The convictions in this case were the result of Mr. Runyan driving a motor vehicle under the influence of alcohol, not any financial or related crimes against Mr. Bengé's estate. Mr. Runyan, unlike the defendant in O'Casey, did not contemplate, consciously or unconsciously, that Mr. Bengé's estate would ever be financially harmed by his actions.

The fact that the Legislature requires that the aforementioned entities be the “direct victim” of a crime in order to recover restitution obviously infers that substantial involvement by the entity in question is required before restitution is appropriate.

Mr. Bengé died tragically as a result of Mr. Runyan's actions. Because of Mr. Runyan's actions, he is currently in the custody of the California Department of Corrections and Rehabilitation serving a prison sentence. However, Mr. Runyan should not be punished in a manner beyond what California law allows. Mr. Bengé's estate is not a victim pursuant to the code, and because no other victim allowed by California law has been identified, no judgment of restitution is appropriate in this matter.


CONCLUSION

The legislature clearly intended to exclude the estate of a victim from receiving restitution in cases like the one here, given the fact that the language of California Penal Code § 1202.4 could have easily included victim's estates in similar situations. If the judgment in this case is affirmed, the purpose of the statute providing for and defining who a victim is would be futile. While Mr. Runyan's actions cannot be excused, punishing him beyond what California law allows is not an appropriate remedy.

For the foregoing reasons, Mr. Runyan respectfully asks that this Court to reverse the judgment of restitution in the amount of \$446, 486.

Dated: January 21, 2010

Respectfully submitted,



Jason Andrew Lieber
Attorney for Defendant and Appellant
PAUL D. RUNYAN

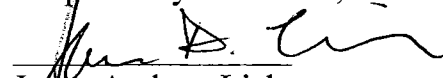
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1. "CT" refers to the Clerk's Transcript.
 2. "RT" refers to the Reporter's Transcript on Appeal.

CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 1,892 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Dated: January 21, 2010

Respectfully submitted,



Jason Andrew Lieber

Attorney for Defendant and Appellant

PAUL D. RUNYAN

PROOF OF SERVICE (Court of Appeal) <input checked="" type="checkbox"/> Mail <input type="checkbox"/> Personal Service	FOR COURT USE ONLY
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1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My residence business address is (*specify*):
6351 Owensmouth Ave. Suite 100 Woodland Hills, CA 91367
3. I mailed or personally delivered a copy of the following document as indicated below (*fill in the name of the document you mailed or delivered and complete either a or b*): Appellant's Opening Brief
 - a. **Mail.** I mailed a copy of the document identified above as follows:
 - (1) I enclosed a copy of the document identified above in an envelope or envelopes **and**
 - (a) **deposited** the sealed envelope(s) with the U.S. Postal Service, with the postage fully prepaid.
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 - (2) Date mailed: January 22, 2010
 - (3) The envelope was or envelopes were addressed as follows:
 - (a) Person served:
 - (i) Name: Office of the California Attorney General
 - (ii) Address:
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 - (b) Person served:
 - (i) Name: District Attorney's Office Los Angeles County
 - (ii) Address:
210 West Temple Street
Los Angeles, CA 90012
 - (c) Person served:
 - (i) Name: Honorable Marcelita V. Haynes
 - (ii) Address:
1945 South Hill Street
Los Angeles, CA 90007
 - Additional persons served are listed on the attached page (*write "APP-009, Item 3a" at the top of the page*).
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CASE NAME: People of the State of California v. Paul D. Runyan

CASE NUMBER: B218863

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Names and addresses of additional persons served and delivery dates and times are listed on the attached page (*write "APP-009, Item 3b" at the top of the page*).

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

Date: January 22, 2010

Stanley P. Lieber

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



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APP-009, Item 3a

(c) Person served:

(i) Name: Paul Runyan

(ii) Address:

CDEC# G43336
2781 South Round Valley Road
Bishop, CA 93514

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; that on March 22, 2011, I caused a copy of the within: NOTICE OF INTENT TO RELY ON PETITIONER'S APPELLATE COURT OPENING BRIEF IN THE CALIFORNIA SUPREME COUORT; APPELLANT'S OPENING BRIEF (California Supreme Court Case No. S187804) to be served via United States Mail on the following:

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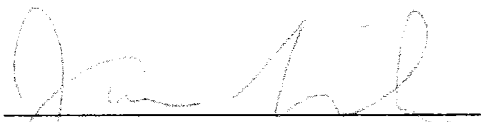
Los Angeles County District Attorney's Office
210 W Temple St
Los Angeles, CA 90013

Honorable Marcelita Haynes
1945 S Hill St
Los Angeles, CA 90007

Paul D. Runyan
CDEC# G43336
2781 South Round Valley Rd
Bishop, CA 93514

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

Executed: March 22, 2011, at West Hollywood, California.



Jason A. Lieber (Declarant)