

# CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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## *People v Martinez* 5/25/17

### **Restitution; Economic Loss Resulting from Defendant's Conduct**

Defendant was driving his pickup truck during the early evening of April 26, 2012, when he was involved in a collision with a 12-year-old boy riding on a scooter. Defendant stopped his truck and checked on the boy, who had been seriously injured in the accident. The victim's mother rushed to the scene. When she arrived, defendant returned to his truck. Defendant later told police that he waited there until he saw the boy loaded into an ambulance, then drove off. At the time of the accident, defendant was unlicensed and on felony probation. He told officers that he left the scene because he was afraid that he had violated his probation by driving without a license.

The victim sustained multiple facial fractures and a fractured clavicle and was diagnosed with a traumatic brain injury. He was hospitalized in intensive care for nine days before being transferred to a rehabilitation center.

Police ultimately identified the vehicle involved in the accident and traced the vehicle to defendant, at which point defendant came forward. In an interview with police, defendant admitted to his involvement in the accident and

that he left the scene. Defendant apologized and told officers that he understood he had committed a crime by fleeing the scene.

After defendant Dennis Terry Martinez pleaded guilty to leaving the scene of an injury accident in violation of Vehicle Code section 20001, subdivision (a) (Vehicle Code section 20001(a), commonly known as “hit and run”), the trial court sentenced him to three years in state prison. The trial court further ordered him to pay \$425,654.63 to the victim as restitution for injuries suffered as a result of the accident. The trial court made no findings concerning defendant’s responsibility for the accident.

Several months after sentencing, the trial court considered whether defendant could be ordered to pay restitution for the medical costs that the victim incurred as a result of the accident. The trial court answered that question in the affirmative, relying on *People v. Rubics* (2006) 136 Cal.App.4th 452. In *Rubics*, the Court of Appeal upheld a direct restitution award of \$44,414 in funeral expenses against a defendant convicted of leaving the scene of the accident that resulted in the victim’s death. Echoing the reasoning of *Rubics*, the trial court ruled that the victim in this case was entitled to restitution for losses incurred as a result of the accident because “even if it was just a pure accident,” involvement in an accident “is still an element of the crime.” Following the trial court’s ruling, the parties entered into a stipulated agreement fixing \$425,654.63 — the amount of the victim’s bill for his stay in intensive care — as the amount of direct victim restitution.

The Court of Appeal reversed the restitution order. It concluded that the trial court erred because “ ‘the gravamen of a section 20001 offense . . . is not the initial injury of the victim, but leaving the scene without presenting identification

or rendering aid.’ ” (Quoting *People v. Escobar* (1991) 235 Cal.App.3d 1504, 1509.) The court disagreed with *Rubics*, which it characterized as “an anomaly in an otherwise ‘unbroken line of cases stretching back more than 50 years’ ” that have characterized the offense in the same manner. (Quoting *People v. Valdez* (2010) 189 Cal.App.4th 82, 89) The court concluded that the trial court lacked the power to order restitution for injuries caused by the accident itself because “defendant was not convicted for any offense involving responsibility for the actual accident and no factual determination of his responsibility for the collision or the victim’s injuries had been made.” The court remanded the matter to permit the People to seek restitution for any losses caused or exacerbated by defendant’s flight.

The California Supreme Court granted review to resolve the conflict about whether, in imposing a sentence for a “hit and run” violation of Vehicle Code section 20001(a), a trial court may order direct restitution for injuries the victim suffered as a result of the underlying accidental collision.

Where, as here, a criminal defendant is convicted and sentenced to state prison, section 1202.4 of the Penal Code (section 1202.4) provides that the **defendant must pay restitution directly to the victim for losses incurred “as a result of the commission of a crime.”** (§ 1202.4, subd. (a)(1); see *People v. Giordano* (2007) 42 Cal.4th 644, 651–652) “To the extent possible,” direct victim restitution is to be ordered in an amount “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).)

Under California law, “**convicted criminals may be required to pay one or more of three types of restitution.**” (*Giordano*, at p. 651.) They may be

**required to pay a restitution fine into the state Restitution Fund, to pay restitution directly to the victim, or to pay restitution as a condition of probation.** The statutory requirements vary depending on the type of restitution at issue.

This case concerns an order of direct victim restitution. Under the California Constitution, as amended in 1982 by Proposition 8 (commonly known as The Victims' Bill of Rights), every crime victim has a right to be compensated by the defendant for losses incurred as a result of the defendant's crime. (Cal. Const., art. I, § 28, subd. (b)(13).) At the time Proposition 8 was passed, "victims had some access to compensation but, courts did not have general statutory authority to order the defendant to pay restitution directly to the victim of his or her crime. (See *People v. Broussard* (1993) 5 Cal.4th 1067, 1072–1074) In passing Proposition 8, the electorate expanded victims' access to compensation by declaring an "unequivocal intention . . . that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer," and instructing the Legislature to adopt legislation to implement this directive.

The Legislature's response, currently codified in section 1202.4, similarly declares that it is the Legislature's intent "that a victim of crime who incurs an economic loss as a result of the commission of a crime shall receive restitution directly from a defendant convicted of that crime." (§ 1202.4, subd. (a)(1).) To that end, section 1202.4 provides that, with certain exceptions not relevant here, "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." The statute further provides that the court's restitution order shall, "to the extent possible . . . fully reimburse the victim or victims for

every determined economic loss incurred as the result of the defendant's criminal conduct." This provision, as the Courts of Appeal have uniformly held, and as the People agree, authorizes trial courts to order direct victim restitution for those losses incurred as a result of the crime of which the defendant was convicted. (See, e.g., *People v. Lai* (2006) 138 Cal.App.4th 1227, 1247–1248; *People v. Woods* (2008) 161 Cal.App.4th 1045, 1051–1052) "The only limitation the Legislature placed on victim restitution is that the loss must be an ' " 'economic loss' " ' incurred as a result of the defendant's criminal conduct." (*People v. Williams* (2010) 184 Cal.App.4th 142, 147)

In this respect, the restitution power conferred by section 1202.4 stands in contrast to a court's power to order restitution as a condition of probation. As explained in *People v. Carbajal* (1995) 10 Cal.4th 1114, "in granting probation, courts have broad discretion to impose conditions to foster rehabilitation and to protect public safety," including the power to "regulate conduct 'not itself criminal' " but " 'reasonably related to the crime of which the defendant was convicted or to future criminality.' " (*People v. Lent* (1975) 15 Cal.3d 481, 486; see Pen. Code, § 1203.1, subd. (j).) This discretion has long been held to include the power to order restitution "even when the loss was not necessarily caused by the criminal conduct underlying the conviction," including in cases in which "the loss was caused by related conduct not resulting in a conviction, by conduct underlying dismissed and uncharged counts, and by conduct resulting in an acquittal." The Supreme Court held in *Carbajal* that this power was unaffected by the passage of Proposition 8 or its implementing legislation, neither of which manifested an intent to abrogate courts' discretion to order restitution as a condition of probation "where the victim's loss was not the result of the crime underlying the defendant's conviction, but where the trial court finds such restitution will serve" the purposes of probation. (*Carbajal*, at p. 1122.) A trial

court's power to order restitution in probation cases is thus broader than its power to order direct victim restitution under section 1202.4 in cases in which the defendant receives a nonprobationary sentence. (See *People v. Anderson* (2010) 50 Cal.4th 19, 29)

In *Carbajal*, the Supreme Court concluded that a trial court does not abuse its discretion in a hit-and-run case by conditioning the defendant's probation on the payment of restitution to the owner of property damaged in the underlying accident. Such a condition, we explained, "can be reasonably related to the offense underlying the conviction and can serve the purposes of rehabilitating the offender and deterring future criminality." (*Carbajal*, at p. 1119) The Court did not have occasion to address the distinct question whether, when a defendant is convicted of a hit-and-run offense and sentenced to state prison, a trial court may order direct victim restitution under section 1202.4, subdivision (f), for losses incurred as a result of the underlying accident.

Section 20001(a) of the Vehicle Code 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." Vehicle Code sections 20003 and 20004, in turn, require the driver to stop and provide identification and render aid to the victim, as well as to report the accident to authorities if there is no police officer present. Failure to comply with these requirements is a criminal offense. (Veh. Code, § 20001, subd. (b)(1) & (2).)

As courts have repeatedly observed, although the Vehicle Code section 20001(a) offense is commonly referred to as a "hit and run," the term is

something of a misnomer; the offense is “more accurately described as fleeing the scene of an injury accident.” (*Valdez*, at p. 84.) That is to say, “ ‘the act made criminal’ ” under the statute “ ‘is not the “hitting” but the “running.” ’ ” “ ‘The legislative purpose of sections 20001 and 20003 is to prevent the driver of a vehicle involved in an injury-causing accident from leaving injured persons in distress and danger for want of medical care and from attempting to avoid possible civil or criminal liability for the accident by failing to identify oneself.’ ” (*Escobar*, at p. 1510.)

Under Vehicle Code section 20001(a), “the occurrence of an injury accident is a condition precedent” to the imposition of a duty to stop, provide identification, and render aid — “but it is not an element of the crime” in the sense that it constitutes part of the conduct forbidden by the statute. (*Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308, 1340.) Nor is any degree of fault required for conviction; a defendant who flees the scene of an injury accident has committed a crime even if the accident was solely the result of the victim’s own negligence. (Veh. Code, § 20001(a).) As the United States Supreme Court once explained in upholding Vehicle Code section 20001 against constitutional challenge, “it is not a criminal offense under California law to be a driver ‘involved in an accident.’ An accident may be the fault of others; it may occur without any driver having been at fault.” (*California v. Byers* (1971) 402 U.S. 424, 431)

The answer to the question in this case follows directly from this long-settled understanding of the crime made punishable by Vehicle Code section 20001(a): Restitution for losses incurred “as a result of the commission of a crime” includes losses incurred as a result of the defendant’s unlawful flight

from the scene of the accident in which he or she was involved, but not losses incurred solely as a result the accident itself.

The People acknowledge that “the occurrence of the accident, in itself, is not independently punishable as a criminal act” under Vehicle Code section 20001. They argue, however, that restitution for injuries resulting from an accident is nevertheless recoverable under Penal Code section 1202.4 because involvement in the collision is an element of the offense — that is, a fact that the prosecution must prove to obtain a conviction. This argument draws heavily on *Rubics*, at pages 454, 462, in which the Court of Appeal upheld a direct restitution order for accident-related losses in a case in which the defendant fled the scene of an accident that resulted in the victim’s death. The court in that case acknowledged that while the “ ‘gravamen of a section 20001 offense . . . is not the initial injury of the victim, but leaving the scene without presenting identification or rendering aid,’ ” a “necessary element of section 20001 is that the defendant 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,” the court reasoned, “a conviction also acknowledges the fleeing driver’s responsibility for the damages he or she has caused by being involved in the accident itself.” The court upheld the restitution order after determining that substantial evidence supported the conclusion that the defendant had been at fault in the accident. Relying on *Rubics*, the People argue that because involvement in an accident is an element of the hit-and-run offense, “it necessarily occurs in ‘the commission of that crime’ (Pen. Code, § 1202.4, subd. (a)(1)), and a court therefore can impose victim restitution for the injury to the extent it was caused by ‘defendant’s conduct’.”



Of course, as previously noted, a conviction under Vehicle Code section 20001 does not, in fact, require any showing of “the fleeing driver’s responsibility” for the underlying accident. (*Rubics*, at p. 459.) And if restitution for accident-related injuries required nothing more than proof that the driver was “involved in an accident that caused serious injury or death,” then section 1202.4 would authorize an award of restitution even in cases in which the victim was solely at fault. To permit such an award based solely on the defendant’s passive involvement in the accident would serve no recognized restitutionary purpose. And, indeed, to require the defendant to compensate the victim for injuries for which the defendant bears no responsibility — much less for injuries the victim has in effect inflicted on him or herself — could raise significant constitutional questions. (Cf., e.g., *Paroline v. United States* (2014) \_\_\_ U.S. \_\_\_, \_\_\_ [134 S.Ct. 1710, 1726]) The California Supreme Court is aware of no appellate ruling that has countenanced such a result.

Seeking to avoid that result here, the People insist that accepting their theory “does not mean that a defendant will be liable for the losses in every hit-and-run case.” Rather, in the People’s view, whether a particular defendant will be required to pay restitution for losses resulting from the accident is “a determination to be made by the sentencing judge at the restitution hearing,” presumably based on the sentencing judge’s view of whether the defendant was at fault in the accident, and therefore can be said to have “caused” the victim’s injuries through his or her “conduct” within the meaning of section 1202.4, subdivision (f).

Whatever the merits of the People’s argument as a policy matter, it cannot be squared with the plain language of section 1202.4. Section 1202.4 refers to losses incurred “as a result of the commission of a crime,” not as the result of

attendant facts or circumstances the prosecution must prove in order to obtain a conviction. Involvement in an accident is precisely such a circumstance; it forms no part of the conduct proscribed by Vehicle Code section 20001(a), but instead describes an event that gives rise to the statutory duty to stop, provide identification, and render aid. Thus, even if defendant had been at fault in the accident — and the evidence in the record does not establish that he was — his negligence might well give rise to civil tort liability, but it would not give rise to an obligation to make direct victim restitution for injuries caused by a collision that involved no criminal wrongdoing.

Nor does the reference to losses resulting from the “defendant’s conduct” in section 1202.4, subdivision (f), suggest a different result, as the People’s argument might suggest. In the very same subdivision of the provision, the Legislature made clear **that restitution is measured by the “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), italics added.) Read in context, the statute’s reference to losses resulting from the “defendant’s conduct” is not plausibly read to expand the scope of direct victim restitution to encompass losses resulting from *noncriminal* conduct, solely because that conduct gives rise to a duty the breach of which *is* punishable as a crime.

This straightforward reading of the statutory text does not, as the People argue, cast any doubt on whether direct victim restitution is available when the victim’s losses are caused by conduct that does, in fact, constitute a crime. If, for example, a thief steals a car and a third party reckless driver damages it, we do not doubt that the owner would be entitled to reimbursement from the thief under section 1202.4, subdivision (f). But that is because the owner has incurred

losses resulting from the thief's criminal conduct (namely, the unlawful deprivation of his or her property) — and not because the law provides general authorization to order restitution for losses caused by noncriminal behavior (including involvement in an accident) that is related in some way to the commission of a crime.

Nor does this reading of the text cast doubt on whether a court may order restitution for losses incurred as a result of the means by which the defendant committed the offense. (*Richardson v. United States* (1999) 526 U.S. 813, 817; *People v. Russell* (2010) 50 Cal.4th 1228, 1257.) So, for example, if a burglar breaks a window to enter a home, he or she may be ordered to pay for the broken window in victim restitution, even though the burglary statute requires the prosecution to prove only that the defendant entered the house with the intent to commit a felony. (See Pen. Code, § 459.) If the burglar happens to have committed the prohibited entry by some means that causes damage to the home, a trial court certainly can — and must — take the damage into account in ordering restitution under section 1202.4, subdivision (f). But the authority to order restitution for losses caused by criminal conduct — in this example, the burglar's unlawful entry into the home — does not imply the authority the People assert here: that is, the power to order restitution for losses caused by noncriminal conduct that took place before the commission of any crime but gave rise to the duty that defendant ultimately breached.

The People argue limiting direct victim restitution in hit-and-run cases to losses incurred by the crime itself — that is, the defendant's flight from the scene of the accident — undermines Vehicle Code section 20001(a)'s purpose of deterring negligent drivers from seeking to avoid potential liability for injuries and damage they have caused. To preclude direct victim restitution for accident-

related injuries, they argue, would incentivize at-fault drivers to flee the scene in hope of evading responsibility altogether or of covering up evidence of their fault.

The People are, of course, correct that Vehicle Code section 20001(a) is designed in part to deter drivers from seeking to avoid responsibility for accidents in which they are at fault. (See *Escobar*, at p. 1510.) But the means the Legislature chose to effectuate that purpose was to make leaving the scene of an accident a crime punishable by a term of imprisonment. The Legislature made no provision for direct restitution for losses caused by the underlying collision. And the Legislature that enacted Vehicle Code section 20001(a) in 1959 (Stats. 1959, ch. 3, § 20001, p. 1661) certainly would not have assumed that such restitution would otherwise be available; no statute provided general authority to award direct victim restitution in any amount until legislation implementing Proposition 8 was enacted more than two decades later. (See *Broussard*, at pp. 1072–1074.)

As the Legislature that enacted Vehicle Code section 20001(a) undoubtedly understood, even if direct victim restitution for accident-related injuries is not available, that does not mean that an at-fault driver will escape responsibility for the losses he or she has caused. **Once the perpetrator has been identified, the victim of a hit and run who believes the other driver was at fault may obtain civil damages in a tort suit, just as he or she would if the driver had stopped and provided identification as required by law.** And although fleeing the scene may permit drivers to attempt to hide evidence of their fault in the accident, the law accounts for this problem by permitting the trier of fact in a civil action to consider the failure to stop as some evidence of consciousness of responsibility for the accident. (*Brooks v. E. J. Willig Truck Transp. Co.* (1953) 40 Cal.2d 669, 676.)

**A driver who breaches the duty to stop thus runs the risk not only of criminal prosecution and possible prison time, but of incurring a material disadvantage in a civil suit as well.**

The Justices acknowledge the costs to the victims of hit-and-run offenses of instituting separate civil proceedings against a defendant whose negligence may have caused the underlying accident. Such costs are, however, unavoidable in a statutory scheme that limits mandatory direct victim restitution to losses incurred “as a result of the commission of a crime.” (§ 1202.4, subd. (a)(1).) Even giving broad and liberal construction to section 1202.4 (*People v. Garcia* (2010) 185 Cal.App.4th 1203, 1208), they will give effect to the unambiguous language the Legislature has chosen.

By its terms, section 1202.4 authorizes — indeed, requires — courts in Vehicle Code section 20001 cases to award direct victim restitution for losses resulting from the defendant’s crime: that is, flight from the scene of the accident without identifying himself or herself, rendering aid, or otherwise fulfilling the statutory requirements. (Veh. Code, § 20001(a).) Where the flight leads to a delay in the victim’s access to medical care, for example, and the victim’s injuries are exacerbated as a result, those costs are properly characterized as the “result of the commission of a crime” for the purposes of a restitution order. (Pen. Code, § 1202.4, subd. (a)(1).) Similarly, the cost of tracking down a defendant who has fled the scene of the accident may be recoverable because such losses, too, result from the defendant’s unlawful flight. **Section 1202.4 does not, however, permit courts to order direct victim restitution for losses that occur as a result of an underlying accident that involves no criminal wrongdoing.**

The judgment of the Court of Appeal is affirmed, and the case remanded for recalculation of the amount of victim restitution in accordance with this opinion.

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