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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JESUS P. JAIME,

Defendant and Appellant.

B270110

(Los Angeles County
Super. Ct. No. BA433297)

APPEAL from post-judgment orders of the Superior Court of Los Angeles County, Renee F. Korn, Judge. Reversed and remanded for further proceedings.

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Margaret E. Maxwell and Tasha G. Timbadia, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Jesus Jaime pleaded no contest to felony leaving the scene of an accident that resulted in death (Veh. Code, § 20001, subd. (b)(2)), commonly known as “hit and run.”¹ The trial court sentenced him to three years in prison and ordered him to pay direct victim restitution. Jaime’s sole contention on appeal is that the restitution orders must be reversed because his criminal conduct, leaving the scene of an accident, did not cause the victim’s injuries and economic damages. In light of our Supreme Court’s recent decision in *People v. Martinez* (2017) 2 Cal.5th 1093, we reverse the restitution orders and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Facts*²

On the evening of January 27, 2015, Jaime was driving eastbound on 48th Street in Los Angeles when he collided with Reanna Goss, a pedestrian. Jaime did not stop, identify himself, or render aid. Goss was transported to the hospital. She died of her injuries.

The following morning, Jaime turned himself in. He stated that he had been driving his father’s vehicle at approximately 35 miles per hour when he hit something. He could not see what he

¹ The plea form indicated a plea to Vehicle Code section 20001, subdivision (b)(2). As discussed below the crime is defined in section 20001, subdivision (a), and the penalty provisions are set forth in subdivision (b).

² Jaime pleaded no contest before a preliminary hearing was held, and agreed that the probation and police reports provided the factual basis for the plea. The trial court also reviewed a videotape of the accident. We glean the facts primarily from the probation report.

hit, but believed he hit a person. He panicked and did not stop. He abandoned the car and wandered around all night. When interviewed by police, Jaime admitted that at lunchtime on the day of the accident, he had consumed “a couple of Coors beers” and smoked marijuana. He denied being under the influence at the time of the accident.

2. Procedure

On April 14, 2015 Jaime entered an open plea of no contest, pursuant to *People v. West* (1970) 3 Cal.3d 595, to felony leaving the scene of an accident resulting in death (Veh. Code, § 20001, subd. (b)(2)). The trial court sentenced Jaime to the midterm of three years in prison. It imposed a restitution fine, a suspended parole revocation restitution fine, a court operations assessment, and a criminal conviction assessment. After restitution hearings, the court ordered Jaime to pay \$11,062.97 plus interest to the victim’s mother for funeral expenses; \$1,451.75 plus interest to the City of Los Angeles Fire Department; \$9,469.23 plus interest to Centinela Hospital Medical Center; \$11,464 plus interest to Harbor UCLA Medical Center; and \$4,686.91 to the Victim Compensation and Government Claims Board. Jaime timely appealed, challenging the restitution orders only.

DISCUSSION

People v. Martinez requires that the orders granting victim restitution must be reversed

At the restitution hearings, Jaime stipulated that the amounts awarded were the amounts in controversy, but objected that any direct victim restitution was improper because there was no showing Goss’s death and economic damages were a consequence of his leaving the scene of the accident. Defense counsel noted that the appellate courts were split on the question

of whether a defendant, who is sentenced to prison in a hit-and-run case, could be required to pay victim restitution and the issue was pending before the California Supreme Court. Counsel asserted that in the instant matter there had been no factual determination that Jaime was responsible for the accident, or that the victim's injuries were a consequence of his flight. The trial court acknowledged the split of authority, but concluded victim restitution was appropriate because the hospital bills were "directly tied to the offense."

Jaime contends that the restitution orders were an abuse of discretion because the victim's injuries and economic losses were not the result of the crime of which he was convicted, leaving the scene of an accident. He urges that his plea to violating Vehicle Code section 20001 did not constitute an admission that he was responsible for the accident, and therefore his plea did not give rise to liability for injuries or death resulting from the accident.

Relying primarily on *People v. Rubics* (2006) 136 Cal.App.4th 452, disapproved by *People v. Martinez, supra*, 2 Cal.5th at p. 1107, fn. 3, the People contend that the restitution orders were proper because the victim's losses were the direct result of Jaime's offense. They urge that by pleading no contest, Jaime "admitted his guilt for leaving the scene of an accident, which included appellant admitting his involvement in the collision that resulted in the victim's economic losses." According to the People, Jaime's involvement in the accident "was an indispensable part of his criminal liability, regardless [of] whether he was at fault for the collision."

After the parties completed briefing, our Supreme Court issued its opinion in *People v. Martinez, supra*, 2 Cal.5th 1093.

1. *Applicable legal principles and People v. Martinez*

We review a restitution order for abuse of discretion. (*People v. Giordano* (2007) 42 Cal.4th 644, 663.) “[A]n order resting on a demonstrable legal error constitutes such an abuse.” (*People v. Hume* (2011) 196 Cal.App.4th 990, 995.)

The California Constitution provides: “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.” (Cal. Const., art. I, § 28, subd. (b)(13)(A).) This constitutional mandate is codified in Penal Code section 1202.4, which “authorizes trial courts to order direct victim restitution for those losses incurred as a result of the crime of which the defendant was convicted.” (*People v. Martinez, supra*, 2 Cal.5th at p. 1101.) Penal Code section 1202.4 states that, subject to exceptions not pertinent 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 in an amount established by court order” (*Id.*, subd. (f), italics added.) The restitution order shall, to the extent possible, fully reimburse the victim for every determined economic loss “incurred as the result of the defendant’s criminal conduct.” (*Id.*, subd. (f)(3); *People v. Martinez, supra*, at p. 1101.) Thus, Penal Code section 1202.4 victim restitution is limited to losses caused by the criminal conduct for which the defendant sustained the conviction. (*People v. Rahbari* (2014) 232 Cal.App.4th 185, 190; *People v. Woods* (2008) 161 Cal.App.4th 1045, 1049.)

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.”³ “[A]lthough 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.’ [Citation.] That is to say, ‘ “the act made criminal” ’ under the statute ‘ “is not the ‘hitting’ but the ‘running.’ ” ’ ” (*People v. Martinez, supra*, 2 Cal.5th at p. 1102.) Under Vehicle Code section 20001, subdivision (a), an injury accident is a condition precedent to the duty to stop, provide identification, and render aid, but it is not an element of the crime and does not constitute part of the conduct forbidden by the statute. (*Martinez, supra*, at pp. 1102-1103; *Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308, 1340.) 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”; no degree of fault on the defendant’s part is required for conviction. (*Martinez, supra*, at p. 1103 [“ ‘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’ ”]; *Corenbaum v. Lampkin, supra*, at p. 1340.)

Prior to *Martinez*, the appellate courts were divided regarding the propriety of a direct victim restitution award when

³ Vehicle Code section 20001, subdivision (b) sets forth the penalty for failing to stop when the accident results in injury or death. Vehicle Code sections 20003 and 20004 specify the information and aid that must be provided, and impose a reporting requirement.

a defendant convicted of leaving the scene of an accident was sentenced to prison. (Compare *People v. Escobar* (1991) 235 Cal.App.3d 1504, 1509 [“Restitution is proper only to the extent that the victim’s injuries are caused or exacerbated by the offender’s leaving the scene”], *People v. Cowart* (2015) 238 Cal.App.4th 945, 955, and *Corenbaum v. Lampkin, supra*, 215 Cal.App.4th at p. 1340 with *People v. Rubics, supra*, 136 Cal.App.4th at p. 458 [“the elements of [Vehicle Code] section 20001 require Rubics’s involvement in the accident and responsibility for the loss incurred”].)

Resolving the question, *Martinez* concluded that, under the plain language of Penal Code section 1202.4, “[r]estitution for losses incurred ‘as a result of the commission of a crime’ [citation] 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 [of] the accident itself.” (*People v. Martinez, supra*, 2 Cal.5th at p. 1103.) The court reiterated that a conviction under Vehicle Code section 20001 does not require any showing of the fleeing driver’s responsibility for the underlying accident. “[I]f 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 [Penal Code] 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 could raise “significant constitutional questions.” (*Martinez, supra*, at p. 1104.) Involvement in an accident “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 . . . 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.” (*Id.* at pp. 1104-1105.)

However, *Martinez* concluded that victim restitution is required where the losses result from the defendant’s crime, that is, his flight from the scene without identifying himself, rendering aid, or otherwise fulfilling his statutory obligations. (*People v. Martinez, supra*, 2 Cal.5th at p. 1107.) “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. [Citation.] 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.” (*Ibid.*)

2. *Application here*

Martinez compels rejection of the People’s arguments and reversal of the restitution award. Jaime’s plea to violation of Vehicle Code section 20001, subdivision (b)(2), does not establish the requisite connection between the crime and the victim’s economic losses. “[D]efendant’s crime was not being involved in a traffic accident, nor does his conviction imply that he was at fault in the accident. Defendant’s crime, rather, was leaving the scene of the accident without presenting identification or rendering aid. Thus, under [Penal Code] section 1202.4, the trial court was authorized to order restitution for those injuries that were caused

or exacerbated by defendant's criminal flight from the scene of the accident, but it was not authorized to award restitution for injuries resulting from the accident itself." (*People v. Martinez, supra*, 2 Cal.5th at p. 1098.)

The People's arguments to the contrary are not persuasive in light of *Martinez*. They urge that Jaime admitted he had been drinking and smoked marijuana at lunch on the day of the accident. Although he claimed he was not under the influence when the accident occurred, they argue that his self-serving statement should not be credited. They also point out that his flight hindered a determination of whether he was intoxicated or impaired when the accident occurred. But Jaime was not charged with or found guilty of driving under the influence, or any criminal offense other than leaving the scene of an accident. We cannot assume he is guilty of criminal conduct that was not charged or adjudicated.

The People also rely on *People v. Carbajal* (1995) 10 Cal.4th 1114, as indirect support for their argument. In *Carbajal*, the court concluded a trial court does not abuse its discretion by conditioning probation on the defendant's payment of restitution in a hit-and-run case. (*Id.* at pp. 1119, 1124-1125.) But the "restitution power conferred by [Penal Code] section 1202.4 stands in contrast to a court's power to order restitution as a condition of probation." (*People v. Martinez, supra*, 2 Cal.5th at p. 1101.) Courts may impose probation conditions that foster rehabilitation and are reasonably related to the offense or future criminality, even when the loss was not necessarily caused by the criminal conduct underlying the conviction. (*Ibid.*) A court's power to order restitution in probation cases "is thus broader than its power to order direct victim restitution under [Penal

Code] section 1202.4 in cases in which the defendant receives a nonprobationary sentence.” (*Ibid.*) Here, Jaime was not granted probation; he was sentenced to prison. The People’s reliance on *Carbajal* is unavailing.

The People further argue, correctly, that restitution is proper in a hit-and-run case insofar as the act of leaving the scene caused or exacerbated the victim’s injuries. (See *People v. Martinez, supra*, 2 Cal.5th at p. 1107; *People v. Escobar, supra*, 235 Cal.App.3d at p. 1509 [restitution is proper to the extent the victim’s injuries are caused or exacerbated by the defendant’s leaving the scene]; *Corenbaum v. Lampkin, supra*, 215 Cal.App.4th at p. 1340 [the damages recoverable in a civil action for violation of Veh. Code, § 20001 “are limited to those caused by fleeing”]; cf. *People v. Valdez* (2010) 189 Cal.App.4th 82, 90 [great bodily injury allegation may attach to a Veh. Code, § 20001, subd. (a) offense when the injury was caused or aggravated by the defendant’s failure to stop and render aid].) The People urge that the trial court found the restitution orders were appropriate in light of the materials it reviewed, including police reports and a video of the collision. They maintain that because the propriety of the restitution orders is a factual question, and Jaime has not provided a record containing all the materials reviewed by the trial court, he has forfeited his challenge to the restitution orders.

But the trial court never directly addressed, let alone made an express finding, that Jaime’s flight caused or exacerbated Goss’s injuries. It stated, “The court believes that the facts in this case are appropriate that those hospital bills for the injuries that she suffered as a cause of the accident are directly tied to the offense in this case. [¶] This court believes that restitution is appropriate based upon the underpinnings of the facts in this

case.” “The court reviewed the videos, heard from the victim’s family, heard from the People and heard from the defendant. I would note certainly the facts in the record in this court’s view make it appropriate for this court to issue the restitution order.” It is possible the court concluded Jaime’s act of fleeing caused or exacerbated Goss’s injuries, but it is also possible the court relied, understandably, on the now discredited *Rubics* rationale to conclude restitution was appropriate. The People’s sentencing memorandum, in arguing the aggravating factors outweighed mitigating factors, focused on the speed of Jaime’s vehicle, his possible intoxication, and the powerful impact of the collision; they did not suggest any harm arose solely from Jaime’s act of fleeing. As far as the record before us shows, the court did not address the question of whether Jaime’s flight caused or exacerbated the victim’s injuries or death. Under these circumstances, there is no forfeiture.

However, as noted, the law was unsettled at the time of the restitution hearing. The trial court does not appear to have considered whether Jaime’s act of leaving the scene caused or exacerbated the victim’s injuries. Because the trial court did not so limit restitution, the People did not have occasion to present evidence demonstrating a connection between Jaime’s flight and the victim’s losses. Accordingly, on remand the People may, in their discretion, move for a further restitution hearing in which they will bear the burden of proving by a preponderance of the evidence any amount(s) of the victim’s losses that were attributable to, or exacerbated by, Jaime’s leaving the scene.⁴

⁴ Jaime requests that we take judicial notice of the videotape the trial court reviewed. We decline to do so because, in light of our resolution of this matter, our review of the videotape at this

(See *People v. Aguilar* (2016) 4 Cal.App.5th 857, 862 [standard of proof at restitution hearing is preponderance of the evidence].)

juncture is unnecessary. It is for the trial court, in the first instance, to make factual findings on the question of whether or not Jaime's conduct of leaving the scene caused or aggravated the victim's injuries.

DISPOSITION

The orders granting victim restitution are reversed. The matter is remanded for a determination of whether Jaime's conduct of leaving the scene of the accident caused or exacerbated the victim's injuries, and, if so, for calculation of the amount of victim restitution.

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BACHNER, J.*

We concur:

EDMON, P. J.

LAVIN, J.

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