

APPEL

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May 10, 2024

Mr. Jorge E. Navarrete
Clerk and Executive Officer of the Supreme Court
Supreme Court of California
350 McAllister St
San Francisco, CA 94102
Sent via Truefiling

Re: *People v. Scotlane McCune*, S276303
Pre-argument letter re: additional authorities

Dear Mr. Navarrete:

This Court has calendared oral argument for May 22, 2024. At oral argument, appellant may refer to the following authority not available at the time briefs were filed:

- *People v. Koontzy* (Apr. 25, 2024, A167703) 2024 WL 1794196
 - Division Five of the First District Court of Appeal, relying on this Court's decision in *People v. Martinez* (2017) 2 Cal.5th 1093, held that the trial court lost jurisdiction to modify the victim restitution order following the termination of probation. The victim restitution order necessarily was a probation condition imposed under Penal Code section 1203.1, not Penal Code section 1202.4, because the restitution order was for the victim's losses due to a car collision rather than losses due to appellant's criminal conduct in leaving the scene of the accident (Veh. Code, § 20001, subd. (a)). Therefore, Penal Code section 1202.46, which only authorizes retention of jurisdiction for imposition or modification of restitution pursuant to Penal Code section 1202.4, did not provide a basis to extend jurisdiction to modify the victim restitution order.

Additionally, in preparing for oral argument, I came across two cases to which I may refer during argument:

- *People v. Holman* (2013) 214 Cal.App.4th 1438
 - The court of appeal notes that although the primary goal of victim restitution is to reimburse the victim for losses caused by the defendant’s criminal conduct, “[s]econdary goals of direct restitution include rehabilitation of the defendant and deterrence of future criminality.” (*Id.* at pp. 1451-1452.) This case also explains how victims receive compensation through several avenues. (*Id.* at p. 1452.) Victims receive direct restitution, but they may also seek compensation for the same losses from the Restitution Fund, as provided for by Government Code section 13950 et seq. (*Id.* at p. 1452.) *Holman* also explains that “direct victim restitution does not preclude a separate civil action by the victim.” (*Id.* at p. 1453.)

- *People v. Evans* (2019) 39 Cal.App.5th 771
 - The court of appeal notes that the primary effect of victim restitution is to compensate victims but acknowledges that victim restitution also serves the purposes of rehabilitation and deterrence. (*Id.* at p. 777.)

Sincerely,

/s/ *Kaiya Pirolo*

Kaiya Pirolo
Staff Attorney

DECLARATION OF SERVICE BY MAIL AND ELECTRONIC SERVICE BY TRUEFILING

Re: *People v. Scotlane McCune*

Case No. S276303

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause. I am employed in the County of Alameda, State of California. My business address is 1212 Broadway, Suite 1200, Oakland, CA 94612. My electronic service address is eservice@fdap.org. On May 10, 2024, I served a true copy of the attached Pre-argument letter re: additional authorities on each of the following, by placing same in an envelope(s) addressed as follows:

Scotlane McCune
[Address on file]
(Appellant)

Each said envelope was sealed and the postage thereon fully prepaid. I am familiar with this office's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice each envelope would be deposited with the United States Postal Service in Walnut Creek, California, on that same day in the ordinary course of business.

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General
amanda.lloyd@doj.ca.gov
(Respondent)

Sahar Nayeri, Los Angeles City
Attorney's Office
sahar.nayeri@lacity.org
(Amicus counsel)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 10, 2024, at Walnut Creek, California.

/s/ Kaiya Pirolo

Kaiya Pirolo

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v.
McCUNE**

Case Number: **S276303**

Lower Court Case Number: **A163579**

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5/10/2024

Date

/s/Kaiya Pirolo

Signature

Pirolo, Kaiya (280393)

Last Name, First Name (PNum)

First District Appellate Project

