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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yuba)

THE PEOPLE,

Plaintiff and Respondent,

v.

TROY THEOSIUS SHERMAN, JR.,

Defendant and Appellant.

C068018

(Super. Ct. No.
CRF10211)

A jury convicted defendant Troy Theosius Sherman, Jr., of first degree robbery and grand theft of a firearm. In addition to ordering defendant to pay restitution to the robbery victim, who was stabbed during the crime, the trial court also ordered defendant to pay restitution of \$454.95 to Medicare and \$319.95 to Medi-Cal for emergency medical services rendered to the stabbing victim, plus a 10 percent collection fee on all restitution amounts.¹

¹ The trial court initially awarded the stabbing victim \$3,464.75 in victim restitution. While this appeal was pending, the trial court amended the abstract of judgment to strike the

On appeal, defendant contends, and the People concede, that the court erred in awarding victim restitution to Medicare and Medi-Cal, because the entities were not "direct victims" within the meaning of the victim restitution statute. We agree the award was error.

Penal Code section 1202.4, subdivision (a)(3)(B)² requires the trial court to order the convicted defendant to pay "[r]estitution to the victim or victims, if any, in accordance with subdivision (f)." In turn, subdivision (f) states, in part, "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." Therefore, under the plain language of section 1202.4, "the court may order restitution only to a 'victim.'" (*People v. Slattery* (2008) 167 Cal.App.4th 1091, 1095 (*Slattery*).)

"[T]he term 'victim' has a broad and flexible meaning" (*People v. Saint-Amans* (2005) 131 Cal.App.4th 1076, 1084), but it is not so broad as to encompass Medicare and Medi-Cal in this case. A "victim" under section 1202.4 "shall include all of the following: [¶] . . . [¶] (2) Any corporation, business trust,

award and instead "reflect that the Court reserves jurisdiction on the issue of restitution as to the victim, Alan M."

² Further unspecified statutory references are to the Penal Code.

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.” (§ 1202.4, subd. (k)(2).) “Thus, Penal Code section 1202.4, subdivision (k) permits restitution to a business or governmental entity only when it is a *direct victim* of crime.” (*People v. Martinez* (2005) 36 Cal.4th 384, 393 (*Martinez*).)

Defendant committed no crime against Medicare or Medi-Cal, so they were not direct victims eligible for restitution under section 1202.4. Analogous cases so provide. (See *Martinez, supra*, 36 Cal.4th at pp. 386, 393-394 [Department of Toxic Substances Control was not a direct victim of attempted methamphetamine production, and may not recover as restitution its costs incurred cleaning up waste material]; *Slattery, supra*, 167 Cal.App.4th at pp. 1096-1097 [defendant inflicted injury on an elder victim; the treating hospital was not a direct victim of the crime entitled to section 1202.4 restitution even though it incurred economic losses].)

We also agree with the parties that, in these circumstances, the matter must be remanded to the trial court so that it may correct the victim restitution award.

DISPOSITION

The trial court shall modify the judgment to strike the victim restitution awards to Medicare and Medi-Cal. As so modified, the judgment is affirmed. The trial court is directed to forward an amended abstract of judgment reflecting the

modification to the California Department of Corrections and
Rehabilitation.

_____ RAYE _____, P. J.

We concur:

_____ MAURO _____, J.

_____ HOCH _____, J.