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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sutter)

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THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
PALVI GILL,  
  
Defendant and Appellant.

C068860  
  
(Super. Ct. No.  
CRF102672)

Defendant Palvi Gill pleaded no contest to two counts of second degree burglary. After sentencing defendant to state prison, the trial court ordered her to pay restitution to four victims--including her former employer, Jon Dayco. Defendant contends that Dayco is not eligible for victim restitution because he is not a direct victim of the offenses, as required by Penal Code<sup>1</sup> section 1202.4, subdivision (k)(2). Because we

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<sup>1</sup> Further undesignated statutory references are to the Penal Code.

agree, we shall strike the restitution award to Dayco and affirm the judgment as modified.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

##### *Charges and Disposition*

On November 10, 2010, the People charged defendant with five counts of second degree burglary against victims Jose Diaz and Ignacio Arellano (§ 459), four counts of grand theft against victims Diaz, Arellano, and Bank One computer system (§ 487, subd. (a)), and two separate counts of forgery against unnamed victims (§§ 470, subd.(d), 476a, subd. (a)).

On March 4, 2011, defendant entered a plea of no contest to count 1 (second degree burglary against Arellano) and count 6 (second degree burglary against victim Diaz); the remaining counts were dismissed with a *Harvey*<sup>2</sup> waiver. On June 22, 2011, the trial court sentenced defendant to a term of three years in state prison.

At a subsequent restitution hearing held on July 22, 2011, the court awarded victim restitution to Dayco and several other individuals.

##### *Defendant's Criminal Conduct*<sup>3</sup>

On October 18, 2010, Yuba City Police Officer Amoruso spoke with Jon Dayco and informed him that defendant, one of his

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<sup>2</sup> *People v. Harvey* (1979) 25 Cal.3d 754.

<sup>3</sup> Because defendant only challenges the restitution award to Dayco, we recite only facts germane to that issue on appeal. We glean these facts from the probation report.

contract representatives, was committing theft. Dayco owned and operated Bankcard POS, based in Illinois. The business distributes point of sale (POS) cash registers and charges a monthly operation fee. Dayco had hired defendant in July 2010 and she had signed on nine new contracts in approximately one month. Dayco paid defendant a commission for each new contract. Soon afterward, Dayco began receiving complaints from businesses that defendant charged them fees up front, with a guarantee they would not have to pay any monthly fees. Defendant was not authorized to waive fees or collect funds on behalf of the company.<sup>4</sup>

*Restitution Claim and Hearing*

Dayco provided the probation officer with a list of victim businesses that had filed police reports in connection with defendant, including a calculated "funded amount" for each contract that included equipment costs (of the cash registers) and commission he paid to defendant (for signing the new contracts). He sought restitution for this "funded amount" in connection with four of the listed businesses, for a total of \$17,288.23.

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<sup>4</sup> In an interview conducted on November 8, 2010, defendant told law enforcement that when she signed contracts on behalf of Bankcard POS, she received commission of \$2,000 plus \$100 to \$200 of "residual payments" on each account. Bankcard POS provided the terminals directly to the customer businesses and began charging monthly fees. When asked about taking payments and waiving monthly fees, defendant claimed it was a misunderstanding.

Citing the negative effect defendant's actions had on Dayco's business, the probation officer recommended awarding Dayco the requested amount in full.

At the restitution hearing, defendant objected to the court's awarding restitution in any amount to Dayco because he was not named as a victim in the charging document. The trial court concluded without significant analysis that Dayco was a "direct victim." It awarded Dayco victim restitution in the amount of \$6,605.60, encompassing only the commissions paid to defendant by Dayco, and reserved jurisdiction to award additional restitution to Dayco if it were provided additional documentation.

#### **DISCUSSION**

Defendant's sole contention on appeal is that the trial court's award of victim restitution to Dayco was unauthorized because he was not a "victim" as the term is defined by victim restitution statutes and relevant case law.

Article I, section 28, subdivision (b) of the California Constitution provides 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. California law provides that: "It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime." (§ 1202.4, subd. (a)(1).) For restitution purposes, "victim" is defined to include the immediate surviving family of

the actual victim, specific family and household members, and any legal or commercial entity when that entity is a "direct victim" of a crime. (§ 1202.4, subd. (k)).

Clearly, the only one of these categories that could even arguably identify Dayco is that of a legal or commercial entity when that entity is a direct victim of a crime. But Dayco is not properly classified a "direct victim" merely because he or his company, Bankcard POS, suffered economic losses as a result of defendant's criminal conduct.

"Nothing indicates the electorate intended to encompass each and every economic consequence that might incidentally be incurred by persons or entities far removed from the crime itself." (*People v. Birkett* (1999) 21 Cal.4th 226, 244.) Rather, "[S]ection 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*)). Under the traditional meaning of "direct victim," which the Legislature did not alter when it inserted this term into the statute in 1994, restitution was limited to "'entities *against which* the [defendant]'s crimes had been committed' -- that is, entities that are the 'immediate objects of the [defendant]'s offenses.'" (*Martinez, supra*, 36 Cal.4th at p. 393.)

In construing the term "direct victim," "[t]he state high court has defined 'direct' as: "'straightforward, uninterrupted, [or] immediate" in time, order or succession, or "proceeding [in logic] from antecedent to consequent, from cause to effect,

etc., uninterrupted," or generally "[e]ffected or existing without intermediation or intervening agency; immediate." [Citation.] (*People v. Slattery* (2008) 167 Cal.App.4th 1091, 1095-1096 (*Slattery*)). The *Slattery* court rejected the People's argument that the term "victim restitution" in section 1202.4, subdivision (f), must be construed to include "all persons who suffer losses as a result of criminal activity." (Cal. Const., art. I, § 28, subd. (b)). Because section 1202.4, subdivisions (f) and (k), limited "victim restitution" to *direct* victims of crime, the court held that a hospital which treated a victim of elder abuse could not claim victim restitution for the unpaid costs of treatment, and must instead recoup its debt by a civil action. (*Slattery, supra*, 167 Cal.App.4th at p. 1097.)

By contrast, a bank which held an account from which a defendant fraudulently withdrew funds was a direct victim of defendant's commercial burglary because the bank "was the object of the crime." (*People v. Saint-Amans* (2005) 131 Cal.App.4th 1076, 1084 (*Saint-Amans*)). This was so because "[defendant] committed his offense by entering the bank's premises at three different branches," "deceiv[ed] the bank's employees[,] and used [its] bank account system"; thus, the bank was the entity against which defendant committed the crime. (*Saint-Amans, supra*, 131 Cal.App.4th at pp. 1086-1087.)

Comparable to the hospital in *Slattery*, here Dayco was not an entity against which defendant committed any charged crime.<sup>5</sup> Although he suffered an economic loss as a *result* of defendant's conduct, he was not the direct and immediate *object* of her offenses. Because defendant was sent to prison and denied probation, the trial court was authorized to award restitution only to the direct victims of defendant's crimes of conviction. (*People v. Anderson* (2010) 50 Cal. 4th 19, 29-31). Defendant was not convicted of any crime against Dayco, nor was Dayco a named victim in the dismissed counts.

Although unnamed victims are not *necessarily* precluded from entitlement to restitution, Dayco does not fit into any of the categories of individual victims entitled to restitution under section 1202.4, subdivision (k). Nor is he a commercial entity that fits the definition of a "direct victim" under that same provision. Thus the restitution award was improper.

#### **DISPOSITION**

The order of victim restitution to Dayco is stricken. In all other respects, the judgment is affirmed. The trial court is directed to prepare an amended abstract of judgment and

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<sup>5</sup> No evidence in the record suggests a connection between Dayco and "Bank One computer system," the named victim in count 9.

forward a certified copy to the Department of Corrections and Rehabilitation.

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DUARTE, J.

We concur:

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BLEASE, Acting P. J.

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HULL, J.