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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH MICHAEL GOMEZ,

Defendant and Appellant.

H037337

(Santa Cruz County

Super. Ct. No. F18368)

Joseph Michael Gomez was convicted by guilty plea of grand theft (Pen. Code, § 487, subd. (a).)<sup>1</sup> and ordered to pay \$48,481 in restitution to the victims (§ 1202.4, subd.(f)(3)(A)). On appeal, defendant challenges the victim restitution order, insisting that it should not have exceeded \$18,841, the total "actual" value of the stolen property as reported by the victims. We conclude that the order must be reversed and the matter must be remanded for further proceedings.

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<sup>1</sup> All further statutory references are to the Penal Code.

I

*Procedural History*

An information, filed November 1, 2009, charged defendant Gomez with committing grand theft of personal property, of a value over \$400, in violation of section 487, former subdivision (a),<sup>2</sup> on or about July 21, 2009.

At the change of plea hearing on March 10, 2010, the prosecutor indicated that the missing laptop had been recovered from a pawn shop but additional personal items had been discovered missing. The court indicated it would grant probation to defendant but he would be required to make restitution in an amount to be determined. The prosecutor indicated that restitution would be in the thousands of dollars because defendant's fingerprints had been found on a jewelry box and rings were missing. She indicated that the amount of loss was approximately \$2,325 but advised the court that the "number may be incomplete." Defendant pleaded guilty to the charge of grand theft. The court placed him on three years of formal probation on certain terms and conditions.

In a memo to the court, filed May 31, 2011, Chief Probation Officer Scott MacDonald endorsed the victims' request for restitution in the total amount of \$20,700. It was his opinion that Lil Snee had "done her best at estimating the value of the stolen items, by going to several jewelry stores and comparing sizes of stones" and she had "put a lot of time and effort into trying to recall what items were stolen . . . ." The memo referred the court to the April 14, 2011 email message from Lil Snee to the District Attorney, which had been forwarded to the officer and attached to his memo. It contained the victims' itemized loss statement.

On June 30, 2011, the court held a restitution hearing and allowed testimony. At that time, the Snees' request for victim restitution had grown to \$64,642.

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<sup>2</sup> Subdivision (a) of section 487 now generally defines grand theft as the theft of "money, labor, or real or personal property" exceeding \$950 in value.

The matter was taken under submission. Subsequently, the court issued a written decision requiring defendant to pay victim restitution to Lil and Caesar Snee in "the sum of \$48,481.00 plus ten percent interest" from the date of the order and "any collection fee imposed by the Probation Department."

Defendant filed an appeal.

## II

### *Restitution Hearing*

At the restitution hearing, the court permitted the parties to call witnesses. The People called Lil Snee and Jessica Snee to testify. Caesar Snee and Sheriff's Deputy Casandra Cassingham were called as witnesses for the defense.

Lil Snee<sup>3</sup> testified that during July 2009, her husband Caesar and she had gone out of town with their eldest daughter for about two weeks. The Snees' two other teenage children, Jessica and her older brother, remained at home. At that time, Jessica was in high school.

While unpacking and putting away clothing the day after returning from the trip, Lil discovered her drawers and closets in disarray. She found some jewelry was missing from her home. She called the Sheriff's Office and Deputy Cassingham came out to the house the same day.

Lil informed Deputy Cassingham of the items that she then believed were missing and showed the deputy around the house. The deputy attempted to lift prints from a variety of places, including a jewelry box kept in a drawer. At the hearing, Lil indicated that a baby ring and baby earrings, a bracelet, and a wrist watch with diamonds had been taken from the jewelry box on which the fingerprint had been found. Rings had been taken from a wooden tray that was in the drawer with some of the jewelry boxes.

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<sup>3</sup> We will sometimes refer to the members of the Snee family by their first names for the sake of clarity and not out of disrespect.

The Snees discovered that a ring, which Lil had given her husband on their first anniversary and was kept in a box in a drawer in her husband's bathroom, was also missing. Lil subsequently realized that a GPS device was missing from the home office. It was discovered in a kitchen drawer along with a purse and a clutch bag. Several days later, she realized that her netbook computer, which was usually in the family room was gone. It was discovered that Jessica's camera, which Lil and her husband had recently bought for Jessica, was also missing from Jessica's room. At some time, Lil's son discovered a hookah was missing from his room and he also discovered his iPod was missing.

As Lil discovered items were missing, she submitted supplemental lists of missing items to the Sheriff's Office. Lil recalled at the hearing that, in the summer of 2010, she submitted an updated list of missing items to Sarah Sturm at the Probation Department.

Lil prepared an itemized list that described the items and the resulting economic losses and she sent the loss statement to the Santa Cruz County District Attorney's Office in an April 2011 email. It listed 17 pieces of jewelry, a camera, a netbook computer, an iPod, an air gun, and hookah pipe. The Snees' claim of economic loss totaled \$20,070. Lil stated in the email: "This a partial claim. I will submit a final claim when I remember other items that were in the jewelry boxes and drawers that [defendant] emptied."

At the restitution hearing, Lil testified that, among the items taken, she counted about six diamond rings, a diamond bracelet, and a wrist watch whose face was surrounded by diamonds. She indicated that she had about five jewelry boxes and a tray of rings in her bedroom. The missing items included an heirloom diamond ring and and stud baby elephant earrings on a pink card, which the birth mother had given Lil's adopted daughter and had significant sentimental value.

In another email message in late May 2011, Lil indicated that she was attaching a photo of her wearing some of the missing jewelry, which she described in her message as

"the 14K gold ring with 3 carat total diamonds in a cascading setting and the 14K gold tennis bracelet with 3 carats total diamonds in a channel setting." The photograph showed Lil with her son and had been taken about five years before the restitution hearing. At the hearing, Lil stated that the ring had about 19 diamonds and the bracelet had about 17 diamonds.

Lil learned that defendant had admitted to her daughter that he stole an iPod from her son's room. Lil had also found out from her daughter that other people had heard defendant bragging about giving someone a diamond ring and pawning a netbook computer. Lil called San Jose pawnshops and tracked down a shop that had a netbook computer. Her husband Caesar went to the pawnshop, identified it, and called San Jose police. The Snees' computer was eventually returned to them.

Lil explained at the hearing that she attributed the loss of all the property itemized in the loss statement to the theft committed by defendant. She reached that conclusion because the items were in the house before defendant was in the house and the items were not there after defendant had been in the house, his fingerprints were found, he admitted taking the iPod, the netbook computer was discovered at a pawn shop, and defendant bragged about a diamond ring.

Prior to the restitution hearing, Lil's husband Caesar discovered that the value of gold and gemstones had risen 3.5 times since most of the jewelry had been purchased. The Snees also located some receipts and were able to revise their claim of loss. As to some of the pieces of jewelry for which they had no receipts, the Snees were able to recollect the original prices because the pieces had been purchased for special occasions. As to other items for which the Snees had not found receipts, they had fixed a value by looking at similar items in jewelry stores and online.

In a June 6, 2011 email to the District Attorney, Lil reported that Caesar had found jewelry receipts and appraisal certificates and they had "charts documenting the increase

in the cost of diamonds and gold." The email indicated that a new spreadsheet was attached.

The Snees's new spreadsheet contained a number of columns. As to each item, which was described in more detail, the spreadsheet stated (1) the originally reported loss, (2) the "actual" value (3) the year of acquisition, and (4) the upward "adjusted value." The "adjusted value" of each jewelry item was 3.5 times its "actual" value but the "adjusted" values for the remaining non-jewelry items were unchanged from the originally reported losses and identical to the "actual" values. The spreadsheet showed that the total originally reported losses equaled \$20,070, the total "actual" values equaled \$18,841, and the total "adjusted" values equaled \$64,642. A statement at the bottom of the spreadsheet read: "Price of gold has risen from \$450 to \$1550 from 1982 to present - 3.5 times." The spreadsheet reflected that the netbook computer had been recovered.

Lil had receipts for item numbers one, two, four, six, nine, 11 through 13, and 17, which were all jewelry items. She was asked in particular about her 14k engagement ring with 2 carats total diamonds (item number one, reportedly purchased in 1983) and the 14k gold ring with three carats total diamonds in a cascading setting shown in the photograph (item number 13, reportedly purchased in 1983).

The engagement ring had been purchased for \$1499.99 but the Snees were claiming the regular price or "actual" value of \$3,000. The ring had been given to her by her husband and they had been married for almost 30 years. The "adjusted value" of the engagement ring was specified as \$10,500. The gold ring with diamonds in a cascading setting, which the Snees had originally reported to be valued at \$3000, had been purchased for \$665 and the "adjusted value" of the ring was specified as \$2,293.

Lil acknowledged that their claimed losses had been increased to reflect the increase in the value of gold based on Caesar's research. Caesar had used a multiplier of 3.5 to reflect the increased price of gold. Lil did not know how much gold was in 14k gold.

Jessica Snee testified that in July 2009, when she was only 16 years old, her parents went away for about two weeks and her brother and she were left alone. One night she had a group of five or six friends over at her house. She knew everyone who came to her house except defendant. Everyone but one girl stayed for the night. Jessica drove defendant home at about 8:30 a.m. the next morning.

Jessica had a friend over four or five times while her parents were gone. She acknowledged that she had people at her home at least three or four times. She acknowledged that she knew that one of the boys, other than defendant, was on probation.

Before her mother returned home, she was putting dishes away when she found a leather purse inside the Tupperware drawer. She thought that was "kind of weird" but she did not think much of it at the time.

When her mother returned and discovered things were missing, Jessica tried to think of who could have taken them and realized that she did not know where defendant had been most of the night. Jessica sent a message to defendant on a social networking site and asked him about the missing items but he denied taking anything. She heard from two of the girls who had been at her house that night that they had heard defendant had given a girl a really nice ring. When she spoke to a male friend of defendant, she learned that defendant had told that friend that he pawned a small laptop.

Jessica subsequently saw defendant again and talked to him about the missing property in an attempt to get it back. Defendant admitted that he had stolen an iPod from her brother's room and asked whether she wanted him to get her another one.

Jessica estimated that the missing hookah pipe was about a foot and a half tall. She could not recall if defendant had a bag or anything with him when he left her house. She indicated that a lot of her male friends carry backpacks.

The defense called Caesar Snee to testify. Caesar indicated that he had not always used the purchase price as the actual value of a piece of jewelry because "many times

[they had gotten] very good deals on them and [he had] listed the appraised price at the time of purchase." In other words, where Caesar had an appraisal and a receipt, he used the appraised value instead of the purchase price "because that was the value of the jewelry when [they] bought it" but they had paid less as savvy shoppers.

Caesar explained that he had calculated the "adjusted value" of the jewelry by multiplying the actual value by 3.5 to account for the increase in the price of an ounce of gold between 1982 and 2011. He confirmed that the price of gold increased during that time frame from \$450 an ounce to \$1550 an ounce. He indicated that the price of gems had also similarly increased during the same period. Caesar admitted that he did not know how much gold or gems were contained in any jewelry item. He did not know how much gold was actually in 14k gold; he had not looked into that. When shown information obtained from a website, Caesar read that 14k gold means 58.3 percent gold.

The defense also called Casandra Cassingham, who testified that she was a Sheriff's Deputy for Santa Cruz County. She went to the Snee's residence on about July 26, 2009 and met with Lil Snee in response to a report of theft. Lil showed Deputy Cassingham her bedroom, the drawers from which things had been taken, and a wooden tray from which rings had been taken. The deputy wrote down the items that Lil reported missing from the residence and included them in her report.

Deputy Cassingham acknowledged that a missing property form included only eight items, specifically six items of jewelry, a tobacco pipe described as a bowl with metal funnels, and an air soft pistol.<sup>4</sup> A man's ring, valued at \$800, was the single

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<sup>4</sup> The form is entitled "Supplementary List of Missing Property" and dated August 5, 2009. The listed jewelry consisted of three women's 14k gold bands with mother-of-pearl or gems, a woman's 14k gold band pinkie ring with three diamonds, a man's gold band Nugget ring with five diamonds, and diamond stud earrings sized for infants.

greatest reported loss. That form did not include a bracelet with three carats of diamonds or a 14k gold ring with three carats of diamonds in a cascading setting.

In about October 2009, Deputy Cassingham received a supplemental report of missing property from the Snees. The deputy's Supplementary List of Missing Property, dated October 5, 2009, does not include any additional jewelry. It lists a laptop, a digital camera, and an iPod.

The parties stipulated that, if called, Deputy McPeck would have testified that "he received the report of a laptop being found . . . in San Jose on October 21st" and "he confirmed that the laptop was listed on evidence that was located in the master file on this case."

During the afternoon session of the restitution hearing, Caesar Snee told the court that he had gone back to look at his calculations of loss. He stated that "even if you assume that half of the ring is gold and the other half is gems, the gems still went up three and a half, the gold, . . . half went up three and a half, so that means that the whole thing went up three-quarters so the total would be two and a half up instead of three and a half up."

In argument, defense counsel pointed out that three significant pieces of jewelry had not been reported missing to police: the engagement ring, the ring with three carats of diamonds, and the bracelet with three carats of diamonds. She also contended that numerous people were in and out of the Snees' house while the parents were away and she questioned whether all missing items could be attributed to theft by defendant. She argued that, even if the price of gold and gems had increased, that presupposition did not mean that the value of the jewelry had increased at the same rate and maintained that the Snees' use of a 3.5 multiplier was inappropriate. Defense counsel contended that documentation of replacement cost was necessary but the victims had not provided that information. She suggested that if the court believed defendant was responsible for

taking all the items as claimed, it should be guided by the actual values assigned by the victims to the missing items, which totaled \$18,841.

The court took the matter under submission. In its subsequent written restitution order, the court stated that the Snees had "presented evidence to support a loss of \$64,642" based on "receipts, testimony, and data showing that the price of gold and jewelry had risen some 3.5 time in the past thirty years." But the court also stated that defendant had "rebutted the Snees' evidence with information about the amount of gold in 14 karat gold (58%), current prices for similar jewelry, and that the Snees did not initially report many items claimed for restitution to law enforcement." The court concluded that "defendant had rebutted some of the evidence presented by the victim" and reduced the claimed loss by 25 percent to \$48,481.

### III

#### *Discussion*

##### *A. Applicable Law*

"In 1982, California voters enacted Proposition 8, an initiative measure also known as the 'Victims' Bill of Rights,' which added to the California Constitution a provision that 'all persons who suffer losses' resulting from a crime are entitled to 'restitution from the persons convicted of the crimes causing the losses.' (Cal. Const., art. I, § 28, subd. (b)(13)(A).) The Legislature was directed to enact implementing legislation. (*Id.*, art. I, § 28, subd. (a)(8); see *People v. Giordano* (2007) 42 Cal.4th 644, 655 . . . .) The Legislature did so. In 1983, it enacted section 1202.4, which is at issue here. (Stats. 1983, ch. 1092, § 320.1, p. 4058.)" (*People v. Stanley* (2012) 54 Cal.4th 734, 736.)

Section 1202.4 states in part that "[i]t 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).) As a general rule, "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." (§ 1202.4, subd. (f).) "The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record." (*Ibid.*)

"To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a 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).) Direct restitution to a victim includes "[f]ull or partial payment for the value of stolen or damaged property." (§ 1202.4, subd. (f)(3)(A).)

Section 1202.4 provides that "[t]he value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible." (§ 1202.4, subd. (f)(3)(A).) The original cost of stolen property may be evidence of the replacement cost. (See *People v. Chappelone* (2010) 183 Cal.App.4th 1159, 1178.)

"[T]he court's discretion in setting the amount of restitution is broad, and it may use any rational method of fixing the amount of restitution as long as it is reasonably calculated to make the victim whole. (*People v. Ortiz* (1997) 53 Cal.App.4th 791, 800 . . . ; see also Pen.Code, § 1202.4.)" (*People v. Baker* (2005) 126 Cal.App.4th 463, 470.) But a "restitution order is intended to compensate the victim for its actual loss and is not intended to provide the victim with a windfall. [Citations.]" (*People v. Chappelone, supra*, 183 Cal.App.4th at p. 1172.)

"Once the victim makes a prima facie showing of economic losses incurred as a result of the defendant's criminal acts, the burden shifts to the defendant to disprove the amount of losses claimed by the victim. (*People v. Fulton* (2003) 109 Cal.App.4th 876, 886 . . . .) The defendant has the burden of rebutting the victim's statement of losses, and

to do so, may submit evidence to prove the amount claimed exceeds the repair or replacement cost of damaged or stolen property. (*Ibid.*)" (*People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1543.)

"While the court need not order restitution in the precise amount of loss, it 'must use a rational method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious.' (*People v. Thygesen* (1999) 69 Cal.App.4th 988, 992 . . . ; see also *In re Brian S.* (1982) 130 Cal.App.3d 523, 527 . . . [court may use any rational method of fixing the amount of restitution which is reasonably calculated to make the victim whole and which is consistent with the purpose of rehabilitation']; *People v. Ortiz* (1997) 53 Cal.App.4th 791, 800 . . . ['[W]hile the amount of restitution cannot be arbitrary or capricious, "[t]here is no requirement the restitution order be limited to the exact amount of the loss in which the defendant is actually found culpable, nor is there any requirement the order reflect the amount of damages that might be recoverable in a civil action." '); *People v. Akins* (2005) 128 Cal.App.4th 1376, 1382 . . . [same].)" (*People v. Chappelone, supra*, 183 Cal.App.4th at pp. 1172-1173.)

Victim restitution orders are reviewed for abuse of discretion. (See *People v. Giordano* (2007) 42 Cal.4th 644, 663; see *People v. Kelly* (2010) 189 Cal.App.4th 73, 77 [courts affirm a victim restitution order if there is a factual or rational basis for the amount ordered].) "The abuse of discretion standard is 'deferential,' but it 'is not empty.' (*People v. Williams* (1998) 17 Cal.4th 148, 162 . . . .) '[I]t asks in substance whether the ruling in question "falls outside the bounds of reason" under the applicable law and the relevant facts [citations].' (*Ibid.*)" (*People v. Giordano, supra*, 42 Cal.4th at p. 663.) "[A] restitution order 'resting upon a "demonstrable error of law" " constitutes an abuse of the court's discretion. [Citations.]' (*People v. Jennings* (2005) 128 Cal.App.4th 42, 49 . . . .)" (*People v. Millard* (2009) 175 Cal.App.4th 7, 26; see *Haraguchi v. Superior Court* (2008) 43 Cal.4th 706, 711.)

In addition, victim restitution orders must include "[i]nterest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court." (§ 1202.4, subd. (f)(3)(G).)

### B. *Application of the Law*

The trial court indicated that it found defendant had rebutted "some of" the victims' evidence but it did not specify what evidence. We infer from the court's choice of reducing the victims' total restitution claim by 25 percent across the board, instead of subtracting the value of particular items, that the court accepted that all property itemized by the Snees had been stolen by defendant. We further infer that the court found the victims' "adjusted" claim of losses, which they intended to reflect the increased price of gold, gems, and diamonds, was excessive.

Defendant argues that the court committed an error of law to the extent it awarded restitution for noneconomic losses since section 1202.4, subdivision (f)(3)(A), limits restitution to "replacement cost." He points to the court's observation in its statement of decision that "[m]ost of the jewelry that was stolen from the Snees had intrinsic value that is very difficult to quantify in monetary terms." The victims' restitution claim was not based on sentimental value or noneconomic loss and the court merely reduced the victims' restitution claim by 25 percent. Defendant has not affirmatively demonstrated that the court included noneconomic losses in its victim restitution order. "On appeal, we presume that a judgment or order of the trial court is correct, ' "[a]ll intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown." ' (*Denham v. Superior Court of Los Angeles County* (1970) 2 Cal.3d 557, 564 . . . .)" (*People v. Giordano, supra*, 42 Cal.4th at p. 666.)

Defendant also contends that restitution is "limited to the replacement value [of the stolen property], not the original cost multiplied by the amount by which a fraction of the property had possibly appreciated." He asserts that the victims improperly inflated their claim of loss because a rise in the price of gold or gems did not necessarily result in

an equivalent increase in the value of the victims' jewelry. He argues that the trial court failed to follow the express language of the statute limiting victim restitution to "the replacement cost" of the stolen property and instead "imposed excess restitution based on unsupported claims of appreciation . . . ."

We do not accept that the appreciated value of stolen property cannot be evidence of "the replacement cost of like property" (§ 1202.4, subd. (f)(3)(A)). (Cf. *People v. Tucker* (1995) 37 Cal.App.4th 1, 6 [testimony regarding the appreciated value of a mutual fund account if the defendant had not embezzled reflected the "replacement cost of like property" under former section 1203.04 of the Penal Code].) We realize, however, that no evidence was presented that jewelry had generally appreciated in keeping with the increase in the cost of gold, diamonds, or gems.

In any case, Caesar Snee admitted that he did not know the amount of gold or gems in each piece of jewelry and he did not take into account that 14k gold is only 58.3 percent gold. Defendant presented some evidence of jewelry prices tending to indicate that the "adjusted" values of the itemized jewelry were overly inflated. Caesar, by offering a smaller multiplier than 3.5 to the court prior to argument of counsel, seemed to realize that he might have overestimated the value of the jewelry. In addition, we note that the victims' increased restitution claim for the missing jewelry was intended to reflect the increase in the price of gold, diamonds or other gems since 1982 but the final spreadsheet indicates that the jewelry items were acquired at various times, not only around 1982. The 14k gold bracelet with three carats of diamonds in a channel setting, for example, was acquired in 1998 according to the spreadsheet. The court impliedly reduced the victims' restitution claim for all or some of these reasons.

But the court did not leave a clear statement explaining how it decided upon a 25 percent reduction. Neither party has shown that the amount of restitution ordered by the court can be rationally explained by the evidence presented. Further, the court had no reason to reduce the value of the non-jewelry items by 25 percent because the victims had

not "adjusted" those losses upward. Although we assume the trial court was attempting to come to a fair disposition, the record does not demonstrate that the court used a rational method for determining the replacement cost of the itemized property.

We agree that "where the statute requires a specific basis for determining the loss, as in the case of stolen or damaged property (see current § 1202.4, subd. (f)(3)(A)), the court must determine the loss on that basis. (*People v. Vournazos* (1988) 198 Cal.App.3d 948, 958.)" (*People v. Ortiz* (1997) 53 Cal.App.4th 791, 800, fn. 6.) But we reject any implied argument that a *reasonable* estimate of the replacement cost of stolen property cannot be an acceptable basis for determining victim restitution for stolen property. (See *People v. Phu* (2009) 179 Cal.App.4th 280, 283-285 [upholding victim restitution order based on municipal utility district's estimate of \$24,704.91 as the value of electrical power stolen by the defendant for growing marijuana]; cf. *People v. Stanley* (2012) 54 Cal.4th 734, 739 [no abuse of discretion where court ordered the defendant to pay restitution, pursuant to section 1202.4 subdivision (f)(3)(A), based upon the automotive body shop's written estimate of \$2,812.94 to repair vandalized truck].)

Lastly, defendant makes a perfunctory due process argument that the court's failure to follow the law's replacement cost requirement constituted a violation of due process under the Fourteenth Amendment to the U.S. Constitution. This contention gives no further aid to defendant given our conclusions and, in any case, is unavailing because "a mere error of state law" is not a denial of due process. (*Rivera v. Illinois* (2009) 556 U.S. 148, 158 [129 S.Ct. 1446].)

The victims in this case are still entitled to "full restitution" for the property stolen by defendant based upon "the replacement cost of like property." (See § 1202.4, subd. (f)(3)(A).) Accordingly, we will reverse and remand the matter to the trial court.

DISPOSITION

The court's victim restitution order is reversed and the matter is remand for further proceedings.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.