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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES KEPPLEY,

Defendant and Appellant.

B287390

(Los Angeles County
Super. Ct. No. YA095877)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark S. Arnold, Judge. Affirmed in part, and reversed in part.

Cindy Brines, 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, Steven D. Matthews and Analee J. Brodie, Deputy Attorneys General, for Plaintiff and Respondent.

James Keppley was convicted of identity theft and access card account information theft with respect to Kevin Brady. Following a contested restitution hearing, the court ordered him to pay restitution to the victim for losses stemming from a burglary of the victim's home. On appeal, Keppley argues, respondent concedes, and we agree that the court erred in awarding restitution for losses stemming from the burglary. We also conclude the court erred in awarding restitution to J.P. Morgan Chase Bank for losses stemming from the unauthorized use of a second victim's credit card. We reverse the portion of the post-judgment order awarding this restitution.

FACTUAL AND PROCEDURAL BACKGROUND

On March 14, 2016, Kevin Brady's bank alerted him that several unauthorized charges had been made on his credit cards. Kevin discovered that several items had been stolen from his and his wife Lesly's home, including some credit cards.¹ One of the unauthorized charges to Kevin's card was made at a Target store. Surveillance footage from the store showed Keppley handing one of Kevin's credit cards to a woman who then used it to purchase several items.

Keppley was charged with identity theft (Pen. Code, § 530.5)² and theft of access card account information (§ 484e, subd. (d)) arising from the unauthorized use of Kevin's credit card at Target.³ A jury convicted Keppley of both counts. He was

¹ We refer to the married victims by their first names. No disrespect is intended.

² All further statutory references are to the Penal Code.

³ Keppley was also charged with identity theft with respect to Lesly, however, the court later granted the prosecution's

sentenced to the midterm of two years for identity theft, and 180 days in jail for misdemeanor theft which was stayed pursuant to section 654.

At a hearing on restitution, Kevin presented evidence that over \$3,000 items had been stolen from his home, and that he incurred \$200 to install new locks and surveillance cameras. The prosecution presented evidence from J.P. Morgan Chase Bank that it had incurred \$410.21 for the unauthorized use of Kevin's and Lesly's credit cards: \$132.75 from the use of Kevin's card at Target, and \$277.46 from the use of Lesly's card at two other businesses. The court awarded \$410.21 to the bank, and \$1,800 to Kevin for stolen watches, speakers, and jewelry, as well as the cost of installing new locks and surveillance cameras. Keppley timely appealed from the restitution order.

DISCUSSION

Keppley argues that the restitution order was unauthorized to the extent it awarded restitution for losses that were not caused by the criminal conduct of which he was convicted. Respondent concedes this argument has merit with respect to the restitution awarded to Kevin for losses stemming from the burglary. However, respondent argues the court was correct to award the bank restitution for losses connected to the unauthorized use of Kevin's *and* Lesly's cards even though Keppley was only charged and convicted of theft with respect to Kevin. We reverse the portion of the restitution order that awards restitution to Kevin for items stolen from his home, and restitution to the bank for losses connected with Lesly's credit card. We otherwise affirm the order.

motion to remove Lesly's name from the verdict form as to this charge.

Under section 1202.4, subdivision (f), “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.” When a defendant is sentenced to state prison, “section 1202.4 limits restitution to losses caused by the criminal conduct for which the defendant was convicted.” (*People v. Lai* (2006) 138 Cal.App.4th 1227, 1246.)

Here, Keppley was not convicted of stealing items from Kevin and Lesly’s home. Keppley was only convicted of the fraudulent use of Kevin’s credit cards, and no evidence was presented as to how he came into possession of those cards. As the losses arising from the burglary were not caused by the criminal conduct of which Keppley was convicted, the trial court erred in awarding restitution to Kevin for these losses. (See *People v. Scroggins* (1987) 191 Cal.App.3d 502 [a defendant convicted of receiving stolen property may not be ordered to pay restitution for items taken in burglaries of which the defendant was not convicted].) We appreciate the real losses suffered by Kevin and Lesly that will remain unreimbursed by our opinion, but our authority is limited by the charges actually filed by the People.

With respect to the restitution awarded to the bank, Keppley argues the court erred in ordering restitution for the bank’s losses caused by the unauthorized use of Lesly’s card (\$277.46) but acknowledges that it was proper to order restitution for the loss caused by the unauthorized use of Kevin’s card (\$132.75). Respondent contends that the entire award to the

bank was proper because Keppley was “directly involved in all of the fraudulent use of the credit cards”—the record shows he was present during the two transactions when Lesly’s card was fraudulently used.

Keppley was convicted of charges stemming from the unauthorized use of Kevin’s credit card, not Lesly’s card. Although the prosecution did introduce footage at trial showing that Keppley was present at the businesses where Lesly’s card was fraudulently used, the prosecutor informed the jury the footage only served “as circumstantial evidence to help establish that it was in fact [Keppley] on the video at Target.” As the bank’s losses for the fraudulent use of Lesly’s card were not “caused by the criminal conduct for which [Keppley] was convicted,” the trial court erred in ordering restitution to the bank for those losses. (*People v. Lai, supra*, 138 Cal.App.4th at p. 1246.)

DISPOSITION

The restitution order is reversed as to the \$1,800 awarded to Kevin Brady, and \$277.46 of the \$410.21 awarded to J.P. Morgan Chase Bank. We affirm the restitution order as to the \$132.75 awarded to J.P. Morgan Chase Bank. The order is otherwise affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.