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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

SCOTT ALLEN JACKSON,

Defendant and Appellant.

2d Crim. No. B271135  
(Super. Ct. No. 14C-42014)  
(San Luis Obispo County)

Scott Allen Jackson appeals from a postjudgment order requiring him to pay restitution to a business. Before a preliminary hearing was conducted, appellant pleaded no contest to six felony counts and admitted five prior prison term enhancements. (Pen. Code, § 667.5, subd. (b).)<sup>1</sup> On count 1, he was sentenced to prison for 16 months, to run concurrently with the sentence imposed in case no. 14C-02196. On each of the five other counts, he was sentenced to prison for 16 months, to run

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

concurrently with the sentence imposed on count 1. The abstract of judgment shows that the court stayed sentence on the five prior prison term enhancements.<sup>2</sup>

Appellant contends that the restitution order is unauthorized because the business is not a direct victim of his crimes. We agree and reverse.

*Factual and Procedural Background*

In April 2014 someone broke into Martin Rehn's truck. The person took Rehn's checkbook as well as the keys to his employer's place of business. Appellant forged a check with his own name as the payor and with the same bank account number as the stolen checks. In September 2014 appellant used the forged check to purchase a vehicle from Auto Park Used Cars (Auto Park).<sup>3</sup>

Appellant was not charged with the burglary of Rehn's truck or with the theft of the items taken from the truck. He was charged with and pleaded no contest to (1) second degree burglary of a commercial building occupied by Auto Park (§§ 459, 460); (2) grand theft of a vehicle belonging to Auto Park (§ 487,

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<sup>2</sup> The above sentence was imposed at appellant's resentencing on June 21, 2016. Appellant was originally sentenced on October 20, 2015.

<sup>3</sup> The Attorney General asserts that "appellant burglarized the victim's vehicle" and "stole" the keys. The Attorney General does not support this assertion with citations to the record. According to a pre-sentence probation report filed on December 7, 2015, the police contacted Rehn when they learned that the forged check bore his bank account number. Rehn "stated that a few months earlier an *unknown* suspect had broken into his truck and stolen his checkbook." (*Italics added.*) There is no evidence that appellant was involved in the burglary of the truck.

subd. (a)); (3) unlawfully driving or taking the same vehicle (Veh. Code, § 10851, subd. (a)); (4) forgery of a check (§ 470, subd. (d)); (5) possession of a forged check with intent to defraud (§ 475, subd. (a)); and (6) obtaining and using Rehn's personal identifying information for an unlawful purpose (§ 530.5, subd. (a)).

Because of the theft of the keys, Rehn's employer, Lubrizol Advanced Materials (Lubrizol), spent \$2,667.65 to rekey its facility. Three months after appellant was originally sentenced, the court ordered appellant to pay restitution to Lubrizol in the amount of \$2,267.65, \$400 less than Lubrizol's claimed loss.

### *Discussion*

Appellant argues that the restitution order is unauthorized because Lubrizol is not a direct victim of his crimes. "Penal Code section 1202.4, subdivision (k)[(2)] permits restitution to a business . . . only when it is a *direct victim* of crime.' [Citation.]" (*People v. Anderson* (2010) 50 Cal.4th 19, 28.) "[I]t is established that a statute 'permitting restitution to entities that are "direct" victims of crime [limits] restitution to "entities *against which* the [defendant's] crimes had been committed"—that is, entities that are the "immediate objects of the [defendant's] offenses." [Citation.]' [Citations.]" (*People v. Runyan* (2012) 54 Cal.4th 849, 856.)

"Whether [Lubrizol] can be a 'direct victim' under section 1202.4 is a legal issue of statutory construction, which we review under an independent or de novo standard. [Citation.]" (*People v. Saint-Amans* (2005) 131 Cal.App.4th 1076, 1084.)

The only direct victims of appellant's crimes are Rehn, Auto Park, and the bank upon which the forged check was

drawn. Accordingly, the order requiring appellant to pay restitution to Lubrizol must be reversed.

*Disposition*

The order requiring appellant to pay restitution to Lubrizol is reversed.

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YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Michael L. Duffy, Judge

Superior Court County of San Luis Obispo

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Jolene Larimore, under appointment by the Court of  
Appeal, for Defendant and Appellant.

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