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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.

ANTHONY MARK MILLER,

Defendant and Appellant.

2d Crim. No. B297240
(Super. Ct. No. 2018016195)
(Ventura County)

Anthony Mark Miller was ordered to pay \$1,555.19 victim restitution after pleading guilty to receiving four stolen laptops worth more than \$950. (Pen. Code, §§ 1202.4, subd. (f); 496, subd. (a).)¹ He appeals, contending that the restitution amount is excessive. The Attorney General agrees. We reverse and remand to recalculate restitution.

Facts and Procedural History

On April 23, 2018, 10 laptops were stolen during a school burglary. Two weeks later, officers found four student laptops bearing school property labels in appellant's van.

¹ All statutory references are to the Penal Code.

Appellant said that someone asked him to repair the laptops and “I should have known they were stolen.” The other laptops taken in the burglary were never found.

Appellant entered a guilty plea and was sentenced to two years felony jail. (§ 1170, subd. (h)(1).) He was ordered to pay restitution. Ventura Unified School District submitted a victim loss statement for the cost of replacing six laptops (\$1,555.19) and school building repairs (\$356.06). Appellant objected to the \$1,911.25 restitution amount because “all or part of that will be cured” when the police return the four laptops found in appellant’s van. The school district, however, had to buy laptop replacements to continue teaching.

The trial court stated: “Seems pretty obvious [appellant] was in possession of stolen computers, four of them which he’s in possession of. [¶] . . . It is rational and reasonable to believe the other two either were sold or provided to someone else at the hands of [appellant]. Someone’s going to bear the burden, the cost of the offense here, which is possession of stolen property. I think that falls on the [appellant].” Appellant was ordered to pay \$1,555.19 restitution for the cost of six replacement laptops. The trial court did not order restitution for the school building repair costs because there was no evidence tying appellant to the burglary.

Excessive Restitution Award

Appellant argues, and the Attorney General agrees, that the restitution amount is excessive. The trial court denied probation and lacked the authority to order restitution for losses caused by uncharged crimes. (§ 1202.4, subds. (a)(1) & (f); *People v. Percelle* (2005) 126 Cal.App.4th 164, 179-180.) “[W]hen 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, 1249.)

The trial court did not err in ordering restitution for the replacement cost of four laptops or their loss of use even though the laptops were eventually returned to school district. (*People v. Holmberg* (2011) 195 Cal.App.4th 1310, 1318, 1323 [restitution may be ordered for loss of use of property later returned to victim]; *People v. Smith* (2011) 198 Cal.App.4th 415, 431 [economic damages include cost of repair or replacement and loss of use].) Appellant, however, may not be ordered to pay restitution for laptops that he was not charged with taking or found to be criminally responsible for. (*People v. Scroggins* (1987) 191 Cal.App.3d 502, 505-506.)

Disposition

The \$1,555.19 victim restitution order is reversed and remanded to recalculate the restitution amount.

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YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Ferdinand D. Innumerable, Judge

Superior Court County of Ventura

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

Xavier Becerra, Attorney General, Gerald A. Engler,
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Plaintiff and Respondent.