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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.

IBRAHIM BIMABDULHAKI BROWN,

Defendant and Appellant.

B244821

(Los Angeles County  
Super. Ct. No. KA094247)

APPEAL, from an order of the Superior Court of Los Angeles County. Bruce F. Marrs, Judge. Affirmed as modified.

Renée Paradis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Erika D. Jackson, Deputy Attorneys General, for Plaintiff and Respondent.

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Ibrahim B. Brown pled no contest to one count of receiving stolen property in violation of Penal Code section 496, subdivision (a).<sup>1</sup> On appeal, the parties agree the trial court erred in ordering Brown to pay restitution for stolen property that was never in his possession. We strike the restitution order.

### **FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>**

On May 5, 2011, Brown was arrested when police pulled him over in a traffic stop and discovered nine stolen laptops in the car he was driving. The computers had been stolen that morning from an elementary school. At the traffic stop, Brown told a police officer his two passengers—Trajon Thomas and “Winston”—put the laptops in his car. Brown said the laptops might be stolen. Brown later told a police officer that another man, Jovan Hughes, stole the computers. Brown indicated Thomas made arrangements with Hughes to pick up the computers. Thomas told the same police officer Hughes said the computers were taken in a burglary. Hughes admitted to police that he burglarized the school. Hughes also admitted stealing over 40 computers.

Although only nine computers were recovered from Brown’s car, a total of 49 computers were stolen from the school, as well as nine LCD projectors. Hughes pled guilty to the burglary of the school. Brown pled no contest to receiving stolen property, admitted a gang enhancement allegation (§ 186.22, subd. (b)(1)(A)), and admitted he had suffered one prior strike (§§ 667, subds. (b)-(i), 1170.12, subdivisions (a)-(d)), one prior conviction within the meaning of section 667, subdivision (a)(1), and one prior conviction within the meaning of section 667.5, subdivision (b).

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

<sup>2</sup> Brown filed a prior appeal in this court, challenging the trial court’s calculation of presentence custody credits. In an unpublished opinion we determined the trial court incorrectly calculated Brown’s custody credits and modified the judgment accordingly. (*People v. Brown* (Jan. 8, 2013, B239819) [nonpub. opn].) We have granted Brown’s request for judicial notice of the record in the prior appeal. Our summary of facts is taken from the preliminary hearing transcript.

At a restitution hearing, an employee from the relevant school district testified the replacement cost of the 40 computers and LCD projectors was \$43,604.06. The trial court ordered Brown to pay the entire restitution amount, jointly and severally with co-defendants Hughes and Thomas. Brown timely appealed.

## **DISCUSSION**

### **The Trial Court's Restitution Award Was an Abuse of Discretion**

We agree with the parties that the trial court's restitution award was in error as to Brown. As explained in *People v. Holmberg* (2011) 195 Cal.App.4th 1310 (*Holmberg*), where there is a factual and rational basis for the trial court's award of restitution, we will not find an abuse of discretion. However, the restitution order should reimburse the victim for the economic loss incurred as a result of the defendant's criminal conduct. (§ 1202.4, subd. (f)(3); *Holmberg*, at pp. 1320-1321.) In *Holmberg*, the defendant pled no contest to charges of concealing stolen property and using a stolen, altered, or counterfeit access card. (*Id.* at p. 1315.) The defendant admitted modifying some of the stolen property and selling it. (*Id.* at p. 1322.)

The court ordered the defendant to pay restitution for the stolen property, which included computers and computer equipment. In addition to property police recovered, and property the defendant admitted having possessed, the victim reported two Ethernet cables were stolen. The prosecution argued that although police did not recover the cables, they found other stolen computer equipment in the defendant's home, thus it was reasonable to believe the person who stole the other equipment and took it to the defendant's home also delivered the cables to him. The Court of Appeal rejected this argument, noting the defendant had admitted possessing other items that were not recovered, but he had not admitted possessing the cables. The court concluded insufficient evidence supported that portion of the restitution award. (*Holmberg*, at p. 1325.)

Similarly, in this case respondent concedes there was no evidence to support the restitution award as to Brown. There was no evidence connecting Brown to the 40 unrecovered computers or the nine LCD projectors. The People did not charge him with

burglary or theft. Brown made no admissions suggesting he was involved in the actual burglary, or that he ever had possession of any of the stolen items beyond the nine laptops law enforcement recovered from his car.

We therefore must conclude the trial court's restitution award was an abuse of discretion as to Brown. We strike the restitution order.

### **DISPOSITION**

We strike the restitution award as to Brown. The trial court is directed to forward a new abstract of judgment reflecting this modification to the Department of Corrections and Rehabilitation. In all other respects, the order is affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

FLIER, J.