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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT STEVEN STARLING,

Defendant and Appellant.

A129084

(Sonoma County  
Super. Ct. No. SCR568139)

**I.**

**INTRODUCTION**

In addition to the more than 30-year state prison sentence appellant Robert Steven Starling received for his participation in four separate robberies from guards of armored cars, appellant was also ordered to pay \$10,000 in restitution under Penal Code section 1202.4<sup>1</sup> to Debbie Christian, manager of the Petaluma branch of Brink’s, Incorporated (Brink’s). Ms. Christian lost part of her “Manager Employee Incentive Plan” bonuses for 2008 and 2009, totaling \$10,000, because three of the four robberies involved armored cars operating out of her branch. We agree with appellant that Ms. Christian was not a “direct victim” of appellant’s crimes, within the meaning of section 1202.4. Therefore, the restitution order as to that amount must be vacated.

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

## II.

### PROCEDURAL AND FACTUAL BACKGROUND

Because we are asked to decide a question of law involving undisputed facts, our exposition of the facts giving rise to this appeal will be brief.

The operative accusatory pleading in this case is the second amended information (SAI), which charged appellant with four robberies (counts 1, 2, 8, & 9) in violation of section 211; two counts of conspiracy to commit robbery (counts 3 & 6) in violation of section 182, subdivision (a)(1); two counts of making false reports to police (counts 4 & 7) in violation of section 148.5, subdivision (a); one count of unlawfully wearing a mask (count 5) in violation of section 185; and one count of intimidating a witness (count 10) in violation of section 136.1, subdivision (a)(1). The SAI also alleged that appellant personally used a firearm during the commission of the robberies, within the meaning of section 12022.53, subdivision (b), and that he was armed with a firearm during the conspiracies, within the meaning of section 12022, subdivision (a)(1).

A jury trial commenced on April 12, 2010, at the conclusion of which appellant was found guilty of all counts. The firearm use and arming allegations were also found to be true.

The robberies, in chronological order, took place on September 27, 2007, at Stony Point (count 9); on April 23, 2008, at Montgomery Village (count 8); on April 15, 2009, at Novato (count 2); and on May 18, 2009, at Sebastopol (count 1). While the Stony Point robbery involved an armored car operated by Loomis Armored Transport (Loomis), the Montgomery Village, Novato, and Sebastopol robberies involved armored cars operated by Brink's.

Prior to sentencing, both sides provided the court with memoranda addressing sentencing issues. As is pertinent here, the prosecution offered an articulate letter dated May 10, 2010, on Brink's stationery from Debbie Christian, who had worked for Brink's for over 22 years, the last five of which as branch manager for its Petaluma branch. It was Ms. Christian who hired appellant as a driver for Brink's. Appellant worked for

Brink's from June 2007 until August 3, 2007, the month before the first so-called armored-car robbery took place.

Although Ms. Christian was not one of the Brink's employees who was present at the scene of the robberies and from whom property was directly taken, she stated in her letter that she was affected "financially, mentally and emotionally" by the crimes. As to her financial loss, Ms. Christian explained that, as branch manager, she was eligible for an annual incentive bonus of \$10,000. Because Brink's suffered a financial loss occasioned by three of the robberies, Ms. Christian's "Manager Employee Incentive Plan" bonus for 2008 was reduced to \$5,000 by the company as a result of the April 23, 2008 robbery at Montgomery Village, and her bonus for 2009 was similarly reduced by \$5,000 as a result of the May 18, 2009 robbery in Sebastopol. She asked for \$10,000 restitution to herself for the reduction in her bonuses.<sup>2</sup>

Her letter also sought restitution in the amount of \$337,000, on behalf of Brink's, which represented the aggregate amount taken during the three robberies. She also sought \$2,560 in lost wages for time off taken by "employees directly affected by these robberies," other than herself, in order to recover from the trauma they experienced.

At the June 8, 2010 sentencing hearing, the trial court confirmed it had received Ms. Christian's letter. In addition to the state prison sentence mentioned *ante*, the trial court ordered appellant to pay "victim" restitution to Loomis in the amount of \$180,000, to Brink's in the amount of \$339,560, to Ms. Christian the amount of \$10,000, and to others to be identified as victims by the Victim's Compensation Board, all pursuant to section 1202.4. Section 1202.4 mandates that whenever one is convicted of a crime the court must impose both a restitution fine (§ 1202.4, subd. (a)(3)(A)), and restitution to the crime victim (§ 1202.4, subd. (a)(3)(B)). (See *People v. Dickerson* (2004) 122

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<sup>2</sup> Earlier during the trial, Ms. Christian testified that of the total loss of \$240,000 from her branch, the branch itself was financially responsible for "the first 20,000 of that, and I am personally responsible for a portion of that and then the company's corporate office pays the rest of that." In context, we understand this "personal responsib[ility]" to reference the reduction in her incentive bonuses, which she explained more fully in her May 18, 2010 letter.

Cal.App.4th 1374, 1379.) Appellant requested a hearing on the restitution issues, and the court set that hearing for July 29, 2010.

Both sides submitted points and authorities on the issue of restitution before the hearing. As to Ms. Christian, appellant's counsel took the position that because she was not a direct victim of the robberies, within the meaning of section 1202.4, appellant could not be ordered to pay restitution for the loss of her incentive bonuses. At the hearing, both sides argued the matter of restitution further.<sup>3</sup> The court took the matter under submission in order to review again several of the authorities referenced by counsel.

The following day the court entered a written order reaffirming the award of \$10,000 to Ms. Christian. The order explained that it was persuaded she was a victim entitled to be "fully compensated for her economic losses suffered as a direct result of [appellant's] criminal conduct" under section 1202.4, subdivision (a)(1), and that the then-recent California Supreme Court decision in *People v. Anderson* (2010) 50 Cal.4th 19 (*Anderson*) "control[ed]."

### III.

#### LEGAL DISCUSSION

We agree with the trial court that the resolution of the single restitution issue addressed by the parties is controlled by *Anderson, supra*, 50 Cal.4th 19. However, the result it compels is not the one reached below.

In *Anderson*, the issue presented was whether, *as a condition of probation*, the trial court could award restitution under section 1203.1, not section 1202.4, to a hospital which incurred expenses for medical care administered to the victim of the defendant's felony hit-and-run accident. (*Anderson, supra*, 50 Cal.4th at pp. 24-25.) Important in *Anderson* is the Supreme Court's detailed disquisition concerning the interplay between two related, but quite different, restitution statutes. The court compared section 1202.4 to section 1203.1, the latter enacted in 1935. It noted that section 1203.1 gives the trial

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<sup>3</sup> As we will explain, defense counsel also correctly pointed out that because appellant received a state prison sentence, victim restitution could be ordered only under section 1202.4.

court broad discretion to impose probation terms, including restitution determined to be “ ‘fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer . . . .’ [Citation.]” (*Anderson, supra*, 50 Cal.4th at p. 26.) It noted that the statute was amended in 1982 to require imposition of restitution “ ‘in proper cases.’ [Citation.]” (*Id.* at p. 27.)

Section 1202.4 was enacted as a result of an initiative measure adopted by California voters in 1982. Proposition 8, also known as the Victims’ Bill of Rights, added article I, section 28 to the California Constitution. This provision states: “It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the persons convicted of the crimes for losses they suffer.” (Cal. Const., art. I, § 28, former subd. (b).)<sup>4</sup> The provision, which was “not self-executing, directed the Legislature to adopt implementing legislation. [Citations.]” (*People v. Giordano* (2007) 42 Cal.4th 644, 652.) To implement this constitutional provision, the Legislature enacted section 1202.4, which made the imposition of restitution mandatory.

Section 1202.4 defines who are victims within the meaning of the statute, and *Anderson* refers to this mandatory restitution statute as a “mandatory direct victim restitution statute[.]” (*Anderson, supra*, 50 Cal.4th at p. 28.) The court completed its comparison of sections 1203.1 and 1202.4 by summarizing the cogent differences between the two: “Trial courts continue to retain authority to impose restitution as a condition of probation in circumstances not otherwise dictated by section 1202.4. In both sections 1203.1 and 1202.4, restitution serves the purposes of both criminal rehabilitation and victim compensation. But the statutory schemes treat those goals differently. When

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<sup>4</sup> The court noted that “California Constitution, article I, section 28 was amended by initiative measure on November 4, 2008. Former subdivision (b) of that provision was renumbered subdivision (b)(13) and the text of the subdivision was amended.” (*Anderson, supra*, 50 Cal.4th at p. 28, fn. 7.)

section 1202.4 imposes its mandatory requirements in favor of a victim's right to restitution, *the statute is explicit and narrow*. When section 1203.1 provides the court with discretion to achieve a defendant's reformation, *its ambit is necessarily broader*, allowing a sentencing court the flexibility to assist a defendant as the circumstances of his or her case require." (*Anderson, supra*, 50 Cal.4th at p. 29, italics added.)

Section 1202.4, subdivision (k) specifically defines who is a victim entitled to mandatory restitution in the event a state prison sentence is imposed for a felony:

"(k) For purposes of this section, 'victim' shall include all of the following:

"(1) The immediate surviving family of the actual victim.

"(2) Any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

"(3) *Any person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions:*

"(A) At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.

"(B) At the time of the crime was living in the household of the victim.

"(C) At the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

"(D) Is another family member of the victim, including, but not limited to, the victim's fiance or fiancée, and who witnessed the crime.

"(E) Is the primary caretaker of a minor victim.

"(4) Any person who is eligible to receive assistance from the Restitution Fund pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

"(5) Any governmental entity that is responsible for repairing, replacing, or restoring public or privately owned property that has been defaced with graffiti or other inscribed material, as defined in subdivision (e) of Section 594, and that has sustained an

economic loss as the result of a violation of Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7 of the Penal Code.” (Italics added.)

It is clear from the face of the statute that Ms. Christian does not fall within the definition of “victim.” While she qualifies under section 1202.4, subdivision (k)(3) as “[a]ny person who has sustained economic loss as the result of a crime,” none of the additional qualifiers under that subdivision are applicable. Therefore, she was not entitled to restitution for her loss of a portion of her incentive bonuses resulting from the Brink’s robberies. Under section 1202.4, only “direct victims” of a crime are entitled to restitution from the perpetrator of the offense. (*People v. Duong* (2010) 180 Cal.App.4th 1533; *People v. Moloy* (2000) 84 Cal.App.4th 257 [victim for restitution purposes is a person who is the object of a crime]; *People v. Crisler* (2008) 165 Cal.App.4th 1503 [parents of murder victim were “victims” eligible for restitution from defendant, since they were “ ‘immediate surviving family of the actual victim’ ”]; *People v. O’Neal* (2004) 122 Cal.App.4th 817 [brother of child molestation victim was “victim” for purpose of restitution statute].)

In citing *Anderson*, the trial court’s order states that “[t]his case does not fall within the concerns expressed in *People v. Slattery* [(2008) 167 Cal.App.4th 1091 (*Slattery*)].” (Fn. omitted.) But it does, and the Supreme Court in *Anderson* makes that clear. In *Slattery*, the defendant assaulted his dependent mother who later died as a result of the injuries inflicted. At the time of her death, there remained unpaid hospital bills for related care she had received. Because the defendant was sentenced to state prison, the court ordered him to pay the hospital restitution pursuant to section 1202.4, subdivision (f). The appellate court in *Slattery* struck the restitution order, noting that the hospital was not a “direct victim” of the defendant’s crime under section 1202.4: “ [T]he hospital incurred its economic loss indirectly from defendant’s conduct: first, defendant illegally inflicted injuries upon her mother; second, Marshall Hospital treated defendant’s mother for the injuries; third, defendant’s mother did not pay the hospital bills.’ (*Slattery, supra*, 167 Cal.App.4th at p. 1097.)” (*Anderson, supra*, 50 Cal.4th at p. 31.)

The *Anderson* court went on to confirm that the *Slattery* appellate court's reasoning was correct because "section 1202.4's mandatory requirement for restitution to a legal or commercial entity is expressly limited to situations in which that entity was the direct victim of defendant's criminal conduct. *Slattery*'s holding on this point is correct, but it does not dispose of this case. Restitution here was not ordered pursuant to section 1202.4, but rather under the broader, discretionary authority of section 1203.1. . . ." (*Ibid.*, italics omitted.)<sup>5</sup>

Like the improper recipient of the trial court's restitution award in *Slattery*, Ms. Christian's victimization was indirect. The direct victims were the guards who were directly robbed of the Loomis and Brink's property under their control, and Loomis and Brink's who were "commercial entit[ies]," targets of the crimes, and therefore, direct victims under section 1202.4, subdivision (k)(2). Appellant does not contest restitution awards as to them. But, Ms. Christian's loss came as a result of a business decision, a policy of Brink's, or a contractual arrangement with her employer. While well-intentioned, it was legal error to award her restitution under section 1202.4.

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<sup>5</sup> The court went on to conclude that the broader, discretionary restitution ordered in that case under section 1203.1 allowed the court to impose restitution directly to the hospital which provided care to the victim of the defendant's vehicular assault. (*Anderson, supra*, 50 Cal.4th at pp. 32-34.)

**IV.**  
**DISPOSITION**

The restitution ordering appellant to pay to Debbie Christian \$10,000 in victim restitution is vacated. The judgment below is otherwise affirmed.

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RUVOLO, P. J.

We concur:

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REARDON, J.

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RIVERA, J.