

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PA** :  
**vs.** : **No. CR-228-2011**

**JOLAN POTTER,** :  
**Defendant** :

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**COMMONWEALTH OF PA** :  
**vs.** : **No. CR-241-2011**

**ANDREW BUCK,** :  
**Defendant** :

**OPINION AND ORDER**

Before the Court are Motions for (Modification of) Restitution filed in the above captioned matters. Defendants pled guilty and were sentenced pursuant to plea agreements. Restitution was ordered in the approximate amount of \$5,700.00. Of this amount, \$4,000.00 was ordered to be returned to victim Leonard Budman.

Defendants objected to the \$4,000.00 amount claiming that they never took any monies from Mr. Budman. Accordingly, a restitution hearing was scheduled and held before the Court on August 8, 2011.

Mr. Budman testified that as of the date of the theft, he had kept money in his glove box in the amount of \$4,000.00. He testified that this amount consisted of monies he received from the sale of beans as well as monies he saved from his vacation pay, bonus checks and regular paychecks. Introduced as Commonwealth Exhibit 1 was a written outline itemizing the monies as well as a receipt from Grain and Fertilizer, LLC in Turbotville, PA verifying that Mr. Budman was paid \$3,362.70 for the sale of soybeans and various earning statements relating to vacation pay, bonus pay and regular pay.

Among the other items taken from his truck were candy, oranges, six packs of soda and a vest.

Defendants testified on their own behalf. They denied taking any monies from Mr. Budman's vehicle. They admitted "stealing stuff" from various vehicles but specifically denied going into Mr. Budman's glove box and taking any cash, let alone \$4,000.00. Despite Defendants' testimony, each had previously pled guilty to the specific Count of their respective Information charging them with the theft of \$4,000.00 from Mr. Budman.

It is the Commonwealth's burden of proving its entitlement to restitution. Commonwealth v. Le Atanasio, 2010 Pa. Super. 94 (May 24, 2010); citing Commonwealth v. Boone, 862 A.2d 639 (Pa. Super. 2004). The amount of restitution must be supported by the record and when fashioning an Order of Restitution, the lower Court must ensure that the record contains the factual basis for the appropriate amount. Le Atanasio, supra., citing Commonwealth v. Pleger, 934 A.2d 715, 720 (Pa. Super. 2007).

In this particular case, the Commonwealth offered the testimony of the victim, Leonard Budman to support its claim for restitution. Mr. Budman's testimony was not speculative nor was his claim for restitution excessive. Mr. Budman specifically testified as to the dollar value of his loss.

The Court does not hesitate in finding the testimony of Mr. Budman credible. His testimony was clear and concise, logical and consistent. His response to cross-examination questions was clear and direct and his overall demeanor while testifying supported his credibility. As well, there was documentation to support his claim.

On the other hand, the Court does not find the testimony of the Defendants to be credible. Their recollection of the events that evening was murky and they clearly had an interest in testifying contrary to Mr. Budman. Moreover, their demeanor was such that the Court could easily conclude that they were not sure of what they took let alone certain that they did not take any monies from Mr. Budman.

The Court finds that the Commonwealth has proven by clear and convincing evidence that it is entitled to the amount of restitution that it claims. The direct victim in this case who suffered pecuniary harm was Leonard Budman and he is entitled to restitution in the amount of the claimed \$4,000.00. Accordingly, Defendants' Motions for Modification of the Restitution Order will be denied.

**ORDER**

**AND NOW**, this \_\_\_\_ day of September 2011 following a hearing and argument, the Court **DENIES** Defendants' Motions for Modification of the Restitution Order.

BY THE COURT,

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Marc F. Lovecchio, Judge

cc: DA  
PD (JR)  
Todd Leta, Esquire  
Victim/Witness Coordinator  
Gary Weber, Esquire (Lycoming Reporter)  
Work File