

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
vs. : **No. CR-435-2011**
 :
LARRY HILL, :
Defendant :

OPINION AND ORDER

On December 14, 2011, Defendant was sentenced on a Simple Assault conviction. The sentence included a restitution obligation as a condition of supervision. The restitution encompassed \$630.00 to Williamsport Ambulance Service, \$4,972.06 to Susquehanna Health, \$557.00 to Best Practices of Pennsylvania, PC and \$38,462.47 to Geisinger Health System.

Defendant's conviction resulted from an incident that occurred on April 25, 2010 in which the Defendant punched an individual by the name of Zachary Gardner in the face causing numerous injuries including a fractured jaw, fractured eye socket, fractured nasal passage, a broken tooth and a hematoma to the back of his head.

By Motion filed on December 23, 2011, Defendant challenged the amount of restitution. A hearing was held on April 2, 2012. By Order of Court dated April 2, 2012, the Court indicated that it would defer a decision on the Motion until after June 11, 2012. The Order also permitted the Commonwealth to file with the Court via an appropriate certification itemized bills relating to the victim's treatment at Geisinger Medical Center no later than May 31, 2012.

The Defendant was permitted an opportunity to request a hearing after receipt and review of the records. The itemized bills from Geisinger with the appropriate certification

were filed on May 4, 2012. Defendant has not requested a hearing and accordingly this matter is ripe for a decision.

Zachary Gardner testified that on April 25, 2010 he was punched in the face by the Defendant. Corporal Brian Womer of the Williamsport Bureau of Police was on patrol and encountered Mr. Gardner along side the outside wall of the New K-Bar in Williamsport.

The ambulance was called to the scene. Mr. Gardner was transported to the Williamsport Hospital. While at Williamsport, he was examined, underwent some diagnostic tests, treated and transferred to Geisinger Medical Center.

The victim was transported by ambulance to Geisinger Medical Center where he was examined, treated and admitted. He remained at Geisinger until the next day when he was discharged.

Within one week, he returned to Geisinger where he underwent nose surgery. He subsequently followed-up with his treating physicians as directed.

The injuries that he incurred as a result of the assault included a broken tooth which was subsequently extracted, a nasal fracture which was subsequently reduced, trauma to his left eye which caused continuing blurred vision, and multiple trauma to his face.

Offered and admitted as Commonwealth Exhibit 1 is a bill from Williamsport Area Ambulance Service in the amount of \$630.00 for services rendered for transporting the Defendant from the scene of the assault to the Williamsport Hospital. Offered and admitted as Commonwealth Exhibit 2 is an additional bill from Williamsport Area Ambulance Service in the amount of \$830.00 for services rendered in connection with transporting the victim from the Williamsport Hospital to Geisinger Medical Center. Offered and admitted as

Commonwealth Exhibit 3 is a bill from Susquehanna Health System (The Williamsport Hospital and Medical Center) for the emergency room services rendered on April 25, 2010 in the amount of \$4,972.06. Offered and admitted as Commonwealth Exhibit 4 is an invoice from Best Practices of Pennsylvania, PC in the amount of \$557.00 representing the bill for services rendered by Dr. Steven Burkholz, the attending doctor at the Williamsport Hospital emergency room. Offered and admitted as Commonwealth Exhibit 5 is a bill from Geisinger Health System in the amount of \$5,940.00 representing the bill for services rendered by the physicians who treated the victim while at Geisinger on April 25, 2010 and April 26, 2010 as well as for services rendered on April 30, 2010 when the victim underwent a closed reduction of his nose fracture and on June 17, 2010 when Defendant underwent a subsequent diagnostic test. Finally, the certified Geisinger records filed on May 4, 2012, total \$38,462.41 for services rendered on April 25, 2010, April 26, 2010, April 30, 2010, and June 17, 2010. These records encompass the invoice admitted as Commonwealth Exhibit 5.

Restitution is governed by statute. At the time of sentencing, the Court must specify the amount of restitution and must consider, among other things, the extent of injuries suffered by the victim, the victim's request for restitution and such other matters as it deems appropriate. 18 Pa. C.S.A. § 1106 (c) (2)(i).

Restitution should be ordered either to compensate a victim for injuries incurred as a result of criminal misconduct and/or to rehabilitate the defendant. 42 Pa. C.S.A. § 9754 (c) (8); 42 Pa. C.S.A. § 9754 (c) (13); Commonwealth v. Hall, 994 A.2d 1141, 1144 (Pa. Super. 2010).

When restitution is ordered as a condition of supervision as in this case, the trial court is given the flexibility to impose appropriate restitution conditions which are designed to not only rehabilitate the Defendant but to provide some measure of redress to the victim. In the Interest of: M. W., 555 Pa. 505, 725 A.2d 729, 732 (1999), citing Commonwealth v. Harner, 533 Pa. 14, 21-22, 617 A.2d, 702, 706 (1992).

“Such sentences are encouraged to give the trial court the flexibility to determine all the direct and indirect damages caused by a Defendant and then permit the Court to order restitution so that the Defendant will understand the egregiousness of his conduct, be deterred from repeating his conduct, and be encouraged to live in a responsible way.” Id., citing Harner, 533 Pa at 22, 617 A.2d at 707.

Case law is clear that the Commonwealth bears the burden of proving its entitlement to restitution and the record must contain a factual basis for the appropriate amount of restitution. Commonwealth v. Atanasio, 997 A.2d 1181, 1183 (Pa. Super. 2010). As well, the amount of restitution must not be excessive or speculative. Id.

But for the Defendant’s assault on the victim, the victim would not have incurred the referenced medical expenses. The amount of restitution has a sound basis in the record and is clearly not speculative or excessive. The amount of restitution ordered is rehabilitative in nature in that it impresses upon the Defendant that his criminal conduct caused the victim’s economic losses and personal injury and further that it is his responsibility to repair the losses and injuries as fully as possible. Indeed, the victim must be made whole. See Commonwealth v. Solomon, 25 A.3d 380, 389 (Pa. Super. 2011); Commonwealth v. Mariani,

869 A.2d 484, 486 (Pa. Super. 2005); Commonwealth v. Boone, 862 A.2d 639, 644 (Pa. Super. 2004).

During the course of addressing this motion, however, the Court discovered that it made an error with respect to whom the restitution should be paid. Case law indicates that restitution is not meant to be a reimbursement system to third parties but rather a compensation system to “victims” as that term is defined by statute. Commonwealth v. Keenan, 853 A.2d 381 (Pa. Super. 2004). Therefore, unless the medical provider is itself a victim of a defendant’s criminal conduct, direct payments of restitution to the provider should not be ordered by the court; instead, payment should be made to the victim. Id.; Solomon, supra at 390.

The Commonwealth has sustained its burden and the restitution ordered in the sentencing Order of December 14, 2011 shall remain as ordered, except that an additional amount of \$830.00 shall be added. None of the restitution, however, shall be paid directly to Williamsport Ambulance Service, Susquehanna Health, Best Practices of Pennsylvania, PC or Geisinger Health System. Instead, the restitution, which totals \$45,451.53, shall be paid to the victim Zachary Gardner.¹

ORDER

AND NOW, this ____ day of May 2012, following a hearing and argument on Defendant’s Motion for Restitution, said Motion is **DENIED**. The Order of December 14, 2011, however, shall be amended to add an additional \$830.00 and to change the designation of whom the restitution shall be paid. The restitution shall not be paid directly to Williamsport

¹ It would then be Mr. Gardner’s responsibility to pay the medical providers.

Ambulance Service, Susquehanna Health, Best Practices of Pennsylvania, PC or Geisinger Health System. Instead, the total amount of restitution, \$45,451.53, shall be paid to the victim, Zachary Gardner.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: DA (EL)
PD (TH)
Suzanne Fedele, Prothonotary
Cost Clerk
Gary Weber, Esquire (Lycoming Reporter)
Work File