

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : **No. CR-1010-2011**
 :
 v. :
 :
 ANTHONY PARSONS, : **Motion for Determination of Restitution**
 Defendant :

OPINION AND ORDER

On May 15, 2012, Defendant was sentenced on a forgery conviction. The sentence included a restitution obligation as a condition of supervision. The restitution totaled \$6,704.75 to the victim, Michael Welch, Sr.

Defendant's conviction resulted from an incident that occurred on June 2, 2011 in which the Defendant signed Michael Welch's name on the title to Welch's truck without having the authority to do so. The truck was then salvaged. Restitution was ordered for the value of the truck in addition to items that were allegedly contained in the bed of the truck before it was salvaged.

By Motion filed on May 17, 2012, the Defendant has challenged the amount of restitution due. Defendant submits that the ordered restitution is improper because, among other things, the value of the truck was overstated and there were no items of value in the truck when it was salvaged. Accordingly, a restitution hearing was scheduled and held before the Court on June 13, 2012.

Mr. Welch, Sr. testified at the restitution hearing. He noted that as of the date of the de facto theft, multiple items were in the bed of his truck, which in addition to the value of the truck, totaled \$6,703.98. Among the items for which he is seeking restitution are a car dolly, a generator, new tires, aluminum wheels, a Leer truck cap, a Dewatt cordless tool, a tool box, a drill saw, a C-saw, and assorted tools. Introduced and admitted as Commonwealth

Exhibit 1 was a written document prepared by Mr. Welch itemizing each item and their replacement value.

Restitution is governed by statute. Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained.... the offender shall be sentenced to make restitution in addition to the punishment prescribed. 18 Pa. C.S.A. § 1106(a). At the time of sentencing, the Court must specify the amount of restitution and must consider, among other things, the extent of the victim's injuries, the victim's request for restitution, and such other matters as the Court deems appropriate. 18 Pa. C.S.A. § 1106(c)(2)(i).

By ordering restitution, two purposes are served. First, the victim may be compensated for his injuries as a result of Defendant's criminal conduct. Second, the Defendant may be rehabilitated by instilling in his mind that it is his responsibility to compensate the victim. 42 Pa. C.S.A. § 9654(c)(8); 42 Pa. C.S.A. § 9754(c)(13); Commonwealth v. Hall, 994 A.2d 1141, 1144 (Pa. Super. Ct. 2010). "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." In the Interest of M.W., 725 A.2d 729, 732 (Pa. 1999), citing Commonwealth v. Harner, 617 A.2d 702, 707(Pa. 1992).

To determine the correct amount of restitution, a "but-for" test is utilized. Commonwealth v. Gerulis, 616 A.2d 686, 697 (Pa. Super. Ct. 1992). "Damages which occur as a direct result of the crime are those which should not have occurred but for the defendant's

criminal conduct.” Id. Due process requires that a defendant pay restitution only where the restitution arises from the action for which the defendant has been criminally accountable. Commonwealth v. Walker, 666 A.2d 301, 309 (Pa. Super. Ct. 1995).

Defendant first argues that because he did not plead guilty to the theft of any items of movable property allegedly contained in the truck bed, he cannot be ordered to pay restitution regarding such items. The Court disagrees. But for Defendant’s criminal conduct on June 2, 2011, resulting in the improper and illegal transfer of Mr. Welch’s truck, the items allegedly contained within the bed of his truck would not have been lost. Had the Defendant not committed forgery by signing the title to Mr. Welch’s truck, the vehicle would not have been salvaged. The loss of Mr. Welch’s items was the direct result of the Defendant’s crime. Accordingly, the Court has authority to order the requested restitution in this case if the Commonwealth meets its burden of proof regarding such.

The Commonwealth bears the burden of proving its entitlement to restitution by a preponderance of the evidence, and the record must contain a factual basis for the appropriate amount of restitution. Commonwealth v. Le Atanasio, 997 A.2d 1181, 1183 (Pa. Super. Ct. 2010). As well, the amount of restitution must not be excessive or speculative. Id. The sentencing court cannot require payment in excess of the damage caused by the defendant. Gerulis, 616 A.2d at 697.

To support its claim for restitution the Commonwealth offered the testimony of the victim, Michael Welch, Sr., as well as his sons, Michael Welch, Jr. and Todd Welch and Mr. Chapman who towed the vehicle on Defendant’s behalf from the victim’s property.

There is no doubt that the credible record evidence supports a finding that the

truck, aluminum wheels and Leer truck cap were fraudulently taken by Defendant. Multiple witnesses noted that they saw aluminum wheels on the victim's truck as well as a Leer truck cap. Mr. Welch, Sr. testified that the aluminum wheels and truck cap came with the vehicle when he originally purchased it.

On the other hand, there is no credible evidence to support the claim that the other items were with or on the truck when it was salvaged. Upon first speaking with the police, Mr. Welch, Sr. failed to inform the officers of any items allegedly contained in the bed of the truck. He told police only of the loss of the truck. Mr. Welch, Sr. was unable to provide the Court with any receipts for the items allegedly contained in the vehicle. Indeed, the victim's claims seem grossly exaggerated. For example, he claims the loss of the wheels and truck cap even though they came with the truck. The receipt for the tires contained a price for installation, spin balance, valve installation and tire disposal, none of which occurred. Further, he claimed the loss of a tool box and tools even though he admitted that they were in a completely different vehicle.

Furthermore, testimony from Michael Welch, Jr., Todd Welch, and Mr. Chapman conflicted with the victim's statements.

None of the witnesses confirmed that there were two tires in the bed of the truck. Mr. Chapman testified that a generator was not in the truck bed. Mr. Chapman and Todd Welch testified that when the truck was towed, a car dolly was not attached. In fact, Mr. Chapman and Todd Welch explained that the dolly was gone at least a week prior to the time of conversion.

Todd Welch testified that he believed tools were in the truck; however, his

testimony was conflicting. At first, he stated that there were tools in a different vehicle. Then, he changed his testimony by stating that the tools were in the truck bed. Mr. Chapman testified that the only items in the truck bed were garbage bags, an old rug, and trash.

The Defendant credibly testified on his own behalf. He denied there being any additional items in Mr. Welch's vehicle. He stated without hesitating, that there were no generator, tools or any other items in the truck bed. He testified that a car dolly was not attached when the truck was hauled away.

The Commonwealth has not proven its entitlement to restitution for two tires, the generator, the car dolly, the cordless drill, tools or the tool box. The evidence in support of its claim is conflicting and in large part not credible. The restitution claim does not have a sound basis in the record.

The measure of damages for conversion is "the market value of the converted property at the time and place of conversion." L.B. Foster & Co. v. Charles Caracciolo Steel & Metal Yard, Inc., 777 A.2d 1090, 1096 (Pa. Super. Ct. 2001). The Commonwealth's request for replacement value is not authorized by law. It is both excessive and speculative. It begs logic to be selling a vehicle for \$750.00 and to then claim restitution for the vehicle of thousands of dollars. Mr. Welch, Sr. purchased the truck for \$500.00. After making improvements to the vehicle, Mr. Welch, Sr. was selling it for \$750.00. Therefore, the Defendant shall be ordered to pay \$750.00 to the victim for the value of the truck, which includes the aluminum wheels and truck cap.

ORDER

AND NOW, this ____ day of June 2012, following a hearing on Defendant's Motion for Restitution, said Motion is **DENIED** in part and **GRANTED** in part. The Court's Sentencing Order of May 15, 2012 is amended to be consistent with this Order. Defendant shall pay restitution in the amount of \$750.00 to the victim for the value of the truck, aluminum wheels, and truck cap. No further restitution shall be ordered.

By the Court,

Judge Marc F. Lovecchio

cc: CA
Cost & Fines
Prothonotary
Ken Osokow, Esquire, ADA
Nicole M. Ippolito, Esquire, APD
Victim/Witness Coordinator
Angeline Allen, Intern for Judge Lovecchio
Gary Weber, Esquire (Lycoming Reporter)
Work File