

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**STEVEN LONG,
Defendant**

:
:
:
:
:
:
:

**No. 1001-2012
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed a Motion for Restitution Hearing on October 23, 2012, which was originally scheduled for a hearing on December 10, 2012. Following multiple continuances, a hearing on the Motion was held on July 9, 2013 and November 11, 2013. After the presentation of evidence concluded, the parties requested to submit briefs to the Court, which were due December 13, 2013.

Background

Steven Long (Defendant) was charged with Burglary,¹ Theft by Unlawful Taking or Disposition,² Receiving Stolen Property,³ Criminal Trespass,⁴ and False Reports to Law Enforcement Agencies.⁵ On September 21, 2012, the Defendant pled guilty under docket number 1001-2012 to one count of Burglary, a felony of the first degree. In addition, the Defendant pled guilty to Attempted Burglary under docket number 339-2012 on the same day. On October 16, 2012, under docket number 1001-2012, the Defendant was sentenced to incarceration in a State Correctional Institution for a period of twelve (12) to thirty-six (36) months. The Defendant was also ordered to pay restitution “in the amount of \$2,440 to Cillo’s

¹ 18 Pa.C.S. § 3502(a).

² 18 Pa.C.S. § 3921(a).

³ 18 Pa.C.S. § 3925(a).

⁴ 18 Pa.C.S. § 3503(a)(1)(i).

⁵ 18 Pa.C.S. § 4906(a).

Antiques and Coins, \$3,000 to Travelers Insurance Company; and \$85,623.68 to Sophia Daskalakis.”

On October 17, 2012, the Defendant filed a Motion for Restitution Hearing. The Motion merely stated that “Defendant contests the amount and value of items taken from Ms. Daskalakis and avers that the \$85,623.68 is inaccurate.” At the time of the hearing, Sophia Daskalakis (Daskalakis) testified that she initially realized that she was missing jewelry when looking for a specific piece and was unable to find it. After searching she determined that numerous other pieces of jewelry from her large collection were missing and had contacted police. It was later determined that the Defendant had been working in Daskalakis’ home and had taken the jewelry, which he pawned/sold at jewelry stores.

The Affidavit of Probable Cause states that Daskalakis reported approximately \$30,000.00 worth of missing jewelry and collectible coins. During the hearing Daskalakis testified that she did not have an inventory of her collection of jewelry and that she gradually realized more pieces that were missing as time went by. At the time of sentencing the estimate of jewelry missing was over eighty thousand dollars.

A portion of the jewelry missing was identified by the victim and given values based on memory. Another portion of the jewelry that was pawned/sold was photocopied by a jewelry store. Rick Mahonski (Mahonski), a local jeweler with thirty-five (35) years of experience, estimated the values of the jewelry depicted on the photocopies. Mahonski assumed the jewelry was fourteen (14) karat gold unless it was indicated otherwise by Daskalakis. It was estimated that only two (2) or three (3) items were described as twenty-two (22) karat gold pieces. In addition, Mahonski only evaluated local jewelry from the area and did not attempt to evaluate manufactured jewelry, the value of which he was not as familiar. Lastly, Mahonski testified that

he appraised the jewelry based on the current price of gold, which is much less than a year ago. A year ago an ounce of gold was approximately \$2,000, while the current cost of gold is between \$1,200 and \$1,300.

Whether the Commonwealth has met the burden of proof for establishing restitution

The Defendant alleges that the Commonwealth has not met the burden of proof for establishing restitution and as a result the victim is receiving a windfall. “Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the victim suffered personal injury directly resulting from the crime, the offender shall be sentenced to make restitution in addition to the punishment prescribed therefore.” 18 Pa.C.S. § 1106(a). In addition, the Court shall consider “the extent of the injury suffered by the victim, the victim’s request for restitution as presented to the district attorney . . . and such other matters as it deems appropriate” when determining the amount and method of restitution. 18 Pa.C.S. § 1106(c)(2).

The Commonwealth and the Defendant have three (3) main issues regarding the restitution: 1) whether the victim’s testimony is sufficient to establish the value of a portion of the stolen jewelry; 2) whether the expert’s testimony is sufficient to establish the value of some of the stolen jewelry; and 3) whether the expert’s testimony on the value was based at the time of the conversion. In determining the value of restitution, this Court will impose an amount that is “supported by the record” and not an amount that is speculative or excessive. Commonwealth v. Pappas, 845 A.2d 829, 842 (Pa. Super. 2004).

The first issue the Court will address is whether Daskalakis’ testimony was sufficient to establish a portion of the restitution. Specifically, whether Commonwealth’s exhibit 9, which is

a handwritten list of jewelry stolen that is valued at \$17,450.00, can be included in the restitution value. In Rush, a trial court conducted a restitution hearing and heard the victim's testimony regarding \$29,450 of stolen property. Commonwealth v. Rush, 909 A.2d 805, 810 (Pa. Super. 2006). The Superior Court of Pennsylvania found that the trial court did not err in imposing the restitution, as it was found that the victim's testimony was credible. Further, the restitution amount was determined prior to the guilty plea and therefore the defendant knew and confirmed the amount through his guilty plea.

Here, the Court does find that the victim's testimony regarding the stolen jewelry and their values to be credible. Daskalakis described the stolen jewelry in detail and in many cases explained when it was purchased and why. The values of the jewelry were also within the price range of the jewelry appraised by Mahonski. The Court understands the frustration of the Defendant due to the fact that the victim had no photographs of this jewelry. The victim, however, had an extensive jewelry collection that spanned decades and it is not unreasonable for there to be a lack of documentation. The Commonwealth does not need to establish the amount of restitution beyond a reasonable doubt and a defendant should not benefit from stealing items just because the victim did not have a photographic log of all the items. Therefore, the Court finds that the testimony of Daskalakis is sufficient to support restitution in the amount of \$17,450.00.

The second issue is whether the expert testimony of Mahonski was sufficient to establish restitution for a portion of the jewelry stolen. These particular items of jewelry were able to be valued by a jeweler because the Defendant had pawned/sold this jewelry to a jewelry store or pawn shop, which made photocopies of the jewelry along with the Defendant's driver's license identifying the items brought to the store by the Defendant. The victim had contacted this

jewelry store but only after most of the jewelry had been melted down. Mahonski was able to value the jewelry based on the photocopies and further description given by the victim.

Similar to this Court's reasoning above, the Court finds that Mahonski testimony is sufficient to establish restitution. Ideally, the victim would have had her jewelry appraised the day it was stolen and had color photographs taken. Such a high standard, however, is unrealistic and unattainable. Here, the jewelry was photocopied in black and white and evaluated by an experienced jeweler aided by additional details provided by the victim. The amount of detail that was able to be provided to Mahonski was well beyond that normally provided in Burglary cases and sufficient to establish restitution.

The last issue raised by the Defendant, however, deals with the timing of the valuation of the stolen merchandise. There is no question that the measure of damages for conversion is the market value of the converted property at the time and place of conversion. See Lynch v. Bridges & Co., 678 A.2d 414 (Pa. Super. 1996); Commonwealth v. McKennion, 340 A.2d 889 (Pa. Super. 1975); Commonwealth v. Figueroa, 859 A.2d 793 (Pa. Super. 2004); see also 18 Pa.C.S. § 3903.

The parties are in agreement that \$35,800.00 is inappropriate because it was based on the current rate of gold at the time of the restitution hearing and not the rate at the time of the conversion, which was March of 2012. The Defendant argues that since the wrong rate was used that he should not have to pay any restitution. The Commonwealth argues that the price of gold was actually higher and that the Defendant should have to pay more. The Commonwealth's brief requests that this Court take judicial notice of the price of gold and then convert the price given originally by Mahonski to the value it would have been in March of 2012.

The Court is not persuaded by the Commonwealth's argument that judicial notice can be

taken to determine the value of the jewelry on the conversion date. The Commonwealth is not only requesting that judicial notice be taken of the value of gold but that the Court also does the math to determine the exact value. A cursory look by the Court at the Commonwealth's math already a discrepancy as they state that Mahonski valued gold in November, 2013 as approximately \$1,250.00 per ounce, when he actually testified at the hearing that it was between \$1,200.00 and \$1,300.00 per ounce.⁶ Without the testimony of an exact figure the Court would only be able to estimate the March, 2012 value. Further, the Commonwealth states that Mahonski bases 6.65% of his sale prices on the price of gold, however, the Court is uncertain of the acceptance of this number when not using Mahonski's valuation of gold and whether it can just blindly use this number for all the different pieces of jewelry. With so much uncertainty, this Court cannot take judicial notice and determine the value of the jewelry itself.

The Court does not believe that the Defendant's obligation of restitution should be forgiven merely because the Commonwealth made an error in calculation, which benefited the Defendant. The cost of gold was much higher at the time the Defendant stole the jewelry than at the restitution hearing. Instead of the Defendant accepting this benefit and paying less, he requests that he should not have to pay anything at all. The Court has difficulty allowing the Defendant to keep the entire benefit he received from stealing the jewelry and giving the victim nothing just because the Commonwealth erred. The Commonwealth's burden is merely preponderance of the evidence. While the Commonwealth did not establish the exact amount that was owed, they did establish that the victim is entitled to restitution for the jewelry and that the value of this jewelry is greater than \$35,800.00. Based solely on the evidence presented at

⁶ The Commonwealth also wants this Court to take judicial notice that the value of gold in November of 2013 was exactly \$1272.25, which the Court has no idea of knowing whether this was the value used by Mahonski to appraise the jewelry.

the restitution hearing, the Court finds that the victim is entitled to the \$35,800.00. With the addition of the \$17,450.00 restitution previously addressed above, the Court finds that the Defendant is to pay a grand total of \$53,250.00 in restitution to Sophia Daskalakis.

ORDER

AND NOW, this _____ day of February, 2014, based upon the foregoing Opinion, the Court finds that the Defendant is to pay restitution in the amount of \$53,250.00 to Sophia Daskalakis. It is **ORDERED** and **DIRECTED** that this Court's sentencing order of October 16, 2012 is hereby **AMENDED**. The Order is amended to reflect that the Defendant is to pay \$53,250.00 in restitution to Sophia Daskalakis. The Defendant must still also pay \$2,440 to Cillo's Antiques and Coins, \$3,000 to Travelers Insurance Company, and a \$300 Central Processing Center fee.

In all other respects the Court's sentencing order of October 16, 2012, shall remain in full force and effect.

By the Court,

Nancy L. Butts, President Judge

xc: DA (MW)
Jeana Longo, Esq.