

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

**COMMONWEALTH OF PA**

**vs.**

**LEWIS MARTZ,  
Defendant**

**:**

**: No. CR-1590-2017**

**: OTN: T664795-5**

**:**

**: Restitution**

**OPINION AND ORDER**

On February 9, 2018, the court accepted the defendant's guilty plea to Counts 8, 9 and 10, all recklessly endangering another person, and Count 42, criminal mischief. On October 7, 2015, the defendant was a resident at Insinger's Personal Care Home and intentionally started a fire in his room causing extensive damage to parts of the facility.

During the defendant's guilty plea, restitution was ordered in the amount of \$1,000.00 to Insinger's Personal Care Home, \$32,964.70 to the insurance carrier for Insinger's Personal Care Home and \$740.00 to William Jones. The defendant contested the restitution amount and a restitution hearing was scheduled for April 24, 2018 before this court.

At the restitution hearing, the Commonwealth called one witness, Ron Insinger. Mr. Insinger testified that he was the owner of Insinger's Personal Care Home.

With respect to the incident involving the defendant, he testified that the defendant set fire to the curtains in his room. Unfortunately, the room was right above the kitchen and caused the facility's sprinkler system to activate.

As a result of the fire and water, three rooms in the facility sustained significant damage: the kitchen, the office next to the kitchen and the defendant's bedroom.

Following the incident, Mr. Insinger notified his insurance company. An insurance adjuster came to the premises, assessed the damages, and sent a check to Mr. Insinger in the amount of \$32,964.70. Mr. Insinger had a \$1,000.00 deductible. He paid his

\$1,000.00 deductible as well as the entire insurance check to a contractor who repaired the damage and restored the property.

Mr. Insinger could not identify the individual who performed the assessment but noted that the insurance company was Western Heritage Insurance Company.

No other witnesses were called on behalf of the Commonwealth, although the Commonwealth did indicate that Mr. Jones was subpoenaed to the hearing but apparently either chose to or neglected to appear and testify.

Restitution is governed by statute. Upon conviction for any crime wherein the value of any property has been substantially decreased as a direct result of the crime, the offender must be sentenced to make restitution. 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. § 9754(c)(8); 42 Pa. C.S.A. § 9754(c)(13); *Commonwealth v. Brown*, 981 A.2d 983, 895 (Pa. 2009); *Commonwealth v. Kline*, 695 A.2d 872, 876-777 (Pa. Super. 1997).

“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 this conduct, and be encouraged to live in a responsible way.” *In re*

*M.W.*, 725 A.2d 729, 732 (Pa. 1999)(citing *Commonwealth v. Harner*, 617 A.2d 702, 707 (Pa. 1992)).

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. 2010). As well, the amount of restitution must not be excessive or speculative. *Id.* “To determine the correct amount of restitution, a ‘but for’ test is used—damages which occur as a direct result of the crime are those which should not have occurred but for the defendant’s criminal conduct.” *Commonwealth v. Gerulis*, 616 A.2d 686, 697 (Pa. Super. 1992).

While the court understands that restitution is penal in nature and is highly favored in the law as well as encouraged so that the criminal will understand the egregiousness of his or her conduct and be deterred from repeating the conduct and be encouraged to live in a responsible ways, *Brown*, supra, the Commonwealth has failed to meet its burden with respect to the restitution claim involving the insurance company and Mr. Jones.

As noted previously, 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. Restitution must not be speculative.

The Commonwealth failed to produce or present any testimony or evidence with respect to any damages allegedly incurred by William Jones. Thus, the claim for his restitution clearly fails.

With respect to the “insurance carrier for Insinger’s Personal Care Home,” the record contains nothing more than evidence that Western Heritage Insurance Company forwarded a check in the amount of \$32,964.70 to Mr. Insinger, and that Mr. Insinger paid that

exact amount to a contractor to repair the damages incurred as a result of defendant's conduct. The Commonwealth failed to present any testimony from: an insurance company representative; the claims specialist handling the matter; any representative from Scottsdale Insurance Company that apparently did "recovery work" for Western Heritage; the appraiser as testified to by Mr. Insinger; or any individual or entity that performed the repair work. Defendant was deprived of the opportunity to cross-examine any witness to determine the factual basis for the amount or whether it was appropriate. Indeed, for this court to award the requested restitution to the insurance company would be speculative at best.

**ORDER**

**AND NOW**, this \_\_\_\_ day of June 2018, following a hearing, the court GRANTS in part defendant's request to amend the restitution order. The court's February 9, 2018 Order is modified. The defendant is directed to pay restitution in the amount of \$1,000.00 to Insinger's Personal Care Home and/or Ronald Insinger. No restitution is awarded to Western Heritage Insurance Company, which was the insurance carrier for Insinger Personal Care Home, or William Jones.

BY THE COURT,

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Marc F. Lovecchio, Judge

cc: DA  
Victim/Witness Coordinator  
Matthew Welickovitch, Esquire (APD)  
Suzanne Fedele, Prothonotary  
Cost Clerk

Gary Weber, Esquire (Lycoming Reporter)  
Work File