

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**OCUFI LAWRENCE,
Petitioner**

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CR-1562-2019

CRIMINAL DIVISION

OPINION AND ORDER

On March 5, 2020, Petitioner filed a Motion for Restitution Hearing. A hearing on the Motion was held on May 14, 2020. In his Motion, Petitioner requests proof of damages as to Petitioner's vehicle.

I. Background

On November 4, 2019, Petitioner entered a no contest plea to Driving under the Influence of Alcohol and Careless Driving. Petitioner was then sentenced on February 10, 2020 to pay restitution in the amount of \$7,312 to Peggy Rodabaugh (Rodabaugh) as Petitioner severely damaged her vehicle while Driving under the Influence of Alcohol.

During the hearing on the Motion for Restitution Hearing, Rodabaugh testified as to her loss due to Petitioner's actions. Rodabaugh went out of her house to go to work on June 24, 2019 and her vehicle was missing. After calling the police she determined that her vehicle had been hit the night before by Defendant and was towed to a garage. On the date following the incident, Rodabaugh could not go into work at Shop-Vac and therefore lost wages of \$85. Rodabaugh's vehicle was a 2000 Mazda MVP, which was rendered totaled due to frame damage the vehicle suffered from the accident. Rodabaugh claims she looked at the Kelly Blue Book value the day after the incident and the vehicle was appraised at \$4,295. Although she eventually got the vehicle back from the garage a month and a half later, the towing and storage cost her \$2,792. For three months following the incident she was without a vehicle and had to pay for separate

transportation into work either by having her co-worker drive her for \$25 a week or by taking the bus for \$12 a week. After those three months, Rodabaugh managed to purchase a replacement vehicle for \$3,000. Rodabaugh did not provide any documentation or records of any of the numbers or damages asserted. Petitioner argues that the amount of restitution is speculative, while the Commonwealth argues that the amount is not speculative because Rodabaugh explained how she determined the amounts and what the amounts were.

II. Discussion

In *Commonwealth v. Pleger*, the Pennsylvania Superior Court discussed restitution:

Although restitution does not seek, by its essential nature, the compensation of the victim, the dollar value of the injury suffered by the victim as a result of the crime assists the court in calculating the appropriate amount of restitution. A restitution award must not exceed the victim's losses. A sentencing court must consider the victim's injuries, the victim's request as presented by the district attorney and such other matters as the court deems appropriate. The court must also ensure that the record contains the factual basis for the appropriate amount of restitution. In that way, the record will support the sentence.

934 A.2d at 720 (citations omitted).

“[T]he amount of the ‘full restitution’ [must] be determined under the adversarial system with considerations of due process.” *Commonwealth v. Ortiz*, 854 A.2d 1280, 1282 (Pa. Super. 2008).

It is the Commonwealth's burden of proving a victim's entitlement to restitution.

Commonwealth v. Atanasio, 997 A.2d 1181, 1183 (Pa. Super. 2010). “The amount of the restitution award may not be excessive or speculative.” *Id.* When evaluating restitution “the injury to property or person for which restitution is ordered must directly result from the crime.” *Commonwealth v. Kinnan*, 71 A.3d 983, 986 (Pa. Super. 2013). This includes any direct loss in victim's wages. *See Commonwealth v. Burwell*, 58 A.3d 790, 793 (Pa. Super. 2012).

Here, the Commonwealth provided a factual basis for restitution in the amount of \$5,877. Rodabaugh testified that her vehicle was totaled and deemed no longer drivable due to

Petitioner's actions. Although this Court agrees there is no information to verify the accuracy of the \$4,295 value Rodabaugh testified to for her vehicle, it did cost her \$3,000 to buy a replacement vehicle, which does factor into restitution. Additionally, Rodabaugh lost wages of \$85 for the day after the incident, which also factors into the calculation. Lastly, the towing and storage total of \$2,792 is included in the restitution amount. Petitioner alleges that the amount for storage and towing is speculative, but Rodabaugh testified to the exact amount and this Court has no reason to disbelieve the amount she paid for storage and towing. Where the Court does agree with Petitioner, is that the cost of getting to work does not factor into the calculation of restitution. Regardless of whether Petitioner drove herself, took a bus, or got a ride with a friend, there is a cost associated with that travel, as no evidence was presented as to what it would typically cost Rodabaugh to get to work this Court will not take that into consideration. Therefore, the total amount of restitution owed by Petitioner is \$5,877.

III. Conclusion

The restitution is not speculative because the Commonwealth provided a factual basis for the amount, and the amount is not in excess of Rodabaugh's losses.

ORDER

AND NOW, this 8th day of June, 2020, based on the foregoing Opinion and in, it is **ORDERED** and **DIRECTED** that the Defendant pay restitution to Rodabaugh in the amount of \$5,877.

By the Court,

Nancy L. Butts, President Judge

cc: PD (MW)
DA (LF)