

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

**COMMONWEALTH OF
PENNSYLVANIA**

vs.

**Brady Eugene Hand,
Defendant**

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:
: **No. CR-1025-2021**
: **OTN# R144283-6**
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OPINION AND ORDER

On January 7, 2022, Defendant was sentenced on Criminal Trespass and Criminal Mischief charges pursuant to his guilty plea to each charge. The sentence included a restitution obligation to the victim, Dylan Bonk. The restitution encompassed amounts for damage caused by the Defendant to the front door of the Victim's home. Defendant admitted to forcing his way into the Victim's home through the front door and causing damage to said door. At time of the guilty plea and sentencing, the Defendant, through legal counsel, verbally requested a hearing on the amount of the damages. The court granted the Defendant's request and scheduled a hearing on the restitution for February 7, 2022.

At the February 7, 2022 hearing, the Commonwealth presented the testimony of the Victim, Dylan Bonk, and Michael J. Bonk of Lyco Builders, LLC. Dylan Bonk testified to the nature and scope of damage to the door. Further, Dylan Bonk testified that he obtained an estimate from Lyco Builders, LLC (the "Estimate") to have the necessary work completed. The Estimate was admitted into evidence as Commonwealth's Exhibit 1. The Estimate listed the total cost to repair the door to be \$5,970.00.

Michael J. Bonk testified that he was the individual who prepared the Estimate. He stated that the Estimate was to repair the door with like materials to what existed prior to the damage by the Defendant. Michael Bonk referenced during his testimony the notes he took when generating the Estimate. He provided details concerning the existing door and steps that

would be necessary to obtain the proper materials and to perform the work. Mr. Bonk testified that the estimated costs were itemized in his notes into three categories: 1) Labor \$2,270; 2) Materials \$1,450 and; 3) Ancillary \$1,250.

While Defendant cross examined each witness, Defendant did not offer any witnesses. Defendant did not offer any documentary evidence to contradict the testimony presented by the Commonwealth.

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. Commonwealth v. Hall, 994 A.2d 1141, 1144 (Pa. Super. 2010). In this case, restitution was ordered to compensate the victim for actual damages incurred due to the Defendant's criminal actions. Further, at the case at bar, the terms of the plea agreement for Defendant's guilty plea was in lieu of any other punishment, the Defendant agreed to make restitution in full for all damage caused by Defendant to the Victim's home, more specifically the door.

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.

In the current matter, but for the Defendant's forcing his way into the Victim's home through the front door, the victim would not have incurred the damage and the cost to

repair the front door. The Commonwealth has presented credible evidence to the extent and cost of the damage. There is a sound basis in the record for the restitution and it is clearly not speculative or excessive. However, the Court will Order the amount of restitution in this case to be \$4,970.00 based upon the totality of the evidence and testimony presented. The Commonwealth presented a written Estimate that provided the amount of \$5,970.00 as the cost to repair the door. However, this amount was not itemized in any manner. In contrast, Mr. Michael Bonk testified his notes itemized the costs into three distinct categories: 1) Labor \$2,270; 2) Materials \$1,450 and; 3) Ancillary \$1,250. Mr. Bonk's testimony provided more detail and specifics for the amount necessary than his written Estimate. These more detailed amounts only add up to \$4,970.00 and reveal that an unintentional calculation error may have occurred when preparing the written estimate. The Court views the error as unintentional as the witness openly testified to how he went about calculating the costs. On this basis, the Court Orders the Defendant to make restitution to Dylan Bonk in the amount of \$4,970.00.

ORDER

AND NOW, this 7th day of March 2022, following a hearing and argument on Restitution, the Defendant is Ordered to make restitution directly to Dylan Bonk in the amount of \$4,970.00.

BY THE COURT,

Ryan M. Tira, Judge

RMT/jel

cc:

CA; CC; APO, DA (MS)
Eric Birth, Esquire
Warden (2)
Victim/Witness Coordinator
PSP Montoursville
Gary Weber, Esquire
Jennifer E. Linn, Esquire – Judge Tira’s chambers

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