

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

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CR-17-2021**  
 v. :  
 :  
 **EDITH DUNLAP,** : **CRIMINAL DIVISION**  
 **Petitioner** :

**OPINION AND ORDER**

On November 12, 2021, Edith Dunlap (Petitioner) filed a Motion to Modify Restitution/Request Restitution Hearing. A hearing on the Motion was originally scheduled on January 18, 2022. The Commonwealth requested a continuance without objection by the Petitioner and the hearing was held on April 22, 2022. In her Motion, Petitioner requests specific proof of the damages incurred by the aggrieved party to their personal property and themselves which is being claimed by this Court’s sentencing order. At Petitioner’s sentencing hearing, this Court awarded Leo Williams (Williams) \$9999.21 in restitution for the damages allegedly caused by Petitioner.

**I. Background**

On September 24, 2021, Petitioner entered a plea of no contest to all of the counts of the criminal information. In her plea, Petitioner acknowledged that there would be sufficient evidence to establish that on August 12, 2020 she had committed the offenses of Simple Assault<sup>1</sup> a misdemeanor of the second degree, and two summary offenses of Harassment<sup>2</sup> and Disorderly Conduct<sup>3</sup> by pepper spraying Leo Williams (Williams) when he came upon her in his truck as she was walking her dog on Valley Street in Duboistown Borough. Petitioner was sentenced on

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<sup>1</sup> 18 Pa. C.S. § 2701(a)(1).

<sup>2</sup> 18 Pa. C.S. § 2709(A)(3).

<sup>3</sup> 18 Pa. C.S. § 5503(a)(4).

October 26, 2021, to two (2) years probation, and was ordered by this Court to pay restitution in the amount of \$9999.21 to Williams.

During the Motion for Restitution Hearing, Williams testified as to the losses he claimed were directly caused by the actions of the Petitioner and therefore subject to the claim for restitution. Williams, the owner of Lycoming Supply, first testified about the damage he received to his eyes and the resultant loss of wages he suffered being away from his job for six (6) days. He testified that immediately after Petitioner sprayed this substance in his direction it felt “like liquid fire” since she was about “four to five feet away from him at the time”. As a result of the injuries, he testified that he needed to order four pairs of glasses one pair for computer work, one pair for safety, one pair for driving glasses and one pair for reading. The total for all new pairs of glasses that he had to purchase was \$546.90. He indicated that because of the injury the glasses were not the “same prescription.” He also stated that he paid \$349.90 for the continuing medical treatment of his eyes. Williams further testified that he estimates his value in his work at \$600 per day because that is about what he “bills himself out as when he works” and has claimed \$3600.00 for missing six (6) days of work. He also testified that while sitting in his work vehicle as a result of not being able to see well after being sprayed, he attempted to pull over at the scene and ran his car into a fire hydrant. He testified that he received a quote for the vehicle damage in the amount of \$3791.12. *See Commonwealth #1*. He testified that this estimate might be greater since there has been a significant passage of time since the estimate was obtained. The vehicle has been used since the incident but has not yet been repaired.

## **II. Discussion**

Petitioner now challenges the amount of restitution owed to Williams. 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.* “[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). When the Court evaluates restitution as a sentence “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). 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...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.

*Commonwealth v. Pleger*, 934 A.2d 715, 720 (Pa. Super. 2007) (citations omitted).

Here, the Commonwealth provided receipts and presented the testimony of Williams to establish the claim for restitution. As part of his claim for restitution, Williams claimed reimbursement for appointments spanning from August 2020 to October 2021, along with almost \$1000 worth of eyeglasses from the October 21st visit. While the Court would award restitution for new glasses on or about the time of the incident, the glasses prescribed and obtained more than one year later, as verified by the records themselves, do not causally relate to this incident. The records show that on August 13, 2020 Williams appeared for a brief medical visit and two (2) subsequent visits within a month of the incident totaling \$205. Any other visits would have occurred more than one (1) year later on October 25, 2021 and were characterized as a regular eye exam with no indication that it was a follow-up for the injury that occurred in August of 2020. Both the glasses and subsequent exams, as referenced by the exhibit, do not relate to the injuries caused by the Petitioner.

The Court finds that the glasses prescribed for Williams in October 2021 relate to his complaints of changing vision and not the August 2020 injury. The Court will accept Williams' testimony about the item purchased from CVS as a prescription drop for his eyes and so find that the \$70.59 reimbursement is directly related to the incident. Williams told the police and testified at the hearing that he ran into a fire hydrant which caused damage to his truck that he used for work. Despite his delay in obtaining an estimate and failure to repair the vehicle, the \$3791.12 worth of damages appear to be directly related to this incident. Although Williams estimated approximately six (6) days of lost wages, the amount of \$600 per day is speculative. Therefore, after reviewing the testimony and documentary evidence, the Court finds that only \$4066.71 of the claim of restitution can be attributed to Petitioner.

### **III. Conclusion**

Although the Commonwealth has provided testimony by the aggrieved party regarding what he believes he is entitled to by way of restitution, there is not a sufficient nexus to account for all of the treatment and damages caused by the actions of Petitioner. Therefore, the award of restitution as set forth in the sentencing order will be modified as it exceeds the amount proven by the Commonwealth.

**ORDER**

**AND NOW**, this 31st day of May 2022, based on the foregoing Opinion, it is **ORDERED** and **DIRECTED** that after the hearing on the Petitioner's Motion to Determine Restitution, the sentencing order issued by this Court shall be modified as follows:

Defendant shall pay restitution to Leo Williams in the amount of \$4066.71.

By the Court,

Nancy L. Butts, President Judge

cc: DA (M.Welickovitch)  
Matthew Diemer, Esq.  
Clerk of Courts