

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1377-2020
v.	:	
	:	
KYLE FRANK,	:	CRIMINAL DIVISION
Petitioner	:	

OPINION AND ORDER

On November 3, 2021, Petitioner filed a Motion for Restitution Hearing. A hearing on the Motion was held on January 18, 2022. In the Motion, Petitioner requests proof of damages as to the aggrieved party's personal property that she claims reimbursement through restitution.

I. Background

On October 25, 2021, Petitioner entered a guilty plea to an amended count of Simple Assault by Mutual Combat. Petitioner was sentenced on the same day and was ordered by this Court to pay restitution in the amount of \$4000.00 to Venice Carter (Carter) as Petitioner entered her apartment and in the struggle that ensued, damaged some of Carter's personal property.

During the hearing on the Motion for Restitution Hearing, Carter testified as to her loss due to Petitioner's actions. While she was able to testify as to the value of a similar set of candle sticks that she had replaced, Carter was unable to testify about the value of a footstool, table, painting or exercise bike that she claimed was damaged by the Defendant. She testified as a result the items were unusable. The painting was done by her mother and Carter testified that it had sentimental value. She explained directly to the Court that she did not purchase any new items to replace those items she claimed were damaged.

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).

Here, the Commonwealth provided photos of the items that were damaged along with the testimony from the aggrieved party as to the items damaged by the Defendant during the commission of the crime. Other than the testimony about a comparable \$60.00 set of candlesticks which had been broken, no other testimony was given to enable the Court to evaluate Carter's restitution request. Therefore Commonwealth is unable to meet its burden to establish the value of the additional items. Since the Court is not permitted to speculate as to the value of the other items which were damaged in the fight, the Court is left with no choice but to award restitution only for the candlesticks, or \$60.00 in restitution.

III. Conclusion

The Commonwealth has provided minimal evidence of the value or replacement value of most of the items alleged to have been damaged by Petitioner. Therefore, the award of restitution will be modified as it exceeds the amount proven by the Commonwealth.

ORDER

AND NOW, this day of January, 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 Venice Carter in the amount of \$60.00.

By the Court,

Nancy L. Butts, President Judge

cc: DA (KG)
George Lepley, Esq.
Clerk of Courts
APO