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Commonwealth v. Shatzer

COMMONWEALTH OF PENNSYLVANIA
v. CONAN KANE SHATZER, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Criminal Action, No. 1583 of 2004

Restitution; Rehabilitation; Extent of injuries suffered by victim

1. The primary purpose of restitution is rehabilitation of the offender by impressing upon him that his criminal conduct caused the victim's loss or personal injury and that it is his responsibility to repair the loss or injury as far as possible.
2. Restitution is not damages, as the objectives are different, and because this is so, the amounts need not be coterminous.
3. In computing the amount of restitution, the sentencing court may consider the extent of the injuries suffered by the victim and such other matters, as it deems appropriate.
4. When the defendant effectively totals the victim's vehicle and the victim had recently improved the vehicle with accessions, the victim lost not only the purchase price of the vehicle, but also the price of those accessions.
5. In order to impress on the defendant that his criminal conduct caused the victim's losses and that it is his responsibility to repair the loss or injury as far as possible, reimbursement to the victim to the full extent of the victim's reasonable request to this Court is proper.
6. The Commonwealth was not required to present expert testimony regarding the loss or injury to the victim.
7. The mandatory provisions of 18 Pa.C.S.A. §1106(c)(1)(i) require the defendant to pay restitution to his own insurance company for payments made for a rental vehicle for the victim and for a payment made to the victim for the loss of his vehicle. A defendant should not benefit from the payment by his own insurance company to the victim; ordering a lesser restitution amount because of such a payment would allow the defendant to avoid the rehabilitative consequences of a restitution order.

Appearances:

Angela R. Krom, Esq., *Assistant District Attorney*

Leland C. Clark, Esq., *Assistant Public Defender*

OPINION

Walsh, J., March 28, 2005

Background

On January 19, 2005, Conan Kane Shatzer, Defendant, was sentenced upon guilty pleas entered to Possession of a Small Amount of Marijuana and Driving Under the Influence of Alcohol, second offense, third tier. The incident giving rise to both criminal charges occurred on August 27, 2004 and included an

automobile accident in which Defendant's vehicle collided with a vehicle owned by Betty Hebb ("Hebb") and then a vehicle owned by Brian Needham, Jr. ("Needham"). The vehicles of Hebb and Needham were parked along East Baltimore Street in Greencastle, Franklin County, Pennsylvania at the time they were struck by Defendant's vehicle. In addition to striking both vehicles, Defendant's vehicle struck and caused damage to Calvary Church, which also is located on East Baltimore Street.

At the time of sentencing, the Court ordered restitution in the amount of \$50.00 to Needham. However, the amount of restitution owed had not fully been determined as of the date of sentencing. Therefore, a restitution hearing was scheduled for Friday, March 4, 2005.

At the March 4th hearing, Officer McCullough of the Greencastle Police Department testified that both Hebb and Calvary Church had been made whole by insurance payments and that neither Hebb nor Calvary Church was seeking any further compensation in the nature of restitution from Defendant. Needham, the third of Defendant's victims, appeared and testified as to his losses. Based on the testimony and the exhibits related thereto, we enter the following:

Findings of Fact

1. At the time of the incident in question, Needham was the owner of a 1988 Chevy dually pick-up truck. The nature of a dually is such that it has two wheels on each side of the rear axle for a total of six (6) wheels - and tires -- on the vehicle.

2. Needham purchased the vehicle on May 27, 2004 from Rod Mayhew for \$3,995.00. See Commonwealth's Exhibit No. 1.

3. At the time of purchase, the vehicle was road-worthy, but it not able to pass Pennsylvania inspection because it needed a new windshield and new tires.

4. On June 16, 2004, Needham purchased a windshield from Chambersburg Glass at a cost of \$318.00 which included its installation. See Commonwealth's Exhibit No. 3.

5. On or about June 5, 2004, Needham purchased six (6) tires from Bob's Tire Service in Berkley Springs, West Virginia for \$749.80. He was on a payment plan for the tires and he still owed \$649.80 as of the time of the hearing. See Commonwealth's Exhibit No. 2. The six new tires had approximately 3000 miles on them at the time of the loss.

6. Additionally, Needham testified that the vehicle's rear end was bad and, in order to make it drivable, he had to replace the rear end. He purchased a rear end from a junk yard for \$1,100.00 in cash. He produced no receipt or other evidence of the cost of the new rear end beyond his testimony. He installed the new rear end himself.

7. On August 27, 2004, Defendant totaled Needham's vehicle in a collision which ultimately gave rise to the criminal charges for which the Defendant pleaded guilty and for which Defendant agreed, as part of his guilty plea, to make restitution.

8. While Needham was without a vehicle, Defendant's insurance paid a total of \$1362.92 for Needham's use of a rental vehicle. Needham himself makes no claim for the cost of a rental vehicle.

9. Ultimately, Defendant's insurance company totaled Needham's vehicle and it paid him \$3,336.34 for the value of that loss. See Defendant's Exhibit No. 2.

10. Not including the \$1100.00 cost of a new rear end, Needham claims to have invested \$5,062.80 in his pick-up truck, which figure includes the \$3,995.00 purchase price, the \$318.00 cost of the windshield and the \$749.80 cost of the tires.

11. Needham seeks \$1,726.46 in restitution representing the difference between the \$5062.80 he spent on the vehicle less the \$3,336.84 payment made to him by Defendant's insurance company.

12. Needham testified that ideally he should be entitled to recover the \$1,100.00 he paid for the rear end that he installed on the vehicle.

Discussion

At the hearing, Needham testified that he paid \$3,995.00 for his vehicle, \$318.00 to have a new

windshield installed, \$749.80 for new tires and \$1,100.00 for a new rear end for the vehicle, which he installed himself. Needham produced documentation for the cost of the vehicle (Commonwealth's Exhibit No. 1), for the new tires (Commonwealth's Exhibit No. 2), and for the new windshield (Commonwealth's Exhibit No. 3). Each of the exhibits was admitted into evidence without objection from the defense. Needham testified that he paid \$1,100.00 for the rear end, which he installed himself, but he said it was a cash transaction and he had no documentation to support his claim. Needham further testified that Defendant's insurance company paid him \$3,336.34 for the loss of his vehicle, essentially a salvage value.

Needham seeks restitution alternatively as follows: [1] \$1,716.46 representing the difference between the total of the cost of the vehicle, the new windshield and the new tires less the \$3336.34 which the Defendant's insurance company paid to him; or [2] \$2,816.46 representing the difference between the sum of the cost of the vehicle, the windshield, the tires **and the new rear end** less the \$3336.34 paid to him by Defendant's insurance company. We are not inclined to order restitution to Needham in an amount greater than that which he seeks. On the other hand, it is clear that Defendant should not benefit from the payment by his own insurance company to Needham. Factoring in that payment to the benefit of Defendant, thus ordering a lesser restitution amount, would allow Defendant "to avoid the rehabilitative consequences of a restitution order." Commonwealth v. Mariani, 2005 WL 120867 (Pa.Super.).

The primary purpose of restitution is rehabilitation of the offender by impressing upon him that his criminal conduct caused the victim's loss or personal injury and that it is his responsibility to repair the loss or injury **as far as possible**. Commonwealth v. Runion, 541 Pa. 202, 662 A.2d 617, 618 (1995) (emphasis supplied).

Moreover, we are well aware that "restitution is not damages, as the objectives are different, and because this is so, the amounts need not be coterminous." Mariani, 2005 WL 120867. In computing the amount of restitution, the sentencing court may consider the extent of the injuries suffered by the victim and such other matters as it deems appropriate. 18 Pa.C.S.A. §1106(c)(1). Considering all of the circumstances of this case, we cannot say that it is either unfair or improper to require Defendant to pay Needham the amount which Needham has asked for, including the cost of a new windshield, the cost of new tires and the cost for a replacement rear end. Needham purchased his vehicle on May 27th and Defendant totaled the vehicle on August 27, 2004. Needham was in possession of the vehicle barely 3 months when the vehicle, with all of the additional dollars Needham spent on accessions to it, were reduced through the Defendant's criminal conduct to a salvage value of \$3336.34. When the Defendant effectively totaled Needham's vehicle, Needham lost not only the dollars he had spent in purchasing the vehicle, but lost also the additional \$318.00 he spent on the windshield, the additional \$749.80 he spent on new tires and the additional \$1100.00 he spent on a new rear end.

We are constrained to inquire as to the extent of the use made by Needham of his accessions to the vehicle. The benefit of his new tires for which Needham paid \$749.80 lasted less than three months. The benefit of the new windshield for which Needham paid \$318.00 lasted less only two and a half months. The Defendant rendered meaningless -- but for less than three months' use - Needham's expenditure of over \$1000 for a windshield and tires. There was no evidence that Needham was, for example, permitted to remove his tires, driven only an estimated 3000 miles, from the salvaged vehicle in order to try to recover a portion of his cost to purchase those tires less than three months earlier. The extent of the injuries suffered by Needham surely encompass outlays of cash for legitimate and necessary accessions to the vehicle that logic dictates Needham would not have spent had he known that his use of the vehicle would come to a screeching halt less than three months later because of the Defendant's criminal conduct.

We find the documentation submitted by Needham to be trustworthy; we believe the amount sought by Needham is both reasonable and appropriate; there were no objections raised either to the documentation in support of Needham's claims or to Needham's testimony as to the cost to him of a new rear end; and Needham's claims were supported by the record. Further, Needham made no effort to seek a double recovery by requesting that the Court award to him restitution in the amount of the total loss value of his vehicle, \$3336.34. Therefore, we will enter an order of restitution consistent with the claims of Needham.

Because we are required to impress on Defendant that his criminal conduct caused Needham's losses and that it is his responsibility to repair the loss or injury as far as possible, we will order reimbursement to Needham to the full extent of Needham's reasonable request to this Court. Commonwealth v. Runion, 541 Pa. 202, 662 A.2d 617, 618 (1995).

Implicit in our decision is our rejection of any concept that the restitution that Defendant should be required to pay is measured as damages would be awarded in a civil case. Price v. Newell, 53 Pa.Super. 628 (1912). The amounts of restitution and the amounts of civil damages need not be coterminous.

Mariani, 2005 WL 120867. Moreover, we reject any notion that the Commonwealth was required to present expert testimony or that the amounts sought by Needham are not supported by the record of these proceedings. Commonwealth v. Dohner, 725 A.2d 822 (Pa.Super. 1999).

Finally, we note the mandatory provisions of 18 Pa.C.S.A. §1106(c)(1)(i) as follows: "the court shall not reduce a restitution award by any amount that the victim has received from an insurance company but shall order the defendant to pay any restitution ordered for loss previously compensated by an insurance company to the insurance company." The mandatory provisions of the statute require us to order Defendant to pay restitution to Progressive Casualty Insurance Company, the Defendant's own insurance company, in the amount of \$4,699.26, representing \$1,362.92 for payments made to Enterprise Rent-A-Car for a rental vehicle for Needham and \$3,336.34 representing total loss damage paid to Needham for the loss of his vehicle. 18 Pa.C.S.A. §1106(c)(1)(i).

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Conclusion

The restitution hearing in this matter was conducted pursuant to the authority of 18 Pa.C.S.A. §1106(c)(3). In entering this order, we note that we are effectively amending our prior order for restitution made at the time of sentencing in this case, which set restitution at \$50. We urge that this Opinion be considered to be our reasons, rationale and conclusions as a matter of record in these proceedings for the restitution finally ordered in this case.

ORDER OF COURT

March 28, 2005, upon consideration of the entire record of these proceedings held in accordance with the authority of 18 Pa.C.S.A. §1106(c)(3), including evidence of record from the March 4, 2005 restitution hearing and upon consideration of the arguments of the parties and the law, it is hereby ordered that the amount of restitution that we ordered at the time of sentencing on January 19, 2005 be changed based upon the evidence adduced at the restitution hearing and based on the law; and that this Court's sentencing order in Criminal Action 1583 of 2004, Count 3, Driving Under the Influence, be amended to change the provision relating to the payment of restitution so that it reads as follows:

Defendant shall pay restitution of \$2,816.46 to Brian E. Needham, Jr. and Defendant shall pay restitution in the amount of \$4,699.26 to Progressive Casualty Insurance Company. The Franklin County Probation Department shall adjust its schedule of payments to enable Defendant to pay the full amount of restitution herein ordered during the period of his supervision for this offense.

In all other respects, the sentencing order entered on January 19, 2005 remains unchanged.