

**COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE**

WILMINGTON, DELAWARE 19801

*John K. Welch*  
*Judge*

December 2, 2010

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**Re: *State of Delaware v. Cerrone M. King***  
**Case No.: 0909023764**

**Date Submitted: November 23, 2010**  
**Date Decided: December 2, 2010**

**MEMORANDUM OPINION**

Dear Counsel:

A Criminal Restitution Hearing in the above captioned matter took place on Tuesday, November 24, 2010 in the Court of Common Pleas, New Castle County, State of Delaware. The Court previously ordered a Presentence Investigation for the purpose of determining restitution following defendant's guilty pleas on May 3, 2010 to Criminal Trespass 1<sup>st</sup> Degree, 11 *Del.C.* §823 and Assault 3<sup>rd</sup>, 11 *Del.C.* §611.

At the defendant's May 3, 2010 sentencing hearing the Court immediately sentenced defendant to cost of prosecution for the Assault 3<sup>rd</sup>, six months at Level V suspended for track of Level II with no contact with Nicole Daisey and her family

and residents, and imposed a zero tolerance for the no contact Order with Ms. Daisey. The Court imposed an identical sentencing order for the Criminal Trespass, 1<sup>st</sup> Degree and Ordered a Presentence Investigation for restitution.

This is the Court's Final Decision and Order in the above captioned matter.

### **THE FACTS**

The relevant facts are that on May 3, 2010 Cerrone M. King (the "defendant") as outlined above, entered a guilty plea to Criminal Trespass 1<sup>st</sup> and Assault 3<sup>rd</sup> on May 3, 2010 in this Court. The balance of the charges were a *nolle prosequi* entered by the Attorney General.<sup>1</sup>

At trial Linda Grussemeier ("Grussemeier") was duly sworn and testified. She works at the Village of Windhover Apartment Complex and has been so employed for 12 ½ years. Her duties include taking care of the resident's maintenance and completing work orders. She generated State's Exhibit No.2, which was a final billing and settlement estimate for damages to the apartment door of Ms. Daisey when she rented an apartment from the complex. According to the estimate in State's Exhibit No. 2 the damages to the front door and wall frame were \$300.00 which she is seeking restitution on behalf of the Village of Windhover Apartments.

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<sup>1</sup> Without objection, the State moved in four separate exhibits into the record a the restitution hearing; State's Exhibit No. 1 was a memorandum dated September 13, 2010 for Cerrone M. King, PSI No. 15721; ID No.: 0909023764; State's Exhibit No. 2 was a final billing and settlement to Ms. Nicole Daisey as a result of damage to her property, which included the front of the door frame and wall; State's Exhibit No.3 was an Intermit website depicting the value of a 19" RCA flat panel TV valued at \$179.99; State's Exhibit No. 4 was a JC Penney Invoice from an Internet search indicating the replacement value of a 10 carat gold 18-22 inch rope gold chain valued at \$349.99 to 429.99.

Grussemeyer generated the document and otherwise prepared it in anticipation of seeking damages from Ms. Daisey. One of her employee's calculated the estimate for the damages which was for the door frame and wall at Ms. Daisey's apartment. When she inspected it, Grussemeyer testified it looked like "someone kicked the door frame out". The cost of replacing the door frame was \$300.00 according to her employee's estimate.

On cross-examination Grussemeyer testified the estimate was prepared on February 15, 2010. Grussemeyer visited the apartment complex several weeks before and testified there was no damage to the Daisey front door when she inspected it as a result of a noise complaint at Ms. Daisey's apartment. On February 10, 2010 her employee Shanna went to the apartment to inspect it and was told "some guy kicked the door out". Shanna works in her office and does inspections for the apartment complex and helped her prepare the estimate.

According to Grussemeyer, the damage is the costs to the trim and door, which was apparently "kicked in" and the "whole frame was split and broke" as a result of a blunt force to the door which broke it open.

On cross-examination Grussemeyer testified her prior visit to the apartment could have been three (3) months, not three (3) weeks before February 15, 2010 when the damage report was prepared.

Ms. Nicole Daisey ("Daisey") presented testimony. She testified Mr. Cerrone M. King ("defendant") kicked the door in when he came to her residence on

September 28, 2009. He entered her apartment after he kicked the door out; 'grabbed her by the hair'; and then broke her TV, as well as her cell phone. She called 9-1-1 from another cell phone and the police arrived, which she claimed "saved her life". According to Daisey the defendant threw her 19" TV on the floor breaking it, and also kicked the door in causing damage to the front door and its frame. According to Daisey, defendant also grabbed her around the neck in an attempt to choke her causing her gold necklace to break in half and her shirt to rip.

As part of the case-in-chief, Daisey testified to the contents of the already marked exhibits, State's No. 3 and 4 which were moved into evidence without objection. Although she testified she paid \$800.00 for the TV to replace it now was a 19" RCA value, as depicted in State's Exhibit No.: 3 the cost is actually is \$179.99. With regards to the chain which was broken when the defendant grabbed and choked her around the neck, the estimate to repair and/or replace the chain according to Daisey is \$349.99.

On cross-examination Daisey testified that the gold chain that her husband bought her was broken but she did not have the funds to attempt to replace it or repair it.

The defendant was duly sworn and testified. He agreed that he was at the apartment complex on the date in question, September 28, 2009. He has filed an Answer admitting liability for the TV and phone, however he disagrees that he broke the door or the chain as Ms. Daisey claims in her restitution report. He testified he

had a key and returned the key to her after he entered the front door. He admits he broke the TV as well as threw the cell phone down and only pled guilty to Assault 3<sup>rd</sup> because it was part of the plea agreement. Finally, Daisey testified the costs to replace her broken cell phone is \$100.00.

On rebuttal, Daisey was recalled to testify. Daisey testified that she had given the defendant's fiancée a key to her apartment, but never gave the defendant a key. Daisey claims that's why the defendant broke down the front door. In addition, Ms. Daisey testified that the defendant did not have a key on the date of the assault and criminal trespass, September 29, 2009 as her roommate, defendant's fiancée had already returned it to her.

Daisey testified on rebuttal again that she did not have the funds to actually fix the existing chain.

### **THE LAW**

In *Pratt v. State*, Del. Supr., 486 A.2d 1154 (1983), the Court enunciated and articulated guidelines for the award of restitution to assist trial courts that have criminal jurisdiction. The following guidelines are used in determining restitution;

- 1) Victim Loss Statements used by the Police and/or the Presentence Office must be changed to ask for market value as opposed to replacement value or replacement costs.
- 2) Whenever possible, a Victim Loss Statement should be contemplated by the victim who must include a receipt or other verification of the Loss Statement.
- 3) A letter informing the victim the right to seek restitution must accompany the Loss Statement.

- 4) Restitution is discretionary and its imposition shall be governed by 11 *Del. C.* §4106(a).
- 5) Restitution should be ordered when the victim has suffered an actual monetary loss through personal injury, damage to, or destruction or theft of property.
- 6) Restitution should cover the victim's out-of-pocket expenses and losses as a first priority; losses covered by insurance are the lowest priority.
- 7) The defendant's ability to pay is an element to be considered in determining the amount of restitution and the schedule of payments.

*See, Pratt v. State*, 486 A.2 at 1161.

The State bears the burden of proving the amount of loss by a preponderance of evidence. *Benton v. State*, Del. Supr. 711 A.2d 792 (1998). It is also clear that the defendant must make restitution to a victim for the consequences of a criminal act. 11 *Del. C.* §4106(a). A plea of guilty can establish responsibility to make restitution. *See State v. Orzechowski*, 1980 W.L. 4749, \*3 (Del. Fam. Ct.). Further, the amount of restitution is "not necessarily limited to the trial evidence necessary to establish guilty beyond a reasonable doubt." *Benton v. State*, Del. Supr., 711 A.2d 792, 796 (1998).

As provided in *State v. Kathryn L. Wharton*, 1992 Del. Super., LEXIS 309 (January 16, 1992), the Court may note as follows:

In the analysis of legislative history and intent, the Delaware Supreme Court recognizes the purpose of the statute was "to make offender's liability for restitution for property which has been lost or severely damage as a result of their crime. *Id.* at 115; *citing Report of the Adhoc Committee on Restitution at 11* (June 1981).

In general, "there is no statutory requirement that a defendant's ability to pay be considered in determining restitution. *Pratt*, *Supra* at 1160. The Court recognizes that the Committee recommended limiting restitution when the

defendant's ability to pay is in question. *Id.* at 1158. For these reasons, the Court in *Pratt* suggested the Courts follow the guidelines set forth [in *Pratt*], one of which suggested defendant's ability to pay as one element to be considered by the Court.

### **OPINION AND ORDER**

The Court has carefully construed and reviewed the trial evidence and testimony of the State's witnesses and the defense and the documentary exhibits moved as State's Exhibits No. 1-4 moved into evidence without objection. The Court has also weighed and scrutinized the credibility of all fact witnesses. The court finds the State's witnesses most credible. Based upon the burden of proof, which is a preponderance of evidence, it is clear to the Court that the actual out-of-pocket monetary loss actually sustained by the alleged victim, Village of Windhover Apartment Complex is \$300.00 for the damaged door. The Court finds that the defendant actually kicked in the door and did not actually have a key on the date in question, September 28, 2009. The Court finds most credible the testimony of both Daisey as well as the apartment manager, Linda Gusseremeyer that the defendant struck and broke the door. The credibility issues clearly are resolved in favor of the State.

With regards to the television, the defendant does not dispute he broke the television. State's Exhibit No. 3 resolves that issue; the cost to replace the 19" RCA television is \$179.99 and the Court so orders that the defendant pay the same through the criminal clerk to Ms. Daisey.

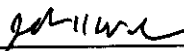
With regards to the other damages, which include but are not limited to the gold necklace and the cell phone, defendant agrees that he broke the cell phone which at trial Ms. Daisey estimated would be \$100.00 to replace. The Court also orders the defendant pay those monies through the criminal clerk to Ms. Daisey.

Finally, although the original chain bought by Daisey's husband, which was broken by the defendant during the assault, which he plead guilty to on May 3, 2010 was much more expensive, and may not be able to be replaced, the Court finds by a preponderance of evidence that the value to replace the chain under today's market value of damages would be \$349.99. Although this far weighs less than the actual cost incurred by Ms. Daisey when her husband originally bought the chain, estimated at \$800.00 during trial, the Court finds, as the proximate result of the defendant's criminal conduct by a preponderance of evidence based upon the trial record that \$349.99 is a reasonable sum as a result of the actual losses sustained by Ms. Daisey for her necklace.

Defendant is directed to report to the Criminal Clerk of this Court to make payment arrangements for this restitution and sign an agreement through the Criminal Clerk in order to pay both victims this Court's ordered restitution. If a lump sum payment cannot be arranged by defendant for all these damages, the criminal clerk is ordered to arrange a payment schedule with the defendant and monitor the same to full compliance with this Order.



**IT IS SO ORDERED** this 2<sup>nd</sup> day of December, 2010.

  
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John K. Welch  
Judge

/jb

cc: Juanette West, Case Manager  
CCP, Criminal Division