

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE )  
 )  
 v. ) Case No. 0912002483  
 )  
 DANIEL JONES, )  
 )  
 Defendant. )

Submitted: April 30, 2011  
Decided: June 29, 2011

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**ORDER**  
**ON STATE'S MOTION FOR RESTITUTION**

The State of Delaware (hereinafter, "State") moves pursuant to 11 *Del. C.* § 4106 for the Court to order defendant Daniel Jones (hereinafter, "Jones") to pay restitution in these proceedings. Jones alleges that relevant Delaware law does not permit the Court to order restitution based upon the facts and the nature of the charges for which he stands convicted by entry of a plea of guilty.

## FACTS

On December 4, 2009, Jones was arrested by the Wilmington Police for the charges of Burglary Third Degree, Theft Under \$1,500, misdemeanor, and Criminal Mischief of damage to property of less than \$1,000, misdemeanor. A preliminary hearing was held in the Court of Common Pleas, New Castle County on December 21, 2009 and the matters were bound over for trial in the Superior Court. The State declined to proceed on the Burglary charges and filed Informations on misdemeanor charges in the Court of Common Pleas. The Informations allege Criminal Mischief of less than \$5,000, indicating window damage and Criminal Trespass First Degree.

On July 14, 2010, Jones entered a plea of guilty to the charge of Criminal Trespass First Degree, which involved the property of Bag and Baggage located at 224 and 226 W. 9<sup>th</sup> Street, Wilmington, Delaware. He also entered a plea of guilty involving two (2) unrelated Shoplifting charges. The Criminal Mischief charge relating to the Bag and Baggage properties was dropped by the State. The Court as part of its sentence on July 14, 2010 ordered a pre-sentence investigation to determine if restitution was appropriate and should be imposed.

Investigative Services Office for the Court of Common Pleas submitted a memorandum report on September 14, 2010. That report included information that the State did not pursue the theft charges because it lacked sufficient evidence to prove the offense alleged. The report also included information that the alleged victims submitted invoices for damages to windows and cost for boarding up such windows on October 14, 2009, November 13, 2009, November 28, 2009, December

14, 2009 and December 20, 2009 in the total amount of \$1,390.00. However, the report recommended restitution only in the amount of \$162.00 for the damages to the window and subsequent boarding for the November 13, 2009 incident which was charged in the Information and Jones pled guilty. The Attorney General also initially agreed that restitution could only be imposed for the broken window referenced in the police report. This report further indicated the victim requested damages of \$36,758.15; however, they were paid by their insurance carrier \$25,000.00, leaving a loss balance of \$11,758.15. A co-defendant was arrested, prosecuted, and convicted for the charges of Burglary and Theft offenses in the Superior Court for New Castle County.

The alleged victims objected to the Investigative Services Report and requested a hearing which was first scheduled on December 10 2010. At the conclusion of the hearing, the State was given leave to investigate whether additional matters should be included for restitution and to submit a memorandum regarding the basis for any additional request.

The State submitted a memorandum on March 7, 2011 requesting restitution in the amount of \$4,999.00, the monetary limit alleged in the Criminal Mischief charge. The State in part relies upon a November 29, 2010 letter from Jones to the Court where he states "I am aware that I might have caused damage to the property in which I trespassed."

A second restitution hearing was held on March 25, 2011, where the State presented testimony of the property owners for 224 and 226 West 9<sup>th</sup> Street,

Wilmington, Delaware. The owners testified that during the period beginning November 2009 through April 2010, there were at least eight (8) illegal entries into their properties. The owner further testified the first break-in occurred on November 9, 2009. They testified that as a result of the series of illegal entries, they incurred property damages of \$11,040.00.

The damages claim submitted by the owners include costs to board up the windows on eight (8) different occasions at the cost of \$250 for each window, on the second and third floors of the building. The owners also alleged the break-in exposed the floors to the elements which resulted in damage and there was a roof entry which exposed the building to weather damage. Testimony was presented that when entering the building, the intruder stepped on the sinks causing them to break away from the wall. They estimate the repairs at \$185.00 on each occasion. Additionally, they had to replace the locks after each illegal entry at the cost of \$450.00. To support their claim, the owners presented photos of damage sustained to the property as a result of the repeated illegal entries. The six (6) photos entered into the record, did not have date or time notations. The owners presented an invoice of \$162.00 to board the windows on the 2<sup>nd</sup> floor of 224 W. 9<sup>th</sup> Street on November 13, 2009.

The owners testified there were seven (7) illegal entries after December 4, 2009, which followed the defendant's arrest. While the owners testified the defendant's clothing was found several places in the building, there is no reference to these findings in the police report. The police report did, however, indicate the

defendant's fingerprint was found on a bathroom toilet, near a window which was used for illegal entry.

Patrolman Backer of the Wilmington Police Department testified he interviewed the defendant on December 14, 2009. During that interview, the defendant admitted entering 224 West 9<sup>th</sup> Street on multiple occasions, but made no statement regarding damages to the property.

The second report was prepared by the Investigative Services Office dated March 15, 2011, which recommended restitution be ordered in the amount of \$4,750.00. The rationale for the revision is based upon the premise that the defendant wrote a letter to the Court where he voluntarily admits "I am aware that I might have caused damage to which I trespassed." Thus, the report seeks monetary payment for damages as follows:

Repair 2 toilets	\$ 500.00
Replace 2 sinks	\$ 800.00
Replace broken window	\$2,000.00
Replace drywall & finish	\$ 600.00
Repair clogged and broken pipe	\$ 200.00
Repair appliances	\$ 185.00
Take boards down	\$ 140.00
Replace door	<u>\$ 325.00</u>
<b>TOTAL</b>	<b>\$4,750.00</b>

## DISCUSSION

The Court's authority to impose restitution is governed by the provisions of 11 *Del. C.* § 4106, "Restitution for property damage or loss" which provides in relevant part as follows:

“(a) Any person convicted of stealing, taking, receiving, converting, defacing or destroying property, shall be liable to each victim of the offense for the value of the property or property rights lost to the victim and for the value of any property which has diminished in worth as a result of the actions of such convicted offender and shall be ordered by the court to make restitution. The convicted offender shall also be liable for direct out-of-pocket losses, loss of earnings and other expenses and inconveniences incurred by victim as a direct result of the crime. For each criminal offense resulting in arrest in which property is alleged to have been unlawfully taken, damaged or otherwise diminished in value, a loss statement shall be prepared, by the police or by the victim when there is no police involvement, documenting for the court the value of the property lost or diminished as a direct result of the crime.

(b) In accordance with the evidence presented to the court, the court shall determine the nature and amount of restitution, if any, to be made to each victim of the crime of each convicted offender. The offender shall be ordered to pay a fixed sum of restitution or shall be ordered to work a fixed number of hours under the work referral program.

The provision of this statute requires the Court to make a two-part inquiry. The first question which the Court must determine is whether the defendant is liable to pay restitution. The second question, if the first is answered in the affirmative, is the amount the defendant is to be held liable. When addressing the question of liability, the Court in *State v. Hoffman*, Del. Super. 2003 WL 21221811, stated, “The statute was written to expand and not to limit the use of restitution in those cases

where persons are convicted of ‘stealing, taking, receiving, converting, defacing, or destroying property.’” The Court goes on to conclude that unless there is a factual basis on the record establishing a defendant’s responsibility for the victims’ damages, the defendant cannot constitutionally be ordered to make restitution for the victim’s loss. The State has the burden of establishing defendant’s liability for restitution to the satisfaction of the Court.

In these proceedings, the defendant entered into a plea agreement with the State where he admitted the offense of Criminal Trespass First Degree. The plea agreement provided that an investigation was to be conducted to determine if restitution was to be paid to McKenzie and Bag and Baggage.

The defendant argues he cannot be held liable for restitution because the statute does not apply to the charges for which he entered a plea i.e., “Criminal Trespass First Degree.” He argues that the statutory language, 11 *Del. C.* § 4106 requires that he be convicted of “stealing, taking, receiving, converting, defacing or destroying property, before he can be legally required to pay restitution. Therefore, since he only pled guilty to knowingly entering or remaining unlawfully in a dwelling, the statute does not apply to the facts of this case.

The State, taking a broad view of the statute, argues it provides that victims may recover restitution for the value of the property rights lost or diminished by the Defendant’s criminal conduct, as well as out-of-pocket loss of earnings and other expenses and inconveniences. The State relies upon *Benton v. State* 711 A.2d 792 (Del. Supr. 1998) which held as the State argues:

“. . . The statutory scheme for restitution expressly provides for the victim to recover the value of the property rights lost or diminished by the defendant’s criminal conduct, as well as out-of-pocket losses of earnings and other expenses and inconveniences.”

This analysis by the Court in *Benton* indicates that when considering restitution, the Court should take a broad view of the statute to accomplish the intended purpose, rather than restrictive analysis, to achieve the goal of putting the victim in the relative position he was prior to the defendant’s criminal conduct. The position put forth by the State is more consistent with the goal of putting the alleged victims in the same position before any loss. The position advanced by Jones would have the Court focus on only the first sentence of the statute and disregard the additional language. However, when considering a statute the Court must consider the entire provision and may not exclude any parts thereof. Further, the Court is required to construe the statute to achieve the objective of the drafters, which is to compensate the victims. When the Court is considering whether to order restitution, it must focus on both the offense which the defendant stands convicted, and nature of the defendant’s conduct in committing the offense. Therefore, I find the provisions of *Section §1406*, notwithstanding the first introductory sentence, is sufficiently broad when read in its entirety to include the charge which the defendant stands convicted based upon his conduct while committing the offense.

However, to impose restitution, the State must carry its burden by the preponderance of the evidence. Thus, it must demonstrate the relationship between the defendant’s conduct for which he was found guilty, and the damages which he is



to be held responsible. The defendant's argument that he cannot be held responsible because he only pled to Criminal Trespass First Degree, I find lack merit. While Trespass is a crime against possessory interest, however the commission of the acts in committing crime can be done in a manner which causes damage, as is presented here – entry through a window which was boarded, thus requiring it to be re-boarded. Also, there is evidence that the entry through the bathroom window caused damage to the bathroom fixtures.

In this case, the defendant was convicted of unlawful entry, which was established by entry through a window which was damaged. His fingerprint was found on a bathroom toilet fixture in the building. Further, the defendant's correspondence admitted causing damage to the property.

Therefore, I find the State has established facts to support restitution as follows:

- (a) Damage to the window of \$162.00; and
- (b) Repairs to the toilet of \$250.00
- (c) Repair for locks \$450.00

Therefore, restitution is ordered in the amount of \$862.00. The other amounts stated above which is requested by the State and the victim is not supported by the evidence as to this defendant, and is Denied.

So Ordered

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Alex J. Smalls  
Chief Judge

Jones-OP June 20 2011