

May 14, 2008

Dennis Kelleher, Esq.
Deputy Attorney General
Department of Justice
102 West Water Street
Dover, DE 19901

Mr. Leroy Hefley
280 Richard Bassett Road
Dover, DE 19901

RE: State of Delaware v. Leroy Hefley
Cr. A. No.: 07-09-1418 (Criminal Mischief < \$1000)
Case No.: 0709007937

Date Submitted: May 14, 2008

Date Decided: May 14, 2008

Decision After Restitution Hearing

Dear Mr. Kelleher and Mr. Hefley:

The defendant for the above-referenced matter was found guilty of Criminal Mischief of Under \$1,000 at his trial on November 29, 2007, and sentenced. During the sentencing, the defendant was ordered to pay restitution in an amount to be ordered and the State was given thirty days to make a recommendation as to the amount of restitution to be ordered. By letter dated February 6, 2008, and filed with the Court on that date, along with supporting documentation, the State requested that the defendant be ordered to pay restitution in the amount of \$100.46. The defendant filed an objection to the award of any restitution for this matter and the Court scheduled a hearing. This correspondence constitutes the Court's decision after the restitution hearing. The defendant is ordered to pay restitution in the amount of \$100.46 to the State of Delaware.

During the hearing for this matter, the defendant indicated that he neither contested the amount of the damage being requested, nor the fact that he caused the damage. His sole objection to the award of restitution rests on the fact that the State took over sixty days to recommend an amount for restitution to be paid by him when the State was ordered to do so within thirty days of his sentencing on November 29, 2007.

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While the State bears the burden during a restitution hearing of proving the amount of loss by a preponderance of the evidence and that the defendant caused the loss through his criminal conduct,¹ the defendant bears the burden of proving that he has been materially prejudiced by the delay of the State's request for restitution if his sole objection to the award of restitution rests on the fact that the State was tardy in its request.² The defendant has not met his burden of proving such prejudice in this case. The State's delay in requesting the restitution was less than two months. Additionally, the defendant is still on probation and is not able to demonstrate how he would be prejudiced in any way by the award of restitution, other than the fact that he would need to reimburse the State for damage that was caused by his criminal conduct. Therefore, the Court orders that the defendant pay restitution in the amount of \$100.46 to the State of Delaware. Defendant shall have sixty days from the date of this order to pay the amount due.

IT IS SO ORDERED.

Sincerely,

Charles W. Welch, III

CWW:mek

¹ *Redick v. State*, 858 A.2d 947, 951 (Del. 2004) (citing *Benton v. State*, 711 A.2d 792, 797 (Del. 1998)).

² *State v. King*, 2007 WL 4150667, at 1 (Del. Super. 2007)

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