

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 KEVIN R. ALVAREZ )  
 )  
 Defendant. )

Cr. ID. No. 1906016908

Date Submitted: May 28, 2021

Date Decided: July 9, 2021

**RESTITUTION OPINION and ORDER**

Anna E. Currier, Esquire, Deputy Attorney General, Wilmington, Delaware, for the State of Delaware.

Erika B. LaCon, Esquire, Assistant Public Defender, Wilmington, Delaware, for Defendant.

PARKER, Commissioner

Defendant Kevin R. Alvarez was charged with Violation of Privacy and Harassment of an identifiable victim (hereinafter the "Victim"), stemming from Defendant's criminal conduct that occurred on or about June 24, 2019. On November 30, 2020, Defendant pled guilty to the lesser included offense of Invasion of Privacy. As part of Defendant's sentence, the Court permitted the State to seek restitution.

The State submitted detailed documentation seeking an award of restitution in the total amount of \$3,526.33. The Victim made two claims to the Delaware Victims' Compensation Assistance Program ("VCAP"). One claim in the amount of \$316 was for Victim counseling expenses and the second claim in the amount of \$3,210.33 was for Victim relocation and housing expenses. The VCAP paid the Victim a total of \$3,526.33 from these two claims (\$316 for counseling expenses and \$3,210.33 for relocation and housing expenses). The State is seeking restitution from the Defendant for the \$3,526.33 the VCAP paid to the Victim.

The Victim's first claim was made on April 7, 2020, for reimbursement of her mental health counseling expenses/benefits. The VCAP determined that the Victim was eligible for compensation under the provisions set forth in Title 11, Chapter 90 of the Delaware Criminal Code and approved the claim for \$316.00 on May 28, 2020. Defendant does not contest this expense being imposed as restitution.

The Victim made a second claim to the VCAP seeking reimbursement for moving/relocation expenses. The Victim had signed a new lease at a different location in December 2019, with the lease term beginning on January 4, 2020, due to Defendant's criminal conduct and ongoing safety concerns. The Victim did not seek reimbursement for her moving/relocation expenses until the one-year lease term was almost up. The lease term was from January 2020 to January 2021, and it was not until December 2020 that the Victim sought reimbursement for her moving/relocation expenses.

The VCAP reimbursed the Victim's moving/relocation expenses in the total amount of \$3,210.33. Of this amount, \$720.33 was reimbursed for the first month's rent, \$797.50 was reimbursed for the last month's rent, \$97.50 was reimbursed for the application fee, and \$1,595.00 was reimbursed for the security deposit.

A restitution hearing was held on April 26, 2021. At the restitution hearing, Defendant did not contest the restitution award of \$316.00 for the Victim's mental health counseling expenses. Defendant contested, however, the imposition of a restitution award for the Victim's moving/relocation expenses.

As a preliminary matter, at a restitution hearing, it is the State's burden to prove by a preponderance of the evidence what amounts are owed to the victim.<sup>1</sup> The Court has broad discretion to determine whether restitution is appropriate, in determining the information upon which it will rely, and in crafting an award tailored to the circumstances of each individual case.<sup>2</sup> The Court may consider the victim loss statement and other evidence at the restitution hearing in crafting an award.<sup>3</sup>

Given the Victim's representations to the VCAP that she relocated due to Defendant's criminal conduct and ongoing safety concerns, the VCAP's reimbursement to the Victim for her first month's rent, last month's rent and application fee in the total amount of \$1615.33 are properly recoverable as restitution from the Defendant.

The security deposit in the amount of \$1595.00 is a different issue. Unlike rental payments and the application fee, the security deposit is a refundable deposit. The security deposit is placed in an escrow account and is returned to the tenant unless the tenant causes damage to the property beyond normal wear and tear or unless the tenant fails to pay his/her rental obligations.

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<sup>1</sup> *Benton v. State*, 711 A.2d 792, 797 (Del. 1998).

<sup>2</sup> See, *Mayer v. State*, 604 A.2d 839, 842-43 (Del. 1992); 11 *Del. C.* § 4204.

<sup>3</sup> *Pratt v. State*, 486 A.2d 1154, 1159 (Del. 1983).

The Victim sought reimbursement of the security deposit just as the rental term was ending. Had the Victim decided to move to a new location, her security deposit would have been returned to her unless, through her own actions, she jeopardized the return of the funds. Apparently, the Victim elected to renew her lease for another year. When she does decide to move to a new location, her security deposit will be returned to her.

Because the Victim will be returned her security deposit unless by her own actions (ie. damage to the property or not paying her rental obligations) she forfeits that refund, nothing is precluding the VCAP from seeking the return of its reimbursed monies for the Victim when she receives it back. It appears inappropriate, under the facts and circumstance of this case, to require Defendant to reimburse the VCAP for the Victim's security deposit, when the money will be returned to the Victim upon her vacating the leased property. Otherwise, the Defendant will be required to reimburse the VCAP for the security deposit that will be returned to the Victim. The Victim will be able to pocket the monies when they are returned to her but the Defendant would still be required to pay for damages to the Victim that were not incurred.


Under the facts and circumstances of this case, the security deposit will not be imposed as an item of restitution against the Defendant.

**RESTITUTION DECISION AND AWARD**

For the reasons set forth herein, restitution, pursuant to 11 *Del. C.* § 4106 and 11 *Del. C.* § 9014, is hereby awarded in the total amount of \$1931.33 (\$316 for mental health counseling expenses and \$1615.33 for moving/relocations expenses comprising of rental payments and the application fee).

**IT IS SO ORDERED.**

Dated: July 9, 2021

  
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Commissioner Lynne M. Parker