

May 19, 2003

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RE: State of Delaware v. Michael G. Hoffman
ID # 0207018512

Dear Counsel:

This is the Court's opinion on the restitution dispute between defendant Michael G. Hoffman ("Hoffman") and the State of Delaware (the "State"). For the reasons stated herein, the State may not seek more than \$1999.98 in restitution from Hoffman.

FACTS

Hoffman was arrested following a brawl at the home of Bruce Edge on August 9, 2002. Subsequently, the State charged Hoffman with Burglary in the first degree, two counts of Assault in the third degree, Terroristic Threatening, Offensive Touching, two counts of Criminal Mischief (less than \$1,000), and two counts of Harassment. Hoffman pled nolo contendere to Offensive Touching and one count of Criminal Mischief (less than \$1,000) and in return the State entered a nolle prosequi on the remaining charges. As part of the plea agreement, Hoffman

agreed to pay restitution to the victims, Bruce Edge and Dennis Edge (the “Victims”), for “[a]ll charged offenses.” The State seeks \$4,560.95 in restitution to compensate the Victims for personal property damaged during the fight.¹

Hoffman contests the amount of restitution sought by the State. First, Hoffman contends the Victims lost their ability to collect restitution when the State submitted the required paperwork two weeks after the date agreed upon in the plea agreement. Second, Hoffman alleges that the amount sought as restitution for victim Dennis Edge is “patently ridiculous” and not credible. Thus, Hoffman argues he is not obligated to pay restitution to this victim. Third, Hoffman believes his conviction for Criminal Mischief (less than \$1,000) limits his restitution liability to \$999.99.

DISCUSSION

According to 11 Del. C. § 4106(a):

[a]ny person convicted of . . . 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 value as a result of the action of such convicted offender and shall be ordered by the court to make restitution.

This statute was written to “expand, and not to limit, use of restitution in those cases where persons are convicted of ‘stealing, taking, receiving, converting, defacing or destroying property.’” Wyatt v. State, 498 A.2d 1088 (Del. 1985). While many cases have examined the propriety of awarding restitution in a given situation, few have studied whether specific criminal charges limit the amount of restitution available to a victim. In a prior opinion, this Court

¹Bruce Edge claims \$4,110.95 in property damage and Dennis Edge claims \$450 in damage to his clothing.

refused to extend a defendant's restitution liability to all losses associated with his or her crime. See State ex rel B.D., Del. Super., C.A. Nos. N81-01-039FA/0391FA/0148FA/0392FA/039FA, Bifferato, J. (Oct. 19, 1981) (five juveniles charged with Theft and Burglary in the third degree pled guilty to the Burglary charge). Specifically, the Court held the defendant was not responsible for losses related to the theft because he was not convicted of that offense. The Court stated:

Unless there is a factual basis on record establishing a defendant's responsibility for a victim's damages, the defendant cannot constitutionally be ordered to make restitution for the victim's loss. To hold otherwise would be to deprive such a defendant of his property without due process of law, for he would be paying for damages without it ever having been proven that he caused them. However, a defendant, whether juvenile or adult, need not have been tried and found guilty of an offense in order to establish this factual basis for his liability. If he pleads guilty to the offense, or, even if not charged, if he voluntarily admits to having committed it, . . . questioning by the court on the record prior to accepting the plea or admission will establish the factual basis and satisfy the requirement.

State ex rel. B.D., at 3. Only one Delaware opinion has explored facts similar to the issue at hand. Family Court objected to an order requiring a defendant pay \$1,272 in restitution after the defendant was charged with Criminal Mischief (less than \$500) and adjudicated delinquent of the same charge. State in the Interest of Steven P., Del. Fam., Pet. No. 97-8-289-1, Conner, J. (Mar. 31, 1989). The Court determined that restitution could not exceed \$500, as a contrary finding would "punish [the defendant] for a crime that he was not even charged with committing."² State in the Interest of Steven P., at 2. Although Delaware's view that restitution is restricted by the

²The Court, limiting the impact of its conclusion, stated the "result might have been different had the defendant been charged with a higher level or more serious offense and pled guilty . . . to a lesser included offense." State in the Interest of Steven P., at 2.

monetary limits attached to a criminal charge and conviction is the minority stance,³ courts in other states behold similar notions. These courts have limited a victim's restitution to the amount defining either the criminal charge or conviction. See United States v. Levy, 992 F.2d 1081 (10th Cir. 1993) (“restitution cannot exceed ‘the loss caused by the specific conduct that is the basis of the offense of conviction’”); State v. Hernandez, 600 N.E.2d 1234 (Ill. App. Ct. 1992) (no order to pay “restitution of sums extraneous to the charges before [the court]”); State v. Francois, 548 So.2d 1284 (La. App. 1989) (defendant originally charged with Possession of Stolen things (valued at \$200)); People v. Smith, 537 N.Y.S.2d 65 (N.Y. App. Div. 1989) (restitution “could not exceed the amount alleged to have been misappropriated by the defendant in the indictment”); State v. Olson, 754 P.2d 626 (Or. Ct. App. 1988) (defendant pays restitution for the amount defendant convicted of stealing).

Hoffman was convicted of Criminal Mischief (less than \$1,000) after entering a plea of nolo contendere. Hoffman did not plead guilty nor did he perform any act before this Court to explicitly accept responsibility for any loss greater than \$1,000. By pleading “guilty without admission” to Offensive Touching and Criminal Mischief (less than \$1,000), Hoffman admitted his responsibility for \$999.99 in damages on one count and agreed to pay restitution on all charged offenses. Given the undisputed facts of this case, only the two criminal mischief offenses raise the issue of restitution. The record is void of any indication that Hoffman

³Opinions indicating a contrary opinion include: Nix v. State, 925 S.W.2d 802 (Ark. Ct. App. 1996); O’Connell v. State, 733 So.2d 556 (Fla. Dist. Ct. App. 1999); J.L.T. v. State, 712 N.E.2d 7 (Ind. Ct. App. 1999); State v. Watts, 587 N.W.2d 750 (Iowa 1998); State v. LaCase, 512 A.2d 312 (Me. 1986); State v. Terpstra, 546 N.W.2d 280 (Minn. 1996); Campbell v. State, 5 S.W.3d 693 (Tex. Crim. App. 1999); State v. Ford, Wash. Ct. App., No. 41334-1-I, 1998 WL 795038 (per curiam) (Nov. 16, 1998).

voluntarily admitted a greater amount of liability. Furthermore, Hoffman was convicted of two of the original charges against him, not a lesser included offense. Thus, Hoffman's restitution liability is limited to \$1999.98.

CONCLUSION

For the aforementioned reasons, the State may seek no more than \$1999.98 in restitution for damages related to Hoffman's Criminal Mischief (less than \$1,000) conviction. Hoffman may, if he chooses, challenge the actual restitution sought by the State. This decision only sets a limit on the amount of restitution the State may seek. The State's right to seek restitution for the Victims is not affected by the State's failure to submit the required paperwork in a timely manner as Hoffman was not prejudiced by this delay.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary's Office