**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

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| COMMONWEALTH OF PENNSYLVANIA,<br><br>Appellee<br><br>v.<br><br>ROSE STOVER,<br><br>Appellant | IN THE SUPERIOR COURT OF PENNSYLVANIA<br><br><br><br><br><br>No. 480 EDA 2012 |

Appeal from the Judgment of Sentence Entered January 10, 2012
In the Court of Common Pleas of Delaware County
Criminal Division at No(s): CP-23-CR-0002586-2011

BEFORE: FORD ELLIOTT, P.J.E., BENDER, J., and SHOGAN, J.

MEMORANDUM BY BENDER, J.: Filed: January 11, 2013

Appellant, Rose Stover, appeals from the judgment of sentence of an aggregate term of two to twenty-three months' incarceration and $57,987.97 in restitution, imposed after she was convicted of simple assault and recklessly endangering another person (REAP). Appellant's counsel, William Wismer, Esquire, seeks permission to withdraw his representation of Appellant pursuant to ***Anders v. California***, 386 U.S. 738 (1967), as elucidated by our Supreme Court in ***Commonwealth v. McClendon***, 434 A.2d 1185 (Pa. 1981), and amended in ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009). For the reasons stated *infra*, we deny counsel's petition, vacate Appellant's sentence of restitution, and remand for further proceedings.

Appellant and her co-defendant, Michael Cziraky, were arrested and charged with various crimes following their involvement in a bar fight. After reviewing the testimony presented at Appellant's and Cziraky's trial, we summarize the facts of their case as follows. At approximately 10 p.m. on March 26, 2011, the victim, Jeffrey Welsh, arrived at Sweeney's Bar in Marcus Hook, Delaware County. Welsh had come to Sweeney's from another bar in Marcus Hook, where he had consumed four 16-ounce beers. Once at Sweeney's, Welsh drank approximately four more 12-ounce beers over the course of about an hour and a half. At some point during the night, Welsh smoked a cigarette and, after being unable to locate an ashtray, he opened the door to the women's restroom and threw the cigarette butt in the toilet. As he was exiting the restroom, he was confronted by Appellant who began yelling at him for going into the women's bathroom. Cziraky, the owner of Sweeney's Bar, also approached Welsh and together, Cziraky and Appellant continued to yell at Welsh. Welsh testified that Appellant then punched him in his face, after which she placed him in a headlock and continued to strike his face and head with her fists. Welsh testified that Cziraky joined in and also punched Welsh's face. Welsh eventually fell to the ground, at which time Appellant, Cziraky, and a third unidentified man began kicking Welsh from his waist up to and around his head.

Welsh testified that he broke free from the assault and escaped into the kitchen area of Sweeney's bar. However, the unidentified man who had been involved in the earlier assault followed Welsh into the kitchen and

punched him in the face several more times. Welsh then exited the bar and was met by police officers outside. He informed the officers that he did not need an ambulance. Instead, Welsh had a friend drive him home. However, once at home, Welsh called 911 and had an ambulance transport him to the hospital, where it was determined that he had a concussion, a broken nose, and multiple cuts and bruises. Welsh also testified that his knee was twisted during the incident. Due to these injuries, Welsh was admitted to the hospital and testified that he spent two days there. He also had to undergo physical therapy for the injury to his knee.

In addition to Welsh's testimony at trial, the Commonwealth presented several other witnesses who had been in Sweeney's Bar on the night of this incident. At least two other patrons of the bar testified that they saw Appellant place Welsh in a headlock and punch his face, with one of those witnesses also stating that he saw Appellant kicking Welsh in the head. Another witness stated that she saw Appellant kicking at something on the floor, after which she saw Welsh lying on the ground.

In her defense, Appellant called several witnesses who claimed that Welsh instigated the physical fight by pushing Cziraky, and/or by grabbing Cziraky around the throat. One witness in particular claimed that after Welsh grabbed Cziraky's throat, he saw two unknown men begin wrestling with Welsh. This witness denied seeing Appellant punch or kick Welsh. Appellant also introduced several character witnesses, each of whom

testified that Appellant had a reputation as a peaceful and law abiding person.

At the close of Appellant's trial, she was convicted of the above-stated charges. However, Cziraky, was acquitted of all the charges pending against him. Appellant was subsequently sentenced as stated *supra*. She did not file post-sentence motions, but filed a timely notice of appeal. On August 15, 2012, in lieu of a Pa.R.A.P. 1925(b) statement, her counsel, William Wismer, Esquire, filed a statement indicating his intent to submit a petition to withdraw and an ***Anders*** brief. ***See*** Pa.R.A.P. 1925(c)(4). On October 9, 2012, Attorney Wismer filed that petition to withdraw and ***Anders*** brief with this Court. On November 1, 2012, Appellant filed a *pro se* response.

"When faced with a purported ***Anders*** brief, this Court may not review the merits of the underlying issues without first passing on the request to withdraw." ***Commonwealth v. Rojas***, 874 A.2d 638, 639 (Pa. Super. 2005) (quoting ***Commonwealth v. Smith***, 700 A.2d 1301, 1303 (Pa. Super. 1997)). In ***Santiago***, 978 A.2d 349, our Supreme Court altered the requirements for counsel to withdraw under ***Anders***. Thus, pursuant to ***Anders/Santiago***, in order to withdraw from an appeal, counsel now must:

> (1) provide a summary of the procedural history and facts, with citations to the record;
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> (2) refer to anything in the record that counsel believes arguably supports the appeal;
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> (3) set forth counsel's conclusion that the appeal is frivolous; and

(4) state counsel's reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

***Commonwealth v. Daniels***, 999 A.2d 590, 593 (Pa. Super. 2010) (citing ***Santiago***, 978 A.2d at 361). This Court must then conduct its own review of the record and independently determine whether the appeal is in fact wholly frivolous. ***See id.*** at 594.

Instantly, Attorney Wismer's ***Anders*** brief provides a summary of the procedural history and facts of Appellant's case with citations to the record. It also includes a discussion of the sole issue that he determined could have arguable merit, with citations to evidence of record that could potentially support that claim. Additionally, Attorney Wismer sets forth his conclusion that an appeal on Appellant's behalf would be wholly frivolous and explains his reasons underlying that determination. He supports his rationale with citations to the record, as well as relevant case law. Therefore, we conclude that Attorney Wismer has complied with the requirements of ***Anders/Santiago***. Accordingly, we will now independently review the issue he presents. Additionally, we will assess several claims raised by Appellant in her *pro se* response to counsel's petition to withdraw. Finally, we will examine the record to determine whether there are any other issues that Appellant could arguably raise on appeal. ***See Daniels***, 999 A.2d at 594.

First, in Attorney Wismer's ***Anders*** brief, he addresses the frivolity of an argument that the trial court erred in excluding evidence of Welsh's blood

alcohol content at the time of the attack. Specifically, on cross-examination, Appellant's trial counsel, Mark Much, Esquire, asked Welsh if he was aware "that [his] blood alcohol content that night was a .306?" N.T. Trial, 11/2/11, at 133. The Commonwealth objected and, in a sidebar discussion with the court and counsel, it argued that expert testimony was required to explain Welsh's blood alcohol content, as only Welsh's blood serum, not his whole blood, had been tested for alcohol. ***Id.*** at 134. Because Appellant did not have an expert witness who could explain the difference between blood serum alcohol content and whole blood alcohol content, the Commonwealth averred that this evidence should not be admitted. ***Id.*** The court agreed and sustained the Commonwealth's objection. ***Id.*** at 139.

In his ***Anders*** brief, Attorney Wismer concludes that the trial court's ruling was appropriate. Quoting our decision in ***Commonwealth v. Michuk***, 686 A.2d 403 (Pa. Super. 1996), he explains:

> The distinction between whole blood and blood serum is significant. "Serum is acquired after a whole blood sample is centrifuged," which separates the [] blood cells and fibrin, the blood's clotting agent, from the plasma-the clear liquid is the blood serum. When blood serum is tested "the results will show a blood alcohol content which can range from between 10 to 20 percent higher than a test performed on whole blood." The reason for this is because the denser components of whole blood, the fibrin and corpuscles … have been separated and removed from the whole blood, leaving the less dense serum upon which the alcohol level test is performed. The value of the blood alcohol content in the serum is then determined. Because the serum is less dense than whole blood, the weight per volume of the alcohol in the serum will be greater than the weight per volume in the whole blood. Thus, an appropriate conversion

> factor is required to calculate [*sic*] the corresponding alcohol content in the original whole blood sample.

***Id.*** at 405-406 (citations and footnotes omitted).

From this discussion in ***Michuk***, Attorney Wismer reasons that,

> the blood alcohol level offered by Appellant was serum and would have been higher than the measurement of alcohol concentration in the victim's whole blood. Certainly[,] there is no requirement outside of [driving under the influence] jurisprudence that blood alcohol levels be proven by whole blood as opposed to serum. However, had the measurement offered by Appellant been that of whole blood, the argument could be made that such a measurement has become sufficiently mainstream as to be more widely understood by the general public. Because a conversion factor would have to be applied to reflect the victim's whole blood alcohol level, no intelligent argument could be made that the trial judge was incorrect in requiring that the serum level be explained to the jury, as it relates to the more widely understood whole blood alcohol concentration, as a condition of admission.

***Anders*** Brief at 11-12.

We agree with Attorney Wismer's rationale. "Questions regarding the admissibility of evidence rest within the trial judge's discretion, and an appellate court will reverse the judge's decision only for an abuse of discretion." ***Commonwealth v. Vandivner***, 962 A.2d 1170, 1179 (Pa. 2009) (citations omitted). Here, it was not an abuse of discretion for the court to conclude that the evidence of Welsh's blood serum alcohol content was inadmissible absent expert testimony explaining the difference between the testing of whole blood versus blood serum.

Furthermore, even if the court erred in excluding this evidence, we would agree with Attorney Wismer that Appellant was not prejudiced

because the evidence of Welsh's blood alcohol content was cumulative of other properly admitted testimony. ***Commonwealth v. Lilliock***, 740 A.2d 237, 246 (Pa. Super. 1999) ("Error is considered to be harmless where: (1) the error did not prejudice the defendant or the prejudice was *de minimis*; or (2) the erroneously admitted evidence was merely cumulative of other, untainted evidence which was substantially similar to the erroneously admitted evidence; or (3) the properly admitted and uncontradicted evidence of guilt was so overwhelming and the prejudicial effect of the error was so insignificant by comparison that the error could not have contributed to the verdict."). For instance, Marcus Hook Police Officer Louis Garay testified at Appellant's trial that on the night of the attack, Welsh appeared intoxicated, smelled of alcohol, and was slurring his speech. N.T. Trial, 11/3/11, at 7. Welsh himself admitted that he drank four 16-ounce beers before arriving at Sweeney's, and approximately four additional 12-ounce beers prior to the assault. Thus, the jury was presented with evidence to indicate that Welsh was intoxicated at the time of the attack. Accordingly, the evidence of Welsh's blood serum alcohol content was cumulative and its exclusion did not substantially prejudice Appellant.

Next, we must address several claims presented by Appellant in her *pro se* response to Attorney Wismer's petition to withdraw. In particular, we interpret Appellant's *pro se* response as raising the following assertions:

> (1) Appellant was discriminated against by the court, jury, and the Commonwealth's witnesses due to her gender and sexual orientation.

(2) Appellant's trial attorney acted ineffectively in that he (a) failed to call to the stand John Michael McEntee, who Appellant told counsel was the unidentified man involved in the assault of Welsh, (b) failed to challenge the amount of restitution where Welsh did not prove the costs he actually paid out-of-pocket, and (c) did not file a post-sentence motion challenging the weight of the evidence to sustain her convictions.

(3) There was insufficient evidence to support Appellant's convictions because the Commonwealth failed to proffer any physical evidence tying her to Welsh's assault, and the Commonwealth's witnesses were incredible.

(4) During the jury's deliberations, jurors asked to "see certain evidence," but the trial court improperly denied this request.

Appellant's *Pro Se* Response to Petition to Withdraw, 11/1/12, at 1-2 (unnumbered pages).

We begin with Appellant's argument that she was discriminated against by the court, jury, and the witnesses for the prosecution. In support of this claim, Appellant solely discusses the reasons that the jury may have been biased against her, namely because of her gender, her job as a prison guard, and her sexual orientation. Appellant argues that the jury was comprised of men and women "who were closer to middle age and could have been more prone to prejudice against lesbianism." ***Id.*** at 1. She also claims that the jury may have been influenced by "the stereotype of most prison guards as being violent and power hungry." ***Id.*** Appellant maintains that the jury's bias against her was evidenced by the fact that her co-defendant, Cziraky, was acquitted of all the charges pending against him. ***Id.***

Appellant's arguments are speculative at best. She fails to point to any specific incident or evidence that would demonstrate that the jury discriminated against her, other than the fact that it acquitted Cziraky. However, we cannot guess at why the jury found Cziraky not guilty, and we certainly cannot presume that it did so because it was prejudiced against Appellant. Appellant's other allegations regarding the juror's stereotypical views of prison guards and age-related biases against homosexuals are essentially challenges to the composition of the jury. However, Appellant's counsel participated in the jury selection process and, thus, her only avenue for raising these complaints is to argue that her counsel acted ineffectively in this regard. Such a claim may not be raised on direct appeal but, rather, must be presented in a timely-filed petition for post conviction relief pursuant to the Post Conviction Relief Act (PCRA), 42 Pa.C.S. §§ 9541-9546. ***Commonwealth v. Grant***, 813 A.2d 726, 738 (Pa. 2002) ("a petitioner should wait to raise claims of ineffective assistance of trial counsel until collateral review"); ***see also Commonwealth v. Barnett***, 25 A.3d 371 (Pa. Super. 2011) (holding that this Court cannot engage in review of ineffective assistance of counsel claims on direct appeal absent an express, knowing and voluntary waiver of review pursuant to the PCRA).

Similarly, Appellant's arguments that her trial counsel was ineffective for the various reasons set forth in issue number (2) above also must be presented in a timely petition for post-conviction relief.

In her third issue, Appellant argues that the Commonwealth failed to proffer sufficient evidence to sustain her convictions. In particular, Appellant takes issue with the lack of physical evidence tying her to the assault, such as blood on her clothing from Welsh's face, which witnesses claimed was "bleeding profusely." Appellant's *Pro Se* Response to Petition to Withdraw, 11/1/12, at 1. Welsh also contends that the Commonwealth's witnesses contradicted each other and were unbelievable.

We disagree. To begin, we note our standard of review of a challenge to the sufficiency of the evidence:

> The standard we apply in reviewing the sufficiency of the evidence is whether viewing all evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of the witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

***Commonwealth v. Troy***, 832 A.2d 1089, 1092 (Pa. Super. 2003) (citations omitted).

Appellant was convicted of simple assault and REAP. A person is guilty of simple assault if he "attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another." 18 Pa.C.S. § 2701(a). "Bodily injury" is defined as "[i]mpairment of physical condition or substantial pain." 18 Pa.C.S. § 2301. To sustain a conviction of REAP, the Commonwealth must prove that the defendant recklessly engaged in conduct that placed, or could have placed, a person in danger of death or serious bodily injury." 18 Pa.C.S. § 2705. "Serious bodily injury" is defined as "[b]odily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." 18 Pa.C.S. § 2301.

Here, our review of the record reveals that there was sufficient testimony by Welsh and the Commonwealth's other witnesses to support Appellant's convictions and, thus, the lack of physical evidence is irrelevant. Welsh testified that Appellant punched him in his face and then put him in a headlock and continued to punch his face and head. N.T. Trial, 11/2/11, at 52. When Welsh fell to the ground, Appellant, Cziraky, and another unidentified man repeatedly kicked him from his "waist up to [his] head." ***Id.*** at 54. Testimony by several Commonwealth witnesses corroborated Welsh's account of Appellant's conduct. For instance, Lisa Hernandez, a friend of Welsh's, testified that she saw Appellant and Cziraky "stomping" something on the floor, after which she "realized there was a human being on the ground and it was [Welsh]." N.T. Trial, 11/3/11, at 113. Hernandez

testified that while this "stomping" was occurring, she saw one of their other friends, Vicky McSorley, screaming, "That's enough, that's enough." ***Id.*** When McSorley took the stand, she testified that she observed Appellant put Welsh in a headlock and punch his head multiple times. ***Id.*** at 182-83. She stated that she worked her way through the crowd to Welsh and saw him lying on the floor being kicked. ***Id.*** McSorley could not see who was kicking Welsh, but "screamed at everybody to leave him alone." ***Id.*** Finally, John Soles, who is also a friend of Welsh, testified that he saw Appellant put Welsh in a headlock and hit him in the face. ***Id.*** at 210. As a result of this attack, Welsh had a concussion, cuts and bruises, a sprained knee, and his nose was broken in two places. N.T. Trial, 11/2/11, at 72, 76.

We conclude that this testimony, which was found credible by the jury, was sufficient to sustain Appellant's convictions. To the extent that Appellant argues her convictions cannot stand because Welsh and the Commonwealth's witnesses gave contradictory and inconsistent testimony, such a claim goes to the weight, not the sufficiency, of the evidence. ***See Commonwealth v. Gibbs***, 981 A.2d 274, 281-82 (Pa. Super. 2009) ("argument that the finder of fact should have credited one witness' testimony over that of another goes to the weight of the evidence, not the sufficiency") (citing, *inter alia*, ***Commonwealth v. Wilson***, 825 A.2d 710, 713-714 (Pa. Super. 2003) (a review of the sufficiency of the evidence does not include an assessment of the credibility of testimony; such a claim goes to the weight of the evidence); ***Commonwealth v. Gaskins***, 692 A.2d 224,

227 (Pa. Super. 1997) (credibility determinations are made by the finder of fact and challenges to those determinations go to the weight, not the sufficiency of the evidence). To properly preserve a challenge to the weight of the evidence, that claim must be raised before the trial court. Pa.R.Crim.P. 607(A) (claim that verdict was against weight of evidence must be raised before trial court orally or in a written motion prior to sentencing, or in a post-sentence motion). Appellant did not file a post-sentence motion raising this issue, and does not point to any place in the record where she orally presented this claim. Consequently, it is waived.

Next, Appellant avers that the court improperly denied the jury's request to see "certain evidence" during its deliberations. We assume that Appellant is referring to the jury's request to see statements "of police and witnesses," a floor plan of Sweeney's Bar, pictures of the kitchen area of the bar, and Welsh's medical records. N.T. Trial, 11/4/11, at 162-63. The court permitted the jury to see the floor plan and pictures of Sweeney's Bar, but denied its request to view the statements and Welsh's medical records.

Initially, we note that Appellant did not object to the court's denial of the jury's request at trial and, thus, this issue is waived for our review. Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal."). Nevertheless, even if Appellant had preserved this claim, we would conclude that it is meritless. Pennsylvania Rule of Criminal Procedure 646 states, "[u]pon retiring, the jury may take with it such exhibits as the trial judge deems proper, except

as provided in paragraph (C)." Pa.R.Crim.P. 646(A). While nothing in paragraph (C) prohibited the trial court from allowing the jury to see the police and witness statements or Welsh's medical records, the court's rationale for denying the jury's request was reasonable. For instance, in regard to the statements, the court directed that the jurors should "rely on [their] recollection of the testimony and what was brought out with respect to those statements," rather than "go[] through each one of those things … with particularity." ***Id.*** Furthermore, the court denied giving the jury Welsh's medical records because those documents included "100 and some pages" of complex medical terminology, some of which may not have been "particularly relevant." N.T. Trial, 11/4/11, at 163-64. Thus, the court again instructed the jury to rely on its "recollection of which parts of the medical records were emphasized during the course of the case." ***Id.*** at 164.

From the court's response to the jury's request, it is clear that the court wanted the jury to focus on what the Commonwealth and defense emphasized about the statements and medical records, rather than the particular – and possibly irrelevant - details not highlighted during Appellant's trial. The court's decision in this regard was not an abuse of discretion. Accordingly, even had Appellant preserved this issue, we would conclude that the court did not err in denying the jury's request to see the statements and medical records.

In sum, each of the issues presented by Appellant in her *pro se* response are frivolous, waived, and/or may not be raised on direct appeal. However, our independent review of the record reveals a meritorious claim regarding Appellant's sentence of restitution. In examining the sentencing transcript, we discovered that the court stated that the amount of restitution "may be reduced by any payments from insurance." N.T. Sentencing Hearing, 1/10/12, at 19. This sentence contravenes 18 Pa.C.S. § 1106(c)(1)(i), which expressly declares, "The court shall not reduce a restitution award by any amount that the victim has received from an insurance company but shall order the defendant to pay any restitution ordered for loss previously compensated by an insurance company to the insurance company." ***See also Commonwealth v. Brown***, 956 A.2d 992, 996 (Pa. Super. 2008) (holding that Medicare was entitled to restitution because, in amending section 1106 to expand the class of those eligible for restitution, "the legislature recognized that defendants should provide restitution not only to the victim directly, but to entities that incurred expenses on the victim's behalf"). Therefore, the court's direction that restitution should be reduced by any amount that Welsh's insurance company paid him was erroneous.

In terms of correcting this sentencing error, we are mindful that "we have the option either to remand for resentencing or amend the sentence directly." ***Commonwealth v. Moran***, 675 A.2d 1269, 1273 (Pa. Super. 1996) (citing ***Commonwealth v. Von Aczel***, 441 A.2d 750, 756 (Pa. Super.

1981)). However, here, we are unable to simply vacate the improper portion of the court's restitution sentence and affirm the remainder, *i.e.* the total amount the court imposed, because there is insufficient evidence of record to confirm that the sum of $57,987.97 was appropriate.

In ***Commonwealth v. Yanoff***, 690 A.2d 260 (Pa. Super. 1997), we stated that "[t]he court must … ensure that the record contains the factual basis for the appropriate amount of restitution." ***Id.*** We further mandated that

> [i]n ordering restitution, … a court must make sure that the amount awarded not only does not exceed damages to the victim, but also does not exceed the [appellant's] ability to pay. We have developed four factors that a sentencing court must consider before imposing restitution. Specifically, these factors are:
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> > (1) the amount of loss suffered by the victim; (2) the fact that defendant's action caused the injury; (3) the amount awarded does not exceed defendant's ability to pay; [and] (4) the type of payment that will best serve the needs of the victim and the capabilities of the defendant.
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> In addition, the sentencing court must apply a "but for" test in imposing restitution. We have held that damages which occur as a direct result of the crimes are those which should not have occurred but for the defendant's criminal conduct.

***Id.*** at 266.

Instantly, the entire discussion surrounding the calculation of Appellant's restitution sentence amounted to the following:

> [The Commonwealth]: … Additionally, Your Honor, there is restitution in this matter. The number that I have been given is $57,987.97, the majority of which, Your Honor, was …

> [The Court]: Medical expenses?
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> [The Commonwealth]: They're all medical expenses, but the majority of which, [$]50,000 and change, was incurred at Crozer-Keystone Hospital on the date of the incident, and the following – and the days following there. … [T]he victim was in the hospital for a couple of days.
>
> [The Court]: Right. $50,000 worth? I mean, even – I just – even by hospital standards, it sounds excessive. Three days in the hospital, two days, whatever it was, right?
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> [Appellant's Counsel]: It's a lot of money, Judge.
>
> [The Commonwealth]: It is … a lot of money, I … agree, but, nevertheless…
>
> [The Court]: Okay. I guess they're the bills you get if you don't have medical insurance?
>
> [Appellant's Counsel]: Yes, Your Honor.
>
> [The Court]: Wow. But I'm sure that the victim didn't have any of the resources to pay that.
>
> [The Commonwealth]: Well, he's on the hook for those.
>
> [The Court]: I understand that. Right.
>
> [The Commonwealth]: Right. So certainly I would imagine if [Appellant's counsel] is able to negotiate those…
>
> [The Court]: All right. I understand.

N.T. Sentencing Hearing, 1/10/12, at 6-8.

This limited discussion can hardly be construed as a proper assessment of the factors set forth in ***Yanoff***, and the remainder of the record does little more to explain the basis for the total amount of restitution sought by the Commonwealth. While a document entitled "Medical Treatment" was entered into evidence and set forth a list of Welsh's medical providers, dates of treatment, and the amount spent, it gave no specific

information about the actual treatment Welsh received. For instance, the document listed that $32.19 was spent at CVS, and that $11.78 was spent at Walmart, but there is no indication of what was purchased. Furthermore, some of Welsh's medical bills that were entered into evidence are rather confusing, such as the bill from Crozer Keystone Hospital totaling $50,570. That document is nearly incomprehensible in terms of what medical treatment Welsh actually was provided. Finally, nothing in the record evidences that the court assessed what particular injuries Appellant's conduct actually caused, or what amount of restitution Appellant could pay.

In sum, it is clear from our review of the record that the court improperly accepted the Commonwealth's restitution request of $57,987.97 without sufficient evidence demonstrating the basis for that total, and without examining the factors set forth in ***Yanoff***. Therefore, we vacate Appellant's sentence of restitution and remand for resentencing.[1] At Appellant's restitution resentencing hearing, we direct the court to conduct a thorough examination of the appropriate factors and provide a more complete record regarding the basis for the amount of restitution it imposes. Additionally, the court may not reduce the amount of restitution by any monies paid to Welsh by his insurance company. 18 Pa.C.S. § 1106(c)(1)(i).

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[1] Appellant does not challenge her sentence of imprisonment, and we ascertain no error in that sentence from our review of the record. Thus, we affirm Appellant's judgment of sentence to the extent that the court imposed an aggregate term of two to twenty-three months' incarceration.

Finally, in light of the fact that we are remanding for further proceedings, we deny counsel's petition to withdraw and direct that he represent Appellant at her resentencing proceeding.

Judgment of sentence affirmed in part, vacated in part. Counsel's Petition to Withdraw Denied. Case remanded for further proceedings consistent with this Memorandum. Jurisdiction Relinquished.

President Judge Emeritus Ford Elliott concurs in the result.