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14-0950

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

BERKELEY COUNTY CIRCUIT CLERK 2014 AUG 2[illegible] PM 12:17 VIRGINIA STATE CLERK

STATE OF WEST VIRGINIA

V.

TAYLOR R. WASSON

Case No. 13-F-213
Judge Silver, Div. III

RESTITUTION ORDER

This matter came before the Court upon the State's request for restitution filed on April 25, 2014, the Defendant's objection and memorandum opposing restitution filed on May 2, 2014, the State's memorandum of law in support of restitution filed on May 15, 2014, and the appearance of the parties for taking evidence or argument on this issue on April 28, 2014, June 3, 2014, and July 28, 2014. Upon consideration of all, the Court makes the following findings of fact and conclusions of law.

1. The Defendant, Taylor Wasson, was indicted in the October, 2013, term of the grand jury for Burglary, Grand Larceny, Conspiracy to Commit Burglary, and Misdemeanor Unlawful Possession of a Firearm.
2. The charges arose from the Defendant burglarizing the home of Samuel and Betty Boynton on May 10, 2013.
3. On January 6, 2014, the Defendant was convicted of Burglary pursuant to a plea agreement. The amount of restitution owed Mr. and Mrs. Boynton was not set forth in the agreement. The remaining counts of the indictment were dismissed pursuant to the agreement.
4. On April 25, 2014, the State requested the Court order the following restitution:

PA
PD ✓
BCpr
7/26/14

$5,739.80 to Samuel E. Boynton or
Betty Boynton

203 North Kentucky Avenue
Martinsburg, WV 25401

12,404.95 claimed
- 1,186.22 9 depreciation
- $5,478.93 settlement from State Farm

$5,739.80

$5,478.93 to State Farm Insurance Company
Claim # 482N06590 (Boynton)
P.O. Box 106126
Atlanta, GA 30348-6126

5. On June 3, 2014, Mrs. Betty Boynton testified about the Burglary to her house, the items stolen, and their value.
6. At that hearing, the State introduced State Farm Content Inventory Summary documents listing the stolen items and their value, State's Exhibits 1 and 3, and a letter Mrs. Boynton sent State Farm, State's Exhibit 2, describing the unrecovered firearms and their value.
7. The State also admitted the Defendant's written confession, State's Exhibit 4, where the Defendant admitted to stealing an X-box, X-Box games, 3 TVs, and 9 guns. Three of the firearms were recovered during the Defendant's arrest.
8. Mrs. Boynton also testified on June 3, 2014, that, on the day of the crime, she did not tell police that jewelry was stolen because she did not know the items were stolen. Ms. Boynton testified that a day or two after the Burglary she noticed a piece of jewelry on the floor of her home and investigated her jewelry collection. Upon her investigation, she discovered a number of missing pieces of jewelry.
9. Through the testimony of Mrs. Boynton and State exhibits, the Court finds that Mr. and Ms. Boynton had a homeowners insurance policy through State Farm

Insurance Company. This policy had a $ $1,000 deductible, a $2,500 aggregate policy limit for firearms, and a $1,000 aggregate policy limit on jewelry and fur. The total amount claimed by Mr. and Mrs. Boynton for firearms and jewelry was $5,043.80 over the total aggregate policy limit for these items.

10. The Court finds that the loss claimed by Mr. and Mrs. Boynton as a result of the Burglary was $12,404.95. The Court further finds that State Farm paid Mr. and Mrs. Boynton $5,478.93. The State or defense did not contest the amount of depreciation calculated by State Farm which was $1,186.22. Therefore, the Court finds that Mr. and Mrs. Boynton were not been reimbursed by a third party or the Defendant for the remaining $5,739.80 of loss.

11. The Court also finds that State Farm insurance was not reimbursed by the Defendant for the $5,478.93 it paid Mr. and Mrs. Boynton for the loss of property taken during the Burglary.

12. W.Va. Code §61-11A-4 requires the Court when sentencing a defendant convicted of a felony or misdemeanor offense to order a defendant pay restitution to a victim who suffered economic injury or loss that includes damage to, loss of, or destruction of property unless the court finds restitution to be wholly or partially impractical as set forth in article 11A.

13. W.Va. Code §61-11A-4(e) specifically allows for restitution payments to third parties who reimbursed the victim.

> *"The court shall not impose restitution with respect to a loss for which the victim has received or is to receive compensation, except that the court may, in the interest of justice, order restitution to any person who has compensated the victim for loss to the extent that the person paid the compensation. An order of restitution shall require that all*

restitution to victims under the order be made before any restitution to any other person under the order is made."

14. The Court concludes the term "person" under W.Va. Code § 61-11A-4(e) includes insurance companies who reimbursed a victim for loss sustained by a criminal defendant.

    W.Va. Code §2-2-10:

    "The following rules shall be observed in the construction of statutes, unless a different intent on the part of the Legislature be apparent from the context:

    (i) the word 'person' or 'whoever' shall include corporations, societies, associations and partnerships, if not restricted by the context;"

15. The Court further concludes that holding otherwise would serve to unjustly enrich criminal defendants and encourage more crime.
16. The Court finds that it would be in the interests of justice for the Defendant to not only pay Mr. and Mrs. Boynton for their unrecovered loss, but also to pay State Farm Insurance for the amount the company paid the victims.

It is ORDERED that the Defendant, Taylor R. Wasson Jr. is ordered to pay restitution in the amount $5,739.80 to Mr. and Mrs. Boynton and $5,478.93 to State Farm Insurance Company. The defendant is ordered to pay restitution within one year of his release from incarceration.

It is further ordered the Defendant pay restitution and court costs while incarcerated. The warden of the correctional facility in which the Defendant is

eventually committed is ordered to deduct from the earnings of the Defendant the restitution and costs in this matter pursuant to W. Va. Code § 25-1-3c.

The Defendant is ordered to submit his restitution payment or payments to the Berkeley County Circuit Clerk located at 380 W. South St., Suite 2200, Martinsburg, WV 25401. The Clerk is directed to send all restitution payments to Mr. and Mrs. Boynton first until the Defendant's obligation to those victims is fulfilled and then send future payments to State Farm. The Clerk shall disperse payments as follows:

$5,739.80 to	Samuel E. Boynton or Betty Boynton 203 North Kentucky Avenue Martinsburg, WV 25401
$5,478.93 to	State Farm Insurance Company Claim # 482N06590 (Boynton) P.O. Box 106126 Atlanta, GA 30348-6126

A co-defendant, Jason Vanmeter, Berkeley County Circuit Court case no. 13-F-210, was also ordered to pay restitution to Samuel and Betty Boynton. By agreement, and based upon his involvement in the crime, Mr. Vanmeter was ordered to pay only $2,300.00 in restitution. That portion of restitution to Betty and Samuel Boynton is, therefore, joint and several. The Clerk is directed to note any payments made by Jason Vanmeter in 13-F-210 towards restitution in Mr. Wason's case, 13-F-213, to reduce Mr. Wasson's obligated amount. The Boyntons are not to receive more than $5,729.80 total in restitution payments from the Berkeley County Circuit Clerk in 13-F-210 and 13-F-213.

The Court notes the objection of the Defendant to ordering restitution in this case.

The Clerk shall enter this order and send copies of this order to Thomas Stanley of the Public Defender Corporation at 295 Monroe St., Martinsburg, WV 25404, and to Gregory K. Jones, Assistant Prosecuting Attorney, 380 W. South St., Suite 1100, Martinsburg, WV 25401.

8/25/14
ENTERED

GRAY SILVER, III, Circuit Judge
23rd Judicial Circuit

TRUE COPY
ATTEST
Virginia M. Sine
Clerk Circuit Court
Deputy Clerk

Prepared by:

Gregory K. Jones, A.P.A.

WASSON, TAYLOR JR.
13-F- 747 to 751
5-20-13 @ 11:15 -
MAG. LOWE

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

IN RE: APPOINTMENT OF PUBLIC DEFENDER IN CRIMINAL CASES WHERE DEFENDANT HAS BEEN DETERMINED INDIGENT

ADMINISTRATIVE ORDER NO. 12-AD-85

ORDER

This matter comes on this 7th day of September 2012, and it appearing to the Court that W.Va. Code §29-21-16 requires that in circuits with a Public Defender Office, determination of indigence shall be made by a public defender office employee, and it further appearing that W.Va. Code §29-21-20 requires that the Circuit Court or the Supreme Court of Appeals issue an order of appointment so that the immunity provisions of said section apply;

It is hereby ORDERED that the Public Defender Corporation and its employed attorneys are appointed to represent all criminal defendants that are deemed eligible for public defender services in Berkeley County, West Virginia effective October 1, 2012.

It is further ORDERED that if a conflict exists which precludes Public Defender representation, the Chief Public Defender will notify the Court and a panel attorney will be appointed.

Enter: September 7, 2012

CHRISTOPHER C. WILKES, JUDGE

A TRUE COPY
ATTEST
Virginia M. Sine
Clerk Circuit Court
By: Karen J. Maughan
Deputy Clerk

BERKELEY COUNTY
CIRCUIT CLERK
2012 SEP -7 PM 2:43
VIRGINIA M. SINE, CLERK