

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III
JUDGE**

April 10, 2012

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

Mr. David V. Haith
223 Andrews Lake Rd.
Felton, DE 19943

RE: State of Delaware v. David V. Haith
Cr. A. No.: K11-06-0529 (RSP < \$1500)
Case No.: 1105027099

Decision After Restitution Hearing

Dear Ms. Hutchison and Mr. Haith:

The defendant for the above-referenced matter was sentenced for Receiving Stolen Property Under \$1500 on August 3, 2011. The State has requested that the defendant be ordered to pay restitution in the amount of \$1,099.00 for damage that was caused to a Kawasaki motor bike and \$2,618.47 for damage caused to a Honda motor bike. The defendant contests the amount of restitution being requested by the State and requested a hearing. This correspondence constitutes the Court's decision after the restitution hearing.

When seeking restitution, the State bears the burden of proving the amount of loss by a preponderance of the evidence. *Benton v. State*, 711 A.2d 792 (Del. 1998). After a careful consideration of the evidence provided at the restitution hearing for this matter,

the Court finds that the State has proven that two motor bikes owned by Mr. Ray Thomas were damaged. The motor bikes are a Kawasaki motor bike, which incurred damages in the amount of \$1,099.00, and a Honda motor bike, which incurred damages in the amount of \$2,618.47. However, the issue of restitution does not end there.


The defendant is only responsible to pay restitution for the damages incurred by his criminal conduct. *State v. Hoffman*, 2003 WL 21221811, at *1 - *2 (Del. Supr. 2003). The defendant was originally charged by Information with Conspiracy Third Degree, in violation of 11 *Del. C.* Section 511(1), and Receiving Stolen Property Under \$1500, in violation of 11 *Del. C.* Section 851. During the restitution hearing, the State acknowledged that the Receiving Stolen Property Under \$1500 charge was only for the Kawasaki motor bike, and did not involve the Honda. The Defendant also testified that he did not have anything to do with the Honda motor bike. Two other people used that motor bike.

When the defendant was convicted, he only pled guilty to the Receiving Stolen Property charge. The Conspiracy Third Degree charge was *nolle prossed*. With the consent of the State and the defendant, the Court reviewed the record of the defendant's colloquy when he pled guilty to the Receiving Stolen Property charge. At the time, there was no mention that the defendant would be responsible for restitution on both charges and that such an agreement had been made as part of the plea agreement. Given these facts, the Court is convinced that the only damages for which the defendant is liable to pay restitution are those which result from his criminal conduct, i.e. only the Kawasaki motor bike.

The defendant further contends that he should only pay one-third of the damages to the Kawasaki motor bike as two other individuals were involved in the incident with the motor bikes. However, at his restitution hearing, he acknowledged that he was the individual that used the stolen Kawasaki motor bike and that the other two individuals rode the Honda. Additionally, the other two individuals have not been ordered to pay restitution with respect to the Kawasaki motor bike. Therefore, the Court finds that the defendant is responsible for the entire amount of the damage caused to the Kawasaki and, therefore, orders him to pay restitution to Mr. Ray Thomas in the amount of \$1,099.00, which represents the damages suffered by Mr. Thomas as a result of the defendant's criminal conduct. The defendant shall have four months from the date of this order to pay the restitution due.

IT IS SO ORDERED.

Sincerely,



Charles W. Welch, III

CWW:mek

pc: Mr. Ray Thomas