

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,	)	
	)	
Plaintiff,	)	
v.	)	Criminal ID Nos.
	)	
JORGE REZA-AYALA,	)	1503016342
*****	)	*****
JOSHUA SCRUGGS,	)	1503016361
*****	)	*****
KALEEF SMYRE,	)	1503016366A
	)	1503016366B
*****	)	*****
BRANDON KASINATH,	)	1503014277
*****	)	*****
CARLOS HERNANDEZ,	)	1503014824
*****	)	*****
JORGE HERNANDEZ,	)	1602001201
*****	)	*****
	)	
Defendants.	)	

RESTITUTION OPINION AND ORDER

This matter involved a March 22, 2015 shooting of a vehicle and its occupants at Rogers Manor Park in the Rogers Manor Neighborhood in New Castle County, Delaware. The above referenced six defendants conspired to rob the occupants of the vehicle. In carrying out their conspiracy, two occupants of the vehicle, and the vehicle itself, were shot.

Jose Louis Padilla-Gonzales, the driver of the vehicle, suffered gunshot wounds to his left shoulder and arm. He had an open wound that was about the size of a baseball.

Miguel Escobar, the front seat passenger, was shot in the face and sustained massive injuries to the entire right side of his face and head. Both of the victims were transported to Christiana Hospital Emergency Room for medical care. Miguel Escobar was immediately taken

to surgery to remove a gunshot pellet from the right side of his brain. He sustained numerous gunshot pellets in his face, head and stomach area. He lost his right eye as a result of the shooting.

All of the Defendants were charged with attempted murder (the shooting of Miguel Escobar), assault first degree (the shooting of Jose Padilla-Gonzalez), robbery, conspiracy and a number of related crimes arising out of the incident.

All of the Defendants were convicted of conspiracy. Five of the six defendants also pled guilty to robbery. The sixth defendant, Kaleef Smyre, whose charges were bifurcated for trial, was convicted at trial for conspiracy and criminal mischief and pled guilty to possession of a firearm by a person prohibited.

At sentencing, each of the Defendants was ordered to pay restitution. The restitution award was ordered to be joint and several as to each of the Defendants.

Restitution Proceedings

The State submitted a restitution report, with supporting documentation, initially seeking a restitution award in the total amount of \$170,988.05, which was subsequently supplemented to reflect continuing expenses incurred by the victims or on their behalf.

The restitution requested by the State represented outstanding medical expenses owed to Christiana Care for medical services rendered to Mr. Escobar; outstanding medical expenses owed to Christiana Care for medical services rendered to Mr. Padilla-Gonzales; out of pocket losses suffered by Mr. Padilla-Gonzales; amounts paid by the Victims' Compensation Assistance Program ("VCAP") on behalf of Mr. Padilla-Gonzales; the balance of monies owed to Westside Health; and the balance of the monies owed to Cheswold Fire Company.

Only one defendant, Joshua Scruggs, opposed a few of the requests for restitution. The other Defendants adopted and joined Defendant Scruggs' opposition as to those few requests. The opposed requests included the restitution sought on behalf of Christiana Care for the victims' medical expenses, and the restitution sought by the VCAP for the payments made to Mr. Padilla-Gonzalez or on his behalf. The remaining requests, for Mr. Padilla-Gonzalez's out of pocket losses, and for monies owed to Westside Health and Cheswold Fire Co., were unopposed by all defendants.

A restitution hearing was held on May 2, 2017 to address the opposed requests for restitution. At the hearing, the Court ruled on all the restitution requests except for one, the outstanding medical bills owed to Christiana Care for the medical services provided to Mr. Padilla-Gonzalez.

Following the restitution hearing, the Court ordered supplemental submissions from the parties on the remaining outstanding issue. Supplemental submissions, with additional supporting documentation, was provided as requested by Court.

Restitution

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.¹ 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.² The Court may consider the victim loss statement and other evidence at the restitution hearing in

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

² See, *Mayes v. State*, 604 A.2d 839, 842-43 (Del. 1992); 11 *Del. C.* § 4204.

crafting an award.³ The Court has broad authority to order the Defendants to pay restitution for the victim's medical expenses.⁴

Where the amount of restitution is geared directly to the amount of the victim's loss caused by the Defendants' criminal activity, proportionality is already built into the order. In this matter, by shooting their victims, the defendants have essentially determined their restitution obligation.⁵ The restitution awarded herein is based directly on the actual losses caused to the victims by the Defendants' criminal conduct. The defendants conspired to rob, and in carrying out that robbery shot the two victims causing serious injuries to both men. The Defendants are responsible for the medical expenses incurred by their victims as a result of the shooting, for the victims' out of pocket expenses, and for the payments made by the VCAP on the victims' behalf.

Upon careful consideration of the record, the testimony of the witnesses, the supporting documentation and the arguments of the parties, restitution is hereby awarded as follows:

1) Out of Pocket Losses Incurred by Jose Padilla-Gonzalez \$23,177.00

This restitution request represents the direct out of pocket losses incurred by Mr. Padilla-Gonzalez. It represents lost wages and some damages Mr. Gonzalez incurred that the VCAP did not pay in full. This request was not opposed by any defendant. This request is awarded as unopposed.

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

⁴ *Wyatt v. State*, 498 A.2d 1088 (Del. 1985).

⁵ *Benton v. State*, 711 A.2d 792, 800 (Del. 1998).

2) Westside Health

\$59.00

Initially, the State requested \$127.00, but later reduced the request to \$59.00. At first, Defendant Scruggs opposed this request but later withdrew his opposition. Accordingly, this request is awarded as unopposed.

3) Cheswold Fire Co.

\$110.00

Initially, Defendant Scruggs opposed this request but later withdrew his opposition. Accordingly, this request is awarded as unopposed.

4) Victims' Compensation Assistance Program "VCAP"

\$25,000

At the time the State submitted its initial request for restitution, the VCAP had paid \$7,467.00 on Mr. Padilla-Gonzalez's behalf. Defendant Scruggs opposed the request on the basis that the VCAP had not provided the necessary documentation or affidavit to support its claim.

The VCAP subsequently paid additional monies on Mr. Padilla-Gonzalez's behalf. The VCAP paid a total of \$25,000, of which \$23,592.00 was paid for medical bills, and \$1,408.00 was paid to cover the loss of Mr. Padilla-Gonzalez's vehicle, which had been seized by the police at the crime scene and not returned.

By Affidavit dated March 29, 2017, the VCAP updated its claim to reflect the full amount of the payments made to Mr. Padilla-Gonzalez or on his behalf. The Affidavit provided by the VCAP provided the necessary documentation supporting its request.

Accordingly, restitution is awarded to the VCAP in the amount of \$25,000, in order to reimburse the VCAP for the amounts it paid to Mr. Padilla-Gonzalez and/or on his behalf as a result of the incident at issue.

5) Miguel Escobar Outstanding Medical Expenses

\$4,505.19

The State requested restitution in the amount of \$8,773.05 to be awarded for the outstanding medical expenses owed to Christiana Care by Miguel Escobar as a result of being shot in the face, stomach and head in the subject incident. The amount requested appeared to include some duplication of expenses, and the Court therefore reduced the amount to \$4,505.19, to accurately reflect the amount of the medical expenses which currently remains outstanding.⁶

Mr. Escobar qualified for Medicaid coverage for most of his medical expenses. The \$4,505.19 is the only portion of Mr. Escobar's medical services that was not covered by Medicaid.

Defendant Scruggs opposed this restitution request. Apparently, Mr. Escobar made a claim to the VCAP for these unpaid medical expenses and the VCAP rejected the claim on the grounds that he "was the perpetrator of the crime." It is important to emphasize that Defendant Scruggs does not himself contend that Mr. Escobar was a perpetrator of the crime. It is, in fact, undisputed that both Mr. Escobar and Mr. Padilla-Gonzalez were victims in this incident. None of the Defendants have ever contended to the contrary. It is therefore undisputed that Mr. Escobar was a victim of the shooting and is entitled to recover for his outstanding medical expenses which resulted from that shooting.

⁶ See, September 28, 2016 e-mail from Carol A. Perozzi at Christiana Care to Nicole M. Wilson advising that the total balance owed by Miguel Escobar to Christiana Care is \$4505.19.

Defendant Scruggs also opposed this restitution request because Mr. Escobar qualified for Medicaid for most of his medical expenses. Defendant Scruggs contends that if Christiana Care cannot seek the outstanding medical expenses from Mr. Escobar, himself, then it cannot seek a restitution award from the Defendants for those outstanding medical expenses. Defendant Scruggs is correct in this regard. If Christiana Care is not permitted to seek the outstanding medical expenses from Mr. Escobar then the Defendants are likewise not responsible for paying those medical expenses.

However, the State represented, and provided supporting documentation, that the medical expenses sought herein were for the portion of his medical expenses not covered by Medicaid and for which Mr. Escobar remains personally responsible. As long as Mr. Escobar remains personally responsible for paying the medical expenses, the Defendants remain personally responsible, joint and severally, to pay those medical expenses on his behalf.

Restitution is awarded in the amount of \$4505.19 for Mr. Escobar's outstanding medical expenses to Christiana Care.

6) Jose Padilla-Gonzalez Outstanding Medical Expenses \$118,874.94

Mr. Padilla-Gonzalez was shot in the left shoulder and arm. He had an open wound that was about the size of a baseball. Mr. Padilla-Gonzalez did not qualify for Medicaid coverage and had no other health insurance. Christiana Care Health System represented that after deducting the payments received from the VCAP for Mr. Padilla-Gonzalez's medical expenses, his remaining balance is \$118,874.94.⁷ This balance is for medical services provided to Mr. Padilla-Gonzalez

⁷ See, May 30, 2017 letter from Patricia Watson of Christiana Care Health system to the Delaware Department of Justice, with supporting documentation.

from March 22, 2015 (the day he was shot) to November 16, 2016, and encompasses all hospital, ancillary health and physician services for treatment of his resulting injuries from the shooting.

Christiana Care represented that the total balance represents the retail prices that are the same for all Christiana Care Health System's services for all patients. The account balances have not been offset or reduced as a collections asset. Christiana Care Health System is the payee for these medical services. Any agency involved in the collections of the medical expenses is acting as an agent of Christiana Care Health System.⁸

Defendant Scruggs' primary opposition to this restitution requested is that the retail prices charged by Christiana Care are far greater than those discounted rates it accepts as payment in full for Medicare, Medicaid and private insurers. Defendant Scruggs contends that the retail prices charged by Christiana Care does not represent the fair market value of the services rendered and that some lesser amount should be awarded.

Defendant Scruggs also objects to the sufficiency of the submissions by the State seeking this restitution award.

Although the retail rates charged by Christiana Care to uninsured patients are greater than the reimbursement rates Christiana Care receives from patients covered by government (Medicaid and Medicare) and private insurance, this two-tiered structure reflects the corresponding risks of medical care providers when treating insured versus uninsured patients. The "retail rates" charged to uninsured patients are frequently uncollected while insured patients are billed at reduced contract rates but the insurance providers pay these reduced rates in full. With contract rates there

⁸ See, May 30, 2017 letter from Patricia Watson of Christiana Care Health system to the Delaware Department of Justice, with supporting documentation.

are reduced payments but it is not accompanied by the uncertainty and delay that accompanies the retail rates.⁹

In this case, the victim, Mr. Padilla-Gonzalez, an uninsured victim, was billed at Christiana Care's usual and customary retail rate for uninsured patients. Mr. Padilla-Gonzalez remains liable to Christiana Care for the full amount of his medical bills. Since Mr. Padilla-Gonzalez remains liable to Christiana Care for the full amount of his medical bills, the perpetrators of the crime causing his injuries should likewise be answerable for the full amount of his medical bills, not for some arbitrarily selected lesser amount.

This Court cannot force Christiana Care, a nonparty to this action, to accept some lesser amount for medical services rendered. If the obligation to pay the medical expenses is arbitrarily reduced for the Defendants, then the victim is left holding the bag, and remains solely liable to Christiana Care for the remaining portion of the medical expenses outstanding.

The law should favor the victim of the wrong over that of the wrongdoer. As between the victim and the assailant, the assailant should be responsible for the victim's medical expenses to the same extent that the victim is liable to the third-party health care provider.

In the tort context, it is a longstanding principle of Delaware tort law that the tortfeasor must take his victim as he finds him and is liable for the full extent of the damage he has inflicted.¹⁰ The tortfeasor, with few exceptions, is not even entitled to the benefit of the victim's insurance coverage to the extent any insurance coverage exists and reduces the amount owed by the victim.

⁹ See, *Smith v. Mahoney*, 150 A.3d 1200, 1207 (Del. 2016).

¹⁰ See, *Lipscomb v. Diamiani*, 226 A.2d 914, 918 (Del.Super. 1967); *Reese v. Home Budget Center*, 619 A.2d 907, 910 (Del. 1992); *Tabor v. Miller*, 389 F.2d 645, 647-48 (3rd Cir. 1968)

The tortfeasor continues to remain liable for the full value of those medical expenses.¹¹ Exceptions have recently been made for victims qualifying for Medicaid and Medicare coverage, when the victim's medical expenses have been paid in full by governmental insurance and nothing more is owed to hospital for medical services rendered.¹²

Unlike the tort context, in this criminal matter, any and all credits or reductions made to reduce the victims' outstanding obligation to Christiana Care are to be fully credited to the Defendants. However, the Defendants must take their victims as they find them. Mr. Escobar qualified for Medicaid coverage for most of his medical expenses, and the Defendants received the benefit of that governmental insurance to the full extent that Mr. Escobar received the benefit. As previously stated, the Defendants are liable for Mr. Escobar's medical expenses that were not covered by Medicaid and for which he continues to remain liable to Christiana Care.

Mr. Padilla-Gonzalez did not qualify for Medicaid coverage and is completely uninsured. Given the heightened risks of nonpayment for uninsured patients, Christiana's usual and customary retail rates, rather than any contract rate, were charged for his medical services. Since Mr. Padilla-Gonzalez was uninsured there was no insurance policy in effect, and therefore no contract rate applicable, to cover his medical services rendered. The fair market value for the services provided to uninsured patients is higher than the contracted value for those services provided to insured patients in light of the increased risks of nonpayment for those services.

¹¹*Mitchell v. Haldar*, 883 A.2d 32 (Del. 2005)(Under "collateral source rule, tortfeasor is required to bear the cost for the full value of his negligent conduct and any reduction in the medical expenses from plaintiff's insurance coverage is not credited against the tortfeasor's liability).

¹²*Stayton v. Delaware Health Corp. et al.*, 117 A.3d 521, 523-524 (Del. 2015)(exception to collateral source rule made for plaintiffs covered by Medicare); *Smith v. Mahoney*, 150 A.3d 1200, 1205-1208 (Del. 2016)(exception to collateral source rule made to plaintiffs covered by Medicaid).

The Defendants are responsible to their victims for their medical expenses to the extent that the victims remain liable to Christiana Care for their medical expenses. Once the victim no longer owes a debt to the hospital for its services, nothing more is owed to the victim.¹³

Mr. Padilla-Gonzalez, an uninsured victim, is liable to Christiana Care for the full amount billed, and therefore, the defendants remain liable to the victim for the full amount billed. Any adjustments made to the charges would be unjust and unwarranted since no such adjustments were made to the victim.

The State has established by the preponderance of the evidence that the medical expenses charged by Christiana Care are the usual and customary retail rates charged to all its patients. The State has also established by the preponderance of the evidence that the medical expenses charged by Christiana Care were for hospital, ancillary health and physician services related to the resulting injuries to Mr. Padilla-Gonzalez as a result of being shot on March 22, 2015.

Although these charges are higher than those with insurance coverage would be required to pay, there is no evidence to demonstrate that these charges are significantly higher than what the victim would have been charged at another hospital in the region, or that the victim would have been charged a significantly reduced rate at another hospital within the region. There has not been a sufficient showing that these charges for medical services are unreasonable or not at the fair market value for uninsured medical services.

Defendants' liability for the victims' medical expenses owed to Christiana Care is in lock-step with the victims' liability to Christiana Care. If Christiana Care adjusts its outstanding bill

¹³ *Stayton v. Delaware Health Corp. et al.*, 117 A.3d 521, 523-524 (Del. 2015); *Smith v. Mahoney*, 150 A.3d 1200, 12075-1208 (Del. 2016).

for whatever reason, because of write-offs, pay-offs, or compromised claims, this restitution award is to be likewise adjusted. Any compensation made by a third party is to be credited to the Defendants' restitution order at the time the payment is made to the victim or on the victim's behalf.¹⁴ Defendants are not liable to Christiana Care for medical expenses that the victims are not required to pay the provider. Whatever the victims owe, Defendants remain obligated to pay. When reduced, the amount owed is reduced. If written-off, the obligation is extinguished.

Restitution is awarded in the amount of \$118,874.94 for Mr. Padilla-Gonzalez's outstanding medical expenses to Christiana Care.

Restitution Payments

The Delaware Supreme Court instructed that restitution should cover the victim's own out-of-pocket expenses and losses as a first priority.¹⁵ The Court has broad discretion to craft an award tailored to the circumstances of each individual case.¹⁶ Under the facts and circumstances of this case, this overarching priority would not be met if payments were first applied to the VCAP.¹⁷ Therefore, payments in this matter should first be applied to Mr. Padilla-Gonzalez's direct out of pocket losses and then to the VCAP, followed by the other payments as ordered herein.

¹⁴ See, *Locklear v. State*, 692 A.2d 898 (Del. 1997).

¹⁵ *Pratt v. State*, 486 A.2d 1154, 1161 (Del. 1984).

¹⁶ See, *Mayes v. State*, 604 A.2d 839, 842-43 (Del. 1992).

¹⁷ 11 Del. C. § 4106(c).

CONCLUSION

For the reasons set forth herein, restitution is hereby awarded, joint and severally as to all the above-captioned Defendants, as follows:

1) Out of Pocket Losses Incurred by Jose Padilla-Gonzalez	\$23,177.00
2) Westside Health	\$59.00
3) Cheswold Fire Co.	\$110.00
4) Victims' Compensation Assistance Program "VCAP"	\$25,000.00
5) Miguel Escobar Outstanding Medical Expenses	\$4,505.19
6) Jose Padilla-Gonzalez Outstanding Medical Expenses	<u>\$118,874.94</u>
TOTAL RESTITUTION AWARDED	\$171,726.13

IT IS SO ORDERED.

Dated: October 19, 2017


Commissioner Lynne M. Parker