

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
TELEPHONE (302) 856-5264

May 23, 2018

Amanda Nyman, Esquire
Department of Justice
114 East Market Street
Georgetown, DE 19947

John Daniello, Esquire
Office of Defense Services
14 The Circle, 2nd Floor
Georgetown, DE 19947

RE: State v. David Shrieves
Restitution Hearing held March 16, 2018
Case ID 1512019000

Dear Counsel:

The defendant was convicted of felony theft and conspiracy by plea and was sentenced to Level 5 time suspended for probation. Restitution was ordered as part of the plea agreement. The defendant requested a restitution hearing on November 3, 2016. A number of hearing dates were scheduled but had to be delayed given defendant's incarceration out-of-state and for other reasons partly attributed to defendant. The hearing was finally held on March 18, 2018.

At the hearing, the victim, Clifford Cubbage, testified and provided

background information. Further, the State introduced four exhibits into evidence related to the crimes and stolen property. The victim operated a lawn and yard maintenance company. Defendant, David Shrieves, and a co-defendant, Christopher Glasgow, stole equipment from the victim's trailer and storage facility on or about Friday, November 13, 2016. Before the crimes, they performed work for the victim. Their motive appeared to be selling the victim's property for drugs. When the loss was reported on Tuesday, November 17, 2015 the victim listed the stolen items which was part of the police report.¹ The total amount listed was approximately \$13,885.00.² As the investigation proceeded, eleven items were recovered.³ The restitution request, therefore, was reduced to \$12,135.00.⁴

At the hearing, through direct and cross examination, the victim shared his experience and familiarity with the value for the stolen property, literally the tools of his trade. As an owner, his testimony about the fair market value of the stolen property is competent.⁵ The victim considered depreciation and shared other reasons to support his estimates. His testimony was credible.

¹ State's Exhibit 4 - the police reports

² State's Exhibit 1 - separately displayed list

³ State's Exhibit 2 - items recovered from three sources

⁴ State's Exhibit 3 - amount claimed for three items reduced from initial report

⁵ *Davis v. State*, 453 A.2d 802, at 803 (Del. 1982).

The law is well settled that the fair market value at the time of the theft is the normal measure to determine restitution.⁶ An owner may provide the opinion; expert testimony is not required.⁷ A victim's loss statement prepared by the police may be relied upon by the Court in determining restitution.⁸ The list in the police report was submitted 4 days after the crimes and the estimates are practically contemporaneously made. The amount of restitution is determined by the preponderance of the evidence standard with the burden on the State.⁹

This burden was carried for all except for the recovered and miscellaneous tool items. Eleven items were recovered from another individual, a shed, and pawn shop. As to this group, however, it appeared some were in working condition or could be used with relatively minor repairs. The total claimed for them amounted to \$1,780.00. Further, there is a discrepancy in the amount claimed for miscellaneous tools. The police report lists value at \$1,000.00 while lists request a \$2,000.00 value.¹⁰ Therefore after hearing the evidence and considering the burden of proof, the amount of restitution is reduced by \$2,780.00

⁶ 11 *Del.C.* § 224(1).

⁷ 31 A Am. Jur. 2d Expert and Opinion Evidence § 230.

⁸ *Pratt v. State*, 486 A.2d 1154 (Del. 1984).

⁹ *Redick v. State*, 858 A.2d 947 (Del. 2004).

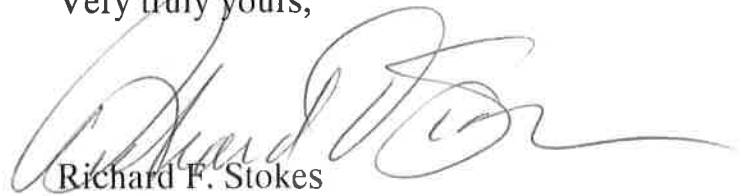
¹⁰ Exhibit 4; Exhibit 1,3.

for an amount of \$9,355.00.

A modified sentencing order will be generated to reflect this decision as well as a civil judgment.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Richard F. Stokes", written in black ink.

Richard F. Stokes

RFS:tls

cc: Prothonotary