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### Nature of Proceedings

The Appellee entered a guilty plea to Offensive Touching in the Court of Common Pleas, to resolve a criminal charge arising from a domestic violence incident that took place on November 23, 2008. As a result of the Appellee's conduct in this altercation, the victim of domestic violence sustained injury and was unable to work, and received compensation in the amount of \$12,107.23 from the Victims' Compensation Assistance Program (hereinafter, "VCAP"). The compensation was documented by extensive medical records and lost wages attributed by medical professionals to the conduct of the Appellee on the date of arrest.

For purposes of sentencing, VCAP filed a timely claim for reimbursement for compensation paid to the crime victim, and the State of Delaware sought restitution from the Appellee in the amount of \$12,107.23. The Appellee and his attorney were provided with documentation of what was paid to the victim, or to whom on her behalf, when, and for what purpose. The Appellee did not present evidence to dispute the claim, other than to deny responsibility. The Appellee at no time sought to withdraw his plea of guilty.

The Court's Investigative Services Office reviewed the documentation provided by VCAP, and recommended that the Court require that the Appellee pay restitution in the amount of \$12,107.35. The Appellee requested a hearing on

restitution, which was held by the Court on December 13 and 20, 2013. At the hearing, the State submitted VCAP documentation, including the police incident report, the claim forms, and ledger entries showing compensation paid to the victim and medical providers, as well as medical treatment records, including a physician's disability report, for the injuries sustained in the domestic violence incident.<sup>1</sup> The State also presented testimony from the records custodian regarding the VCAP file materials. The Appellee testified briefly and denied causing injury or having any restitution or reimbursement obligation. No medical testimony was presented by the Appellee to dispute causation of the injuries or to dispute the amount of the bills.

The Court denied the claim for reimbursement, and held that the Appellee had no legal obligation to pay restitution, because "VCAP is not a victim".<sup>2</sup> The Court held that VCAP's ability to recover for compensation paid to a crime victim was limited to a civil lawsuit against the criminal defendant in the Superior Court.

VCAP filed a timely appeal from this decision to the Superior Court. After full briefing, the Order of the Court of Common Pleas was affirmed by the Superior Court, without opinion.

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<sup>1</sup> The crime victim did not exercise her statutory right to speak at sentencing.

<sup>2</sup> Opinion at 4.

## Summary of Argument

1. The Court of Common Pleas had the duty, in sentencing a criminal defendant in a case arising from a domestic violence incident, to order the defendant to reimburse VCAP for payments of medical bills, prescriptions, and lost wages made to and on behalf of the victim. The statutory mandate for reimbursement does not require that VCAP be characterized as a victim of the crime; but rather demands that the criminal be held accountable for the consequences of the injury caused to the crime victim. The Court erred as a matter of law in denying reimbursement to VCAP for compensation paid pursuant to statute for a valid claim.

2. The failure of the Court of Common Pleas to impose a compensating fine for the purpose of reimbursing VCAP was based on factual findings that were clearly wrong and unsupported by the evidentiary record. The uncontradicted evidence of the police investigation and the medical documentation conclusively established that the victim sustained injuries caused by the appellee that resulted in medical expenses and lost wages reimbursed by VCAP. There was no factual or legal basis for the Court to deny reimbursement. The Superior Court compounded the error by adopting the holding of the lower Court without comment.

3. The only legal conclusion possible from the evidence presented to the Court of Common Pleas is that the appellee was criminally responsible for causing

injury to the victim that resulted in compensation paid by VCAP for medical treatment, prescriptions, and lost wages. The Court of Common Pleas erred as a matter of law in failing to impose on the Appellee the mandatory statutory obligation to reimburse VCAP for these payments made on the part of the victim. The failure of the Superior Court to correct this error jeopardizes the financial security of the Victims' Fund by depriving VCAP of reimbursement through the statutory compensating fine.



### Statement of Facts

On November 23, 2008, the Appellee dragged the victim, his former girlfriend, from his house, feet first<sup>3</sup>, knocking her unconscious, and causing injuries to her neck and head. She reported the incident to the Delaware State Police, and it was investigated, and the Appellee was charged with domestic violence. He later entered a guilty plea to Offensive Touching as a result of the incident.

The domestic violence victim was treated by Lucas J. Beerepoot, M.D., a diplomate of the American Board of Psychiatry and Neurology, beginning in March of 2009. The victim complained of headaches, neck pain, problems with concentration and memory, sleep disorder, balance issues, irritability, and depressed mood. Dr. Beerepoot rendered a diagnosis of post-concussion syndrome, cervical sprain, and post-traumatic stress disorder. He urged the victim to “stop working and take rest to let her brain heal”. He found that the victim was disabled as a result of traumatic brain injuries sustained in the domestic violence incident in November of 2008.<sup>4</sup>

Dr. Beerepoot referred the victim to Katrian Streiff, M.D. a psychiatrist. Dr. Streiff evaluated the victim on May 7, 2009, and received a history of the

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<sup>3</sup> A-3-5; A-82.

<sup>4</sup> A-18,19.

November 23, 2008 altercation with the Appellee. Her symptoms included nightmares, depression, intrusive thoughts, agitation, and irrational fears. The diagnosis was post-traumatic stress disorder and major depressive disorder. Other residual symptoms included visual distortions, inability to read for extended periods, depression, anxiety, and severe migraines. The victim was thus unable to work.<sup>5</sup>

The victim was referred to Robert Sergott, M.D. at the Wills Eye Hospital, where she was seen for evaluation on July 17, 2009. Her complaints from the November 23, 2008 domestic violence incident included visual distortion, tunnel vision, and blurring.<sup>6</sup>

As a result of the domestic violence, the victim was medically disabled and unable to work at her job from April 13, 2009 until July 10, 2009, a period of eleven weeks, resulting in a net loss of \$8,734.77 in wages, for which she received payment from VCAP. The period of disability was documented by her medical providers.<sup>7</sup> The victim also incurred a total of \$3,372.58 in medical and prescription expenses, and was reimbursed by VCAP for that amount. The date of the VCAP award was September 29, 2010, and the full amount of compensation paid was \$12,107.35.

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<sup>5</sup> A-20.

<sup>6</sup> A-27-29.

<sup>7</sup> A-11-17.

At the restitution hearing, the State of Delaware presented documentation of the injuries sustained, the diagnoses, the treatment rendered by the various providers, the medications prescribed, and an accounting of the medical and prescription bills and lost wages that were paid by VCAP. Maggie Gall, a VCAP employee familiar with the file, testified, and was cross-examined by counsel for the Appellee. Lisa Ogden, the VCAP Director and an attorney, also appeared before the Court to explain the process by which VCAP documents injuries and other expenses as related to an act of domestic violence, and thus subject to compensation.

The Appellee testified, and acknowledged that he entered the guilty plea to Offensive Touching as a result of the domestic violence incident on November 23, 2008.<sup>8</sup> At the restitution hearing, he admitted only to grabbing the victim by the wrist and leading her out of his house and into his truck.<sup>9</sup> He also admitted that he was rude.<sup>10</sup> In response to a leading question from his lawyer, the Appellee agreed with a characterization of the victim's injuries as "bogus".<sup>11</sup>

The Appellee failed to present any medical evidence or other testimony to support the bald assertion that the victim's claims were "bogus". There was no

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<sup>8</sup> A-84.

<sup>9</sup> A-85.

<sup>10</sup> A-85,86.

<sup>11</sup> A-86.

effort to contradict the specific expert findings in the medical reports, including the finding of disability. The Appellee testified that he simply did not want to pay restitution to anybody.<sup>12</sup>

Lisa Ogden, the VCAP Director, explained to the Court how victims apply for compensation and provide documentation, and how claims are investigated and paid. Where the victim is disabled as a result of a crime of violence, as here, the lost wages attributable to the offender's conduct are calculated and paid during the period of disability, in this case eleven weeks. Finally, Ms. Ogden explained that the Victims' Compensation Fund depends in part on recovery of funds paid through restitution to replenish the Fund balance and make compensation available to other crime victims.

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<sup>12</sup> A-87.

**I. A CRIMINAL DEFENDANT IS LEGALLY OBLIGATED REIMBURSE VCAP FOR MEDICAL EXPENSES AND LOST WAGES PAID DUE TO INJURIES SUSTAINED BY A CRIME VICTIM AS A RESULT OF DOMESTIC VIOLENCE.**

A. Question Presented

Does a criminal defendant in a domestic violence case have a legal obligation to pay restitution for medical expenses and lost wages sustained by the crime victim?<sup>13</sup>

B. Standard of Review

An appeal from a decision of the Court of Common Pleas in a criminal case is upon both the law and the facts. *State v. Cagle*, 332 A.2d 140, 142-143 (Del.Supr.1974). Criminal appeals from the Court of Common Pleas are reviewed on the record by the Superior Court. 11 *Del.C.* §5301(c). That Court functions in the same manner as this Court, in its position as an intermediate appellate court, when considering an appeal from the Court of Common Pleas. *Baker v. Connell*, 488 A.2d 1303, 1309 (Del.1985). In such an appeal, the Superior Court (in the first instance) has the duty to review the sufficiency of the evidence and to test the propriety of the findings below. The reviewing court may make findings of fact that contradict those of the Trial Judge, where the record reveals that the findings

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<sup>13</sup> The VCAP claim for reimbursement was preserved by counsel, A54-A66; and through the documentation introduced, A73-A74 and A99-A102; and the testimony presented, A102-A111; in support of the claim at the hearing before the Honorable Alex J. Smalls, President Judge, Court of Common Pleas, on December 13, 2013, and on December 20, 2013.

below are clearly wrong and the appellate judge is convinced that a mistake has been made which, in justice, must be corrected. Findings of fact will be approved upon review only when based on the proper exercise of judicial discretion in accepting or rejecting 'live' testimony. *Barks v. Herzberg*, 206 A.2d 507 (Del.1965).

The Court of Common Pleas holding denying restitution, affirmed without opinion by the Superior Court, was a mixed question of law and fact. Where, as here, errors of law are alleged, this Court must review the Court of Common Pleas decision for errors in formulating or applying legal precepts. *Downs v. State*, 540 A.2d 1140, 1144 (Del.1990). *See also duPont v. duPont*, Del.Supr., 216 A.2d 674, 680 (1966) ("We have the duty, not only to review the evidence in search of factual support for the findings below, but also for the purpose of testing the propriety of those findings."), and *Levitt v. Bouvier*, Del.Supr., 287 A.2d 671, 673 (1972) (Supreme Court reviews appeals from Superior Court trials to determine factual findings sufficiently supported by the record and the product of an orderly and logical deductive process).

### C. Merits of Argument

The Court of Common Pleas had broad authority to order restitution, as well as to enable the victim or the State of Delaware to enforce the restitution obligation as a civil judgment. 11 *Del.C.* §4101(a), (b), and (c). The focus of restitution is on

the harm sustained by the victim, and the responsibility of the offender to make reimbursement as a sanction for his criminal conduct. Court of Common Pleas Criminal Rule 32 provides that the Court shall, at sentencing for any offense enumerated in 11 *Del.C.* §9401(1)<sup>14</sup>, afford the Attorney General an opportunity to submit a “victim impact statement detailing the physical, psychological and economic effects of the crime on the victim.” C.C.P.Cr.R. 32(a)(1)(D). *See also* 11 *Del.C.* §4331(d) and (e) (requiring a description of “physical, psychological, or economic injury” and a determination of “any fees or costs for psychological or counseling services”) *and* §4415 (regarding a conference with the victim for purposes of the presentence report).

The purpose of restitution is to make the victim whole, either through direct payment of lost wages, or reimbursement of providers. The General Assembly created VCAP to provide interim compensation to deserving crime victims who could establish losses attributable to offenders like the Appellee, in defined categories and limited amounts, and subject to investigation and verification by the agency. In so doing, the legislative intent was always for the offender to be ultimately responsible for reimbursement of the agency for compensation paid to the victim. As a matter of law, VCAP stands in the shoes of compensated victims,

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<sup>14</sup> The crime of Offensive Touching is set forth in §9401 as an included offense.

for purposes of recovering restitution from the offenders responsible, as a critical part of sentencing.

There is nothing in the Code that limits the payment of restitution to crime victims themselves, as opposed to providers, insurers, and others who have paid interim compensation for losses sustained by crime victims as a result of domestic violence. Those who have made payments on behalf of crime victims are entitled to receive restitution, just as are those who have provided services and are owed money by the victim. The offender who caused injury has no standing to question to whom restitution is ultimately paid, so long as the amount is based on legitimate and verified claims of loss attributable to his conduct.

The decision of the Superior Court in *Schafferman v. State*, 2013 WL 4716350 (Del.Super. August 30, 2013), does not support Appellee's gambit here to avoid restitution, and was misinterpreted by the court below. Its holding can readily be distinguished. Here, unlike in *Schafferman*, VCAP sought an award of restitution at sentencing through the statutory vehicle of a "compensating fine" pursuant to 11 *Del.C.* §9018. Judge Young in *Schafferman* pointed out that such a fine at sentencing was a proper vehicle to reimburse VCAP. *Id.* at 2. Moreover, the Court in *Schafferman* admitted that the source of payment of losses sustained by a victim should not determine whether the criminal defendant should pay restitution for the losses he caused:



First, it is counter-intuitive to have a system that precludes recovery for an expense caused by a perpetrator, whether it is for the original human victim or his indemnitor. Second, as indicated above, 11 Del.Code § 4106(c) not only presumes compensation to VCAP, but gives it priority. *Id.* at 2.

The ruling in *Schafferman* was limited by its author to the peculiar facts presented in that case, namely the failure of the State to seek a compensating fine or reimbursement of VCAP at sentencing. In essence, the Court ruled that the State had waived the right to seek reimbursement. No such waiver can be implied here. The Court in *Schafferman* did foresee the issue now squarely presented by a timely request under the statute: “The issue at a later sentencing where this problem may arise will be dealt with at that point.” *Id.* There could be no clearer indication that Judge Young did not intend to bar consideration of a proper claim by VCAP for restitution.

And now the point foreseen by Judge Young has been reached, in a case where there is no procedural bar to reimbursement of VCAP through a “compensating fine”. The dicta in *Schafferman* should have been applied by the Superior Court in this case. As Judge Young noted, it would be counter-intuitive to make the criminal defendant’s restitution obligation contingent on who paid legitimate expenses on an interim basis. Put differently, the law does not require that the victim pay medical and prescription bills, and forego payment of lost wages, in order for the offender to owe restitution. The proper focus at sentencing

should be on the harm caused by the offender, and making the victim whole, and not on who the ultimate payee is.

The holding by the Court of Common Pleas, adopted by the Superior Court without further comment, finds no support in any Delaware decisions, and would reverse decades of practice, thereby creating a windfall for undeserving perpetrators of domestic violence. The Superior Court has routinely ordered criminal defendants to pay restitution to third parties such as doctors, hospitals, and even insurance companies, for services rendered and compensation paid to crime victims. There is no reason why VCAP should be treated any differently. Rather, as *Schafferman* recognizes, reimbursement of VCAP, through a “compensating fine”, is a priority of the legislature. The legislative intent is crystal clear: to create a revolving fund for crime victims that is reimbursed through payments from the perpetrators, as ordered at sentencing. 11 *Del.C.* §4106(c).

The court below erred as a matter of law in perceiving a bar in this case to the payment of restitution by the offender to VCAP. The court ignored the central purpose of restitution, which is to make the victim whole, while allocating full responsibility to the offender for his conduct. The only issue before the court below at sentencing was whether the losses sustained by the victim and paid by VCAP were attributable to the conduct of the Appellee. They were. The

uncontradicted record reflects that the State of Delaware was entitled to an order of restitution measured by the compensation paid by VCAP.

**II. WHERE THE EVIDENCE ESTABLISHES THAT THE VICTIM WAS COMPENSATED FOR INJURY AND DISABILITY CAUSED BY THE CRIMINAL ACT OF THE APPELLEE, VCAP HAS FULL STATUTORY AUTHORITY TO RECOVER REIMBURSEMENT THROUGH A COMPENSATING FINE PAID BY THE OFFENDER.**

A. Question Presented

Does the Court of Common Pleas, at the sentencing of a domestic violence offender, have the authority to impose a “compensating fine” on the convicted criminal defendant, in order to reimburse the Victims’ Compensation Assistance Program for compensation paid to the crime victim?<sup>15</sup>

B. Standard of Review

An appeal from a decision of the Court of Common Pleas in a criminal case is upon both the law and the facts. *State v. Cagle*, 332 A.2d 140, 142-143 (Del.Supr.1974). Criminal appeals from the Court of Common Pleas are reviewed on the record by the Superior Court. 11 *Del.C.* §5301(c). That Court functions in the same manner as this Court, in its position as an intermediate appellate court, when considering an appeal from the Court of Common Pleas. *Baker v. Connell*, 488 A.2d 1303, 1309 (Del.1985). In such an appeal, the Superior Court (in the first instance) has the duty to review the sufficiency of the evidence and to test the propriety of the findings below. The reviewing court may make findings of fact

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<sup>15</sup> The VCAP claim for reimbursement through a “compensating fine” was preserved by counsel, A54-A66; and through the documentation introduced, A73-A74 and A99-A102; and the testimony presented, A102-A111; in support of the claim at the hearing before the Honorable Alex J. Smalls, President Judge, Court of Common Pleas, on December 13, 2013, and on December 20, 2013.

that contradict those of the Trial Judge where the record reveals that the findings below are clearly wrong and the appellate judge is convinced that a mistake has been made which, in justice, must be corrected. Findings of fact will be approved upon review only when based on the proper exercise of judicial discretion in accepting or rejecting ‘live’ testimony. *Barks v. Herzberg*, 206 A.2d 507 (Del.1965).

The Court of Common Pleas holding denying restitution, affirmed without opinion by the Superior Court, was a mixed question of law and fact. Where, as here, errors of law are alleged, this Court must review the Court of Common Pleas decision for errors in formulating or applying legal precepts. *Downs v. State*, 540 A.2d 1140, 1144 (Del.1990). *See also duPont v. duPont*, Del.Supr., 216 A.2d 674, 680 (1966) (“We have the duty, not only to review the evidence in search of factual support for the findings below, but also for the purpose of testing the propriety of those findings.”), and *Levitt v. Bouvier*, Del.Supr., 287 A.2d 671, 673 (1972) (Supreme Court reviews appeals from Superior Court trials to determine factual findings sufficiently supported by the record and the product of an orderly and logical deductive process).

### C. Merits of Argument

In addition to restitution, the Court has the option of imposing a “compensating fine” on the defendant under the authority of 11 *Del.C.* §9018.

“The amount of such fine shall be in the discretion of the court and shall be commensurate with the malice shown and the injury done to the victim.” *Id.* Payments from the offender, on account of a compensating fine, are deposited into the Victims’ Compensation Fund. *Id.* This source of reimbursement is distinct from the statutory right of the State to recover compensation paid by VCAP from the criminal defendant through the filing of a civil action. 11 *Del.C.* §9014.

The choice of words used by the General Assembly in authorizing a “compensating fine” at sentencing was deliberate. The purpose is both to reimburse the Victims’ Fund and to punish the offender. The measure of the fine is both the malice of the offender and the injury to the victim that resulted. In this case, the Appellee admitted dragging the victim from his house to his truck, a malicious act even by his self-serving account. The injury he caused can be measured by the documented medical treatment and period of disability causing the lost wages.

The compensation paid by VCAP is a fair measure of the loss sustained by the victim, because the General Assembly set forth narrow criteria for determining a crime victim’s eligibility for compensation. Compensation is available under Delaware law to victims of domestic violence or abuse, 11 *Del.C.* §9002(5)(g), as well as victims of offenses in the Criminal Code containing characteristics of assault and other crimes of violence. 11 *Del.C.* §9002(5)(a). VCAP may award

only “the amount of pecuniary loss actually and reasonably sustained by reason of the personal injury in question minus the amount the claimant has or will receive as indemnification from any other source, including any applicable insurance.” 11 *Del.C.* §9009(1). “Pecuniary loss” for purposes of an award of compensation encompasses medical expenses, including psychiatric care and mental health counseling of the victim, as well as loss of past or future earnings (including, but not limited to, reimbursement for vacation, sick and compensatory time) because of a disability resulting from such personal injury. 11 *Del.C.* §9002(9). The agency is not compelled to provide compensation in any case, nor is it compelled to award the full amount claimed. 11 *Del.C.* §9009(3). In this case, the record reflects that VCAP did not award the full amount claimed - evidence that the agency properly exercised its discretion under the statute.

A crime victim seeking compensation must file a written statement of claim accurately describing the crime and circumstances which brought about the injury.<sup>16</sup> The application must state the time and place the injury occurred, the names of all persons involved, and the amount claimed by the applicant. 11 *Del.C.* §9012(a). VCAP is required by law to initiate an investigation of the claim within thirty days of the filing of the claim. After this investigation, the Agency renders a

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<sup>16</sup> The victim’s statement of claim appears at A-6-8.

decision on whether or not to award compensation to the claimant, and if an award is made, the amount of that award.<sup>17</sup> *Id.*

In a decision dated September 29, 2010<sup>18</sup>, VCAP determined that the claimant in this case was a victim of domestic violence, based on the police report of the November 23, 2008 incident.<sup>19</sup> The agency further determined that the victim sustained injuries in the incident, as a direct result of appellee's conduct, that caused her to incur medical bills and to miss work for a period of time. Compensation was awarded in the amount of \$3,372.58 for out-of-pocket medical expenses, from January 9, 2010 through June 3, 2010. Compensation was also awarded for lost wages in the amount of \$8,734.77, from April 13, 2009 through July 10, 2009.

The Court of Common Pleas erred as a matter of law in failing to assess the Appellee with a compensating fine, payable to the Victims' Fund, in the full amount claimed. The Appellee did not contest the documentation submitted by VCAP, and did not present any medical testimony to rebut the opinions of three doctors as to the cause-and-effect relationship between the domestic violence incident on November 23, 2008 and the injuries sustained. Appellee's lame assertion that he could not have caused injury, and did not want to pay restitution,

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<sup>17</sup> The agency's decision with respect to the victim is found at A-9, 10.

<sup>18</sup> A-9, 10.

<sup>19</sup> A-3-5.



was unsupported and unworthy of consideration by the court below. Rather, it reflects that the Appellee is nothing more than a deadbeat who refuses to take responsibility for the consequences of his criminal acts. A “commensurate” fine would be for the full amount of the compensation paid by VCAP to the victim. The clear intent of the General Assembly was to hold such offenders to account by requiring reimbursement of the Victims’ Fund as a penalty as sentencing. The record below provided a clear basis for the court below to impose a compensating fine, and the failure to do so was reversible error.

**III. THE COURT BELOW ERRED IN APPLYING THE LAW MANDATING REIMBURSEMENT OF VCAP TO FACTS ESTABLISHING THAT A VICTIM OF DOMESTIC VIOLENCE WAS COMPENSATED FOR INJURY AND DISABILITY CAUSED BY THE APPELLEE.**

A. Question Presented

Did the evidence presented to the Court support the State's request that a criminal defendant in a domestic violence case pay as restitution, the full documented amount of compensation received by the crime victim for medical expenses and lost wages caused by the criminal defendant?<sup>20</sup>

B. Standard of Review

An appeal from a decision of the Court of Common Pleas in a criminal case is upon both the law and the facts. *State v. Cagle*, 332 A.2d 140, 142-143 (Del.Supr.1974). Criminal appeals from the Court of Common Pleas are reviewed on the record by the Superior Court. 11 *Del.C.* §5301(c). That Court functions in the same manner as this Court, in its position as an intermediate appellate court, when considering an appeal from the Court of Common Pleas. *Baker v. Connell*, 488 A.2d 1303, 1309 (Del.1985). In such an appeal, the Superior Court (in the first instance) has the duty to review the sufficiency of the evidence and to test the propriety of the findings below. The reviewing court may make findings of fact

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<sup>20</sup> The VCAP claim for restitution was preserved by counsel, A54-A66; and through the documentation introduced, A73-A74 and A99-A102; and the testimony presented, A102-A111; in support of the claim at the hearing before the Honorable Alex J. Smalls, President Judge, Court of Common Pleas, on December 13, 2013, and on December 20, 2013.

that contradict those of the Trial Judge where the record reveals that the findings below are clearly wrong and the appellate judge is convinced that a mistake has been made which, in justice, must be corrected. Findings of fact will be approved upon review only when based on the proper exercise of judicial discretion in accepting or rejecting 'live' testimony. *Barks v. Herzberg*, 206 A.2d 507 (Del.1965).

The Court of Common Pleas holding denying restitution, affirmed without opinion by the Superior Court, was a mixed question of law and fact. Where, as here, errors of law are alleged, this Court must review the Court of Common Pleas decision for errors in formulating or applying legal precepts. *Downs v. State*, 540 A.2d 1140, 1144 (Del.1990). *See also duPont v. duPont*, Del.Supr., 216 A.2d 674, 680 (1966) ("We have the duty, not only to review the evidence in search of factual support for the findings below, but also for the purpose of testing the propriety of those findings."), and *Levitt v. Bouvier*, Del.Supr., 287 A.2d 671, 673 (1972) (Supreme Court reviews appeals from Superior Court trials to determine factual findings sufficiently supported by the record and the product of an orderly and logical deductive process).

### C. Merits of Argument

The defendant entered a plea of guilty to a crime of domestic violence and was subject to the full sentencing authority of the Court of Common Pleas. The

police report and medical file document a domestic violence incident in which the innocent victim sustained significant trauma, both physical and emotional, at the hands of the defendant, resulting in neurological and psychiatric treatment, including prescriptions, and a period of disability. While there is a prior history of abuse, three medical professionals have attributed the symptoms and treatment and disability, for which the victim was partially compensated, to the November 23, 2008 incident. The Appellee failed to produce any expert medical opinion or other evidence to contradict these findings.

Numerous Delaware cases have held that unrebutted medical opinion supported by objective tests is conclusive to establish causation. *Amalfitano v. Baker*, 794 A.2d 575, 577 (Del.2001); *Maier v. Santucci*, 697 A.2d 747, 748 (Del.1997). To dispute causation, a defendant must submit an expert medical opinion. *Russell v. Kanaga*, 571 A.2d 724, 732 (Del.1990). Where the defendant seeks to question medical causation, his burden is to produce competent expert opinion disputing the views of the various treating physicians: that the injury and disability would not have occurred, but for the November 2008 Offensive Touching incident. *See Reese v. Home Budget Center*, 619 A.2d 907, 911 (Del.1992) (psychiatric expenses for treatment of emotional and anxiety disorders following work accident).

Appellee asserted below that “[t]here is no evidence in the VCAP file that identifies the November 23, 2008 events between [Appellee] and [the victim] as the cause of the injuries for which VCAP compensated [the victim].”<sup>21</sup> That statement is demonstrably false, as it ignores the overwhelming expert medical opinion evidence set forth above, which is taken directly from the VCAP file, and which was not rebutted by the Appellee. Instead the Appellee could only speculate that the victim’s complaints might be the result of prior “accidents” or injuries. This assertion, which is unsupported by any medical opinion, is contradicted by the records and the opinions of multiple professionals concerning causation. The only factor cited, other than the November 2008 incident, is past abuse inflicted by the Appellee, hardly a viable defense to his restitution obligation.

The Appellee relied on the police report concerning the November 23, 2008 incident to support his claim, admittedly made to avoid restitution, that the victim’s claims of harm were “bogus”. That report, prepared by Delaware State Police Trooper First Class Mark Hogate, contains this overview of the incident: “The Male Defendant Dragged His Girlfriend, By Her Legs, Out of His House, During A Verbal Dispute.” The Domestic Violence incident was reported at 1659 hours, or 4:59 p.m. The defendant is listed as six feet tall and weighing 300 pounds.<sup>22</sup>

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<sup>21</sup> Defendant’s Memorandum at ¶6.

<sup>22</sup> The victim is described in the medical records as 5’7” in height and 180 pounds.

Trooper Hogate interviewed both the appellee and the victim. The victim described an argument which caused the defendant to grab her wrists, while she was seated, causing her to fall to the floor. The defendant then grabbed her legs and proceeded to drag her toward the door of his house, in an effort to throw her out. The victim grabbed at a coffee table, causing an incense vial to shatter and spill on her blue shirt. She eventually left the dwelling and called police.

The appellee denied any physical altercation, claimed that he “never touched” the victim<sup>23</sup>, and specifically denied any glass breaking or shattering, any incense being spilled, or any cleanup involving the victim’s blue shirt. With the consent of the appellee, the Trooper examined the contents of his kitchen trash can, and found glass fragments, the scent of incense, and subsequently was given the blue shirt described by the victim, ripped in half by the appellee and used to clean up the spilled incense.

A defendant who has entered a guilty plea to an offense cannot, at sentencing, deny committing the offense in order to avoid punishment. *In Re Blansfield*, 1978 WL 194977 (Bifferato, J. Sept. 15, 1978). By pleading guilty, the Appellee waived his constitutional right to trial, including the right to dispute the evidence against him and to present evidence on his own behalf. *Sheppard v. State*, 367 A.2d 992, 994 (Del.1976). The sole procedural vehicle for the

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<sup>23</sup> This statement is contradicted by the Respondent’s testimony at sentencing, A-\_\_\_ [T-34], admitting that he dragged the victim out of the house and to his truck by her wrists.

defendant to avoid the consequences of his guilty plea would be a motion to withdraw the plea. *See* C.C.P.Cr.R. 32(d).

Appellee, while making statements inconsistent with his guilty plea, has not sought to withdraw it. Where the appellee was ably represented by counsel and the Court engaged in the full plea colloquy, C.C.P.Cr.Rule 11(c), withdrawal, if sought, should not be favored. Seeking to avoid the human cost of his conduct would not be a “fair and just reason” to allow Appellee to withdraw his plea. *See Blackwell v. State*, 736 A.2d 971, 972 (Del.1999) (Motion to withdraw guilty plea denied, based on lack of cause or prejudice).

Based on this evidence, the Court of Common Pleas had the statutory obligation to order Appellee to reimburse VCAP, either through a “compensating fine” or an order of restitution. The payment of \$12,107.35 in lost wages and medical bills was documented by VCAP, and the conduct of the appellee on November 23, 2008 was established as the proximate cause of these expenses. This evidence was not contradicted by the Appellee. VCAP acted properly in compensating the victim for her losses due to the criminal act of the defendant. VCAP has carried its burden of proving its right to reimbursement, and the appellee has failed to present evidence in rebuttal. VCAP is thus entitled to full reimbursement.

The Court of Common Pleas erred as a matter of law in failing to award restitution or to order reimbursement for injuries and lost wages caused by the criminal who pled guilty to a domestic violence offense. Contrary to the Court's faulty analysis, no criminal defendant is relieved of the legal obligation to make restitution, merely because the victim has received interim payments from an agency of the State created for that purpose. VCAP 'stands in the shoes' of the crime victim, for purposes of reimbursement. To allow a convicted offender to escape the consequences of domestic violence, where the cost of medical treatment and lost wages has been documented and compensation has been paid to the victim, is an absurd result that ignores legislative intent. The General Assembly clearly intended that a criminal defendant should reimburse the Victims' Fund for losses sustained by a victim of domestic violence. VCAP was entitled to reimbursement at sentencing in the form of a "compensating fine". Such a fine both replenishes the Fund and punishes the offender for the consequences of his violent acts. The decision below should be reversed, with instructions to the court below to order the offender to pay to VCAP the full amount of compensation paid to the domestic violence victim, \$12,107.35.

/s/ Ralph K. Durstein, III  
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Attorney for Appellant

Dated: February 10, 2015

## **Trial Court Judgment and Rationale**

1. Order of the Superior Court, Hon. John A. Parkins, Jr., dated December 4, 2014.
2. Order and Judgment of the Court of Common Pleas, Hon. Alex Smalls, Chief Judge, dated April 10, 2014.

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

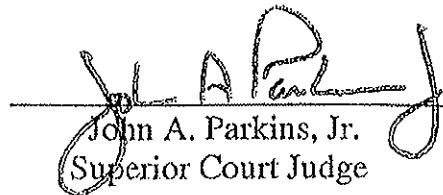
STATE OF DELAWARE, )  
 )  
 Appellant – Plaintiff, )  
 )  
 v. ) Case ID: 0811016584  
 )  
 DAVID P. CHIANESE, )  
 )  
 Appellee – Defendant. )  
 )

ORDER

WHEREAS, the State of Delaware having appealed from an opinion and judgment of the Court of Common Pleas dated April 10, 2014,

It is hereby **ORDERED** that the opinion and judgment of the Court of Common Pleas is **AFFIRMED** for the reasons stated therein.

Dated: December 4, 2014

  
John A. Parkins, Jr.  
Superior Court Judge

cc: Prothonotary  
cc: Ralph K. Durstein III, Esquire – Department of Justice,  
Wilmington, Delaware  
Alfred J. Lindh, Esquire – Alfred J. Lindh, Attorney at Law,  
Wilmington, Delaware