

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

TIMOTHY JAMES WYANT

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1710 WDA 2012

Appeal from the Judgment of Sentence September 5, 2012

In the Court of Common Pleas of Clarion County

Criminal Division at No(s): CP-16-CR-0000116-2012

BEFORE: SHOGAN, J., LAZARUS, J., and PLATT, J.\*

MEMORANDUM BY LAZARUS, J.

FILED: June 17, 2013

Timothy James Wyant appeals from his judgment of sentence, entered in the Court of Common Pleas of Clarion County, after he was ordered to pay \$91,587.00 in restitution to his victim after entering a guilty plea<sup>1</sup> to theft (F-3).<sup>2</sup> On appeal, Wyant claims that the restitution sentence is illegal because the amount is speculative, excessive and not supported in the record. We affirm.

When a defendant raises a claim regarding the propriety of a restitution order and whether it is supported by the record, the issue

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> In addition to restitution, Wyant was also sentenced to a term of six months' incarceration, with a 78-month probationary tail.

<sup>2</sup> 18 Pa.C.S.A. § 3921 (theft by unlawful taking or disposition).

concerns the legality of the sentence. ***Commonwealth v. Balisteri***, 478 A.2d 5 (Pa. Super. 1984). In such cases, our Court's standard of review is whether an error of law occurred. ***Commonwealth v. Dietrich***, 970 A.2d 1131 (Pa. 2009).

Restitution must properly be included in a sentence. 18 Pa.C.S. § 1106(c)(2) provides that at the time of sentencing the court shall specify the amount and method of restitution. Further, it shall be the responsibility of the district attorneys of the respective counties to make a recommendation to the court at or prior to the time of sentencing as to the amount of restitution to be ordered, based upon information solicited by the district attorney and received from the victim. § 1106(c)(4)(i).

***Id.*** at 1134.

Wyant broke into a cabinetry shop and stole 2,700 feet of 600 volt copper wire; during the course of the theft, Wyant also damaged a panel box and conduit, a pipe that housed the wire. N.T. Restitution Hearing, 10/1/2012, at 4-6. At Wyant's restitution hearing, the Commonwealth offered the testimony of Ralph Herman, the vice-president of operations for the business that owned the cabinetry shop. Herman testified regarding an estimate of the victim's loss that was prepared by an electrical company. The electrical company estimated the victim's replacement costs at \$91,587: \$47,628 for the wire; \$40,000 in labor (800 hours @ \$50/hour); \$3,174 for the conduit; and \$785 for the panel box. ***Id.*** 5-7. At the hearing, the defense entered, as an exhibit, an estimate prepared by an insurance adjustor that had been given by Herman to an investigating trooper months earlier. The adjustor estimated the victim's replacement costs at \$57,248

(including wire, transformer repairs, and labor).<sup>3</sup> **Id.** at 15. Defense counsel asked the court to consider both of the estimates when fashioning its restitution sentence. N.T. Restitution Hearing, 10/1/2012, at 16.

Wyant claims that the court's restitution award is excessive because it is based on an estimate with higher-grade copper wire than that which he actually stole from the victim. Specifically, the copper wire stolen was 600 volt; the electrical company's estimate described the replacement wire as 750 THHN CU<sup>4</sup> MCM.<sup>5</sup> Wyant asserts that the electrical company provided an estimate for 750 volt wire, not 600 volt. His argument is misplaced.

The voltage rating of a wire determines the size of the conductor, its thickness and the type of insulation. [http://www.amwire.com.ph/pages/technical\\_guide.htm](http://www.amwire.com.ph/pages/technical_guide.htm). Thermoplastic heat-resistant wire with nylon jacket (THHN) is commonly used in buildings and is considered "a general purpose 600 volt building wire than can be used as power, lighting and control wiring." [http://www.amwire.com.ph/pages/our\\_products.htm#thhn](http://www.amwire.com.ph/pages/our_products.htm#thhn). Here, the numerical value 750 in the electrical company's estimate did not mean that

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<sup>3</sup> The court opined that this initial estimate given to the trooper was used in order to decide how to grade the charged theft offense. N.T. Restitution Hearing, 10/1/2012, at 19.

<sup>4</sup> "CU" indicates that the wire is made of copper.

<sup>5</sup> "MCM" denotes the cross-sectional area of a wire.

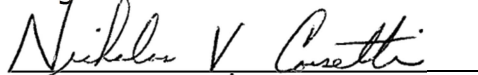
the wire was a higher grade, rather it indicated the gauge<sup>6</sup> of the wire based upon a general 600 volt building wire like that stolen by Wyant. **See** N.T. Restitution Hearing, 10/1/2012, at 5 (Commonwealth attorney states that estimate of electrical company was to replace "750 gauge commercial wiring.").

A review of the record reveals that the trial court complied with section 1106(c)(2)(i) and considered all of the evidence presented by the parties at the restitution hearing. The court ultimately determined that the electrical company estimate was a more accurate estimate because it would "be more familiar than an insurance company with what it would need to bring the [victim's] property back." **Id.** at 20. Because the court's order is supported in the record, **Balisteri, supra**, we find no legal error. **Dietrich, supra.**

Judgment of sentence affirmed.

Shogan, J., concurs in the result.

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Cussetti", is written over a horizontal line.

Deputy Prothonotary

Date: 6/17/2013

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<sup>6</sup> The gauge of the wire determines the amount of electric current a wire can safely carry. [http://www.generalcable.com/NR/rdonlyres/5EF31BDA-6D5C-4599-90A6-1D6DC9F32CBC/0/Pg94\\_Wire\\_Gauge.pdf](http://www.generalcable.com/NR/rdonlyres/5EF31BDA-6D5C-4599-90A6-1D6DC9F32CBC/0/Pg94_Wire_Gauge.pdf).

