

In re Rengiil, Jr., 13 ROP 258 (Tr. Div. 2006)

**In the Matter of
MARKY RENGIL, JR.,
an Alleged Juvenile Delinquent.**

JUVENILE CASE NOS. 05-037 and 03-018

Supreme Court, Trial Division
Republic of Palau

Decided: May 12, 2006

KATHLEEN M. SALII, Associate Justice:

This matter came before the Court for a hearing to determine the amount of restitution to be ordered as a term and as a condition of probation after the Probation Office filed a Restitution Determination on March 10, 2006.

FACTS AND PROCEEDINGS

The Juvenile was adjudicated as being a delinquent child following his plea of guilty to one count of assault and battery with a dangerous weapon. These charges arose out of a September 4, 2005, incident in which he shot Mario Hilajan with a pellet gun. The Juvenile was sentenced to 4 years imprisonment, of which all but the first 30 days was suspended, with the remainder to be served on probation.

The Court further ordered the Juvenile to make restitution to the victim for any losses caused by the offense. The Probation Office filed a Restitution Determination on March 10, 2006, in which it determined that the victim was entitled to \$50 restitution for lost wages and \$141.90 for costs incurred for treatment of his injury when the bullet entered his upper right shoulder (for total restitution of \$191.90). The Republic requested that the determination of restitution be modified to allow for future expenses that would be incurred by the victim in anticipation of further medical treatment for the injury he suffered as a result of the Juvenile's criminal conduct. In support of such a modification, the Republic presented testimony from Dr. Bo Htoo, the Emergency Room doctor who treated the victim on September 4, as well as the victim himself. Dr. Htoo testified that he treated the victim for a wound in his front right shoulder. Dr. Htoo did not locate an exit wound, and later x-rays revealed that the pellet remained lodged in the muscle tissue of the victim's right chest area. Although the victim enjoyed a full range of motion of the arm, he was nevertheless in pain from the wound. Dr. Htoo testified that he was concerned that immediate removal of the pellet may result in more harm than good because of the location of the bullet in the muscle tissue, so he advised the patient to delay consideration of surgical removal of the pellet.

Dr. Htoo further testified regarding the potential harmful effects of having lead in your body and of having a pellet, lead or otherwise, lodged in the body over a prolonged period of time. The doctor's testimony credibly established that due to the unknown long-term effects of

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having a foreign object lodged in the body, the victim **1259** should, at a minimum, be examined to check blood concentration levels and to have x-rays taken to see if the pellet has moved further than when it first entered the body. At the present time, the Belau National Hospital does not have the capability of checking blood concentration levels.

Mario Hilajan confirmed that when he went to the emergency room for treatment of his gunshot wound, he wanted the bullet removed. He was advised, however, to wait a while before considering whether to have surgery. His total bill for the visit to the emergency room was \$169.90, of which \$141.90 was for the treatment and \$28.00 for medication he ultimately failed to pick up because he did not have the money to pay the bill. The hospital bill remains unpaid. Approximately two weeks later, he returned to the hospital for a follow-up visit and inquired into the cost of the surgery in Palau to have the bullet removed. During this inquiry, he was given an invoice in the amount of \$2,145.50. In response to inquiries by the Probation Office as to expenses he incurred, the victim claimed \$3,365.40 broken up as follows: \$169.90 for actual bill incurred; \$2,145.50 based on the quotation provided by Belau National Hospital to perform the bullet extraction; \$350.00 for 15 days of lost wages; and \$700.00 for one month of lost wages following surgery to remove the bullet. During the hearing, however, testimony revealed the victim's current actual monthly salary to be \$100 and not \$700. Thus, the 15 days of lost wages totals \$50, not \$350. The victim further testified that beginning around February of this year, he began experiencing intermittent pain in his back, which he believes may be a result of the pellet which remains in his body.

The issue before the Court is whether the victim's claims for future medical expenses can be ordered by the Court. The statute governing restitution in the Republic provides:

a defendant convicted of any crime in the Republic may be ordered to pay restitution. . .to any victim who has suffered a loss due to the criminal conduct, in order to compensate the victim of such crime. Proof of damages for purposes of compensating a victim of a crime . . . shall be by a preponderance of the evidence.

17 PNC § 3105. The Republic claims that under this statute, the victim is entitled to actual damages and that this amount should include the costs for future medical treatment associated with either the care for or extraction of the pellet. The defense, on the other hand, urges that any future medical expense must be shown to be reasonable and necessary in order to be considered as restitution, and that the victim in this case had failed to establish that extraction of the bullet at this time was necessary to save his life. In support of this argument, Defendant points to Dr. Htoo's inability to state with certainty that the continuing presence of the pellet in the victim's body constituted a life-threatening condition, in light of the fact that he had not seen the victim since the September 2005 emergency room visit.

Restitution is simply the "restoring to original owner something lost or unlawfully taken away; it is a making good for loss, injury or damage." *LaFleur v. State*, 848 S.W. 2d 266 (Tex. Crim. App. 1993). While 17 PNC § 3105 does not specifically address the possibility of restitution for future expenses, *cf. State v. Hart*, 699 P.2d 1113 (Or. **1260** 1985) (upholding restitution award including reasonable predictable future medical expenses under state restitution

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statute that expressly allowed for recovery of future expenses reasonably predictable), the Court believes that such restitution is reasonable and necessary to effectuate the policy goals of the statute. *See Armaluuk v. ROP*, 9 ROP 55, 57 (2002) (describing restitution as a “remedy of the state, meant to rehabilitate a defendant”) (internal quotations omitted). In light of its underlying purpose, the Court believes that where the cost of future medical treatment for an injury caused by a defendant’s criminal conduct is reasonable, restitution to allow for such future expenses is justified.

In the instant case, the victim should not have to continue to suffer from his injuries caused by Defendant’s criminal conduct. While it is not disputed that the victim does not appear to have sustained serious physical injuries, he nevertheless continues to complain of intermittent pain. Moreover, the long-term effects of having the lead pellet lodged in his body remain unclear. Although the defense contends that the Republic has failed to meet its standard of proof, the Court is satisfied that the victim has shown by a preponderance of the evidence that he has sustained injuries and that continuing medical treatment either to maintain or to remove the pellet at some point in the future is justified.

CONCLUSION

Based on the evidence presented, the Court hereby determines restitution in this case to be as follows: 1) \$141.90 for the victim’s hospital visit on September 4, 2005, to be paid to Belau National Hospital, 2) \$50 in lost wages to be paid to the victim or his representative, and 3) the cost of any reasonable medical care associated with the care for or extraction of the pellet.