

**IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

COMMONWEALTH OF THE NORTHERN) MARIANA ISLANDS,)	TRAFFIC CASE NO. 99-0009
Plaintiff,)	
vs.)	DECISION ON THIRD
SABURO, STEWART,)	PARTY RESTITUTION
Defendant.)	
_____)	

I. INTRODUCTION

On September 23, 1999, the court heard the arguments of counsel on the matter of the defendant’s restitution obligation. Assistant Attorney General Elaine Paplos represented the Commonwealth. Assistant Public Defender Robert T. Torres represented the defendant Stewart Saburo (“Defendant”). At the hearing, the court ordered the parties to brief the issue of third party restitution. On October 14, 1999, Defendant submitted a Memorandum of Points and Authorities on the matter. The Office of the Attorney General failed to file a memorandum. The court, being fully informed of the premises, now renders its written decision.

II. FACTS

In the early morning hours on Christmas Day, 1998, Defendant, while driving his Isuzu pickup [p. 2] on Middle Road near the Chalan Lau Lau area, struck Gui Hua Luo (“Luo”) as Luo crossed the road with a companion. On August 18, 1999, the court found Defendant guilty of violating 9 CMC § 7105, for driving under the influence of alcohol or drugs, and the Open Container Act or Public Law 10-54. The court sentenced Defendant to 90 days imprisonment, all suspended, for a period of one year and was also ordered to pay a fine. Among the conditions for his suspended sentence, the court placed Defendant on probation for one year and ordered him to pay restitution. The Commonwealth submitted the following amounts to be paid: \$102.18 for lost wages and

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overtime and \$438.81 for medical expenses. Luo's employer paid the medical expenses incurred as a result of Luo's injuries. Defendant objected to the restitution to Luo's employer, contending that he was not required under Article I, Section 11 of the Northern Mariana Islands Constitution ("Constitution") to make restitution to a third party.

ISSUE

Does Article I, Section 11 of the CNMI Constitution require a defendant to make restitution to a third party, other than a victim of crime?

ANALYSIS

Defendant asserts that the Constitution limits restitution only to those amounts actually paid by the victim. Because the victim's employer paid the medical expenses, Defendant contends he is not required to make restitution to the victim's employer.

Article I, Section 11, of the N.M.I. Constitution states: "The right of the people to be secure in their persons, houses, and belongings against crime shall be recognized at sentencing. Restitution to the crime victim shall be a condition of probation and parole except upon a showing of compelling interest." N.M.I. Const. art. I, § 11.

The court will interpret § 11 according to the general principles of statutory construction. [p. 3] *Camacho v. N. Mariana Islands Retirement Fund*, 1 N.M.I. 362, 368 (1990)(interpreting the retirement system provision in NMI Const. art. III, sec. 20). The plain meaning of the language will govern unless a contrary meaning was intended. *Id.* at 368. If the language is ambiguous, then the court may consult legislative history. *Id.* at 369. The court is also duty-bound to give effect to the intent of the framers of the NMI Constitution and the people adopting it. *Aldan-Pierce v. Mafnas*, 2 N.M.I. 122, 163 (1991).

The plain meaning of § 11 clearly indicates that a crime victim has a constitutional right to restitution from a defendant. The question then turns to whether the term "crime victim" encompasses both direct and indirect victims of crime. The court directs its attention to the legislative history on N.M.I. Const. art. I, § 11, for guidance.

Section 11 was one of 44 amendments proposed by the Second Constitutional Convention and later ratified by the electorate in November 1985. According to the report by the Committee on

Personal Rights and Natural Resources, the committee's proposed amendment was based on a model legislation from the state of Michigan. *Report to the Second NMI Constitutional Convention by the Committee on Personal Rights & Natural Resources on Committee Recommendation No. 8* at 1; see *People v. Grant*, 565 N.W.2d 389, 394 (1997). The court declines to explore Michigan law since it is unclear whether the model legislation was the same measure which eventually passed the Michigan state legislature in October 1985. *Grant* at 394. Aside from the passing reference to the model, the committee report does not discuss the Michigan measure. A comparison between N.M.I. Const. art. I, § 11 and the 1985 Michigan statute uncovers a common intent to provide restitution to crime victims and little else. See Mich. Comp. Laws Ann. § 780.766 (West 1999). The Michigan restitution statute is, understandably, far more comprehensive and specifically provides for restitution to persons who have compensated a crime victim. *Id.*

The committee drafts reveal that the committee substantially amended the sweeping language [p. 4] of two delegate proposals on this matter.¹ *Report of the Committee, supra*. The committee report is also replete with references to victims of crime and contains virtually no discussion on restitution to third parties. *Id.* The court notes that the Convention made further changes to the committee's recommendation during the Committee of the Whole deliberation to limit the proposed amendment to a broad recognition of crime victims rights and a requirement that restitution to the victim be a condition of probation and parole. *Transcript of the Committee of the Whole, Second N.M.I. Constitutional Convention*, 30th day, July 17, 1985. Throughout the Committee of the Whole discussion, the delegates' comments were directed at the crime victim, the statute existing at the time governing restitution, and the Legislature's authority to enact a more comprehensive restitution statute. *Id.* As is the case with the committee report, the discussion is devoid of any mention about a defendant's obligation to make restitution to persons who compensate a victim. *Id.* The pertinent convention journals of the plenary sessions contain brief reports on the changes made by the

¹ One of the proposals, Delegate Proposal No. 36-85 states: "The legislature shall provide for a victim-of-crime assistance program for personal injuries such as rape, injury in the commission of robbery, and other types of injuries to be determined by the legislature. The legislature may require the perpetrator of the crime to defray *any or all costs* that are reasonably related to the injury, be it bodily or otherwise, such as hospital cost(s), sick-leave payments, and all other costs subject to adjudication." (emphasis added)

Committee of the Whole. *Journal of the Second N.M.I. Constitutional Convention*, 30th & 31st days, July 17 & 18, 1985. In sum, the substantial committee changes to the original delegate proposals and the convention's further amendments suggest that § 11 requires restitution only to direct victims for the costs that they have incurred and paid as a result of crime.

The Supreme Court in *Commonwealth v. Mitchell*, No. 95-019, slip. op. at 5-6 (Feb. 18, 1997), addressed a similar issue in an assault and battery criminal prosecution. The Court's analysis indicates that the right to restitution under § 11 applies only to victims of crime. *Id.* The Court, however, acknowledged that 6 CMC § 4109, extends restitution orders to any injured person caused by the acts of a defendant.² This statute applies only to Title 6 offenses. *See* 6 CMC § 4109. In the [p. 5] instant case, Defendant was adjudged guilty of offenses under Title 9, which sets forth the penalties for vehicle code violations. Title 9 has no similar provision authorizing restitution to third parties.

CONCLUSION

Based on the foregoing reasons, the court hereby orders that Defendant shall not be required to make restitution to the victim's employer for medical expenses paid.

SO ORDERED this DEC 22 1999.

/s/ John A. Manglona
JOHN A. MANGLONA, Associate Judge

² This statute, enacted in 1983, pre-dates NMI Const. art I. § 11.