

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 15AP-45 (C.P.C. No. 12CR-5337)
Delrico E. Jones,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 29, 2014

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Yeura R. Venters, Public Defender, and *David L. Strait*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

SADLER, J.

{¶ 1} Defendant-appellant, Delrico E. Jones, appeals from a judgment of the Franklin County Court of Common Pleas, entered upon remand, in which the trial court resentenced appellant and issued an order of restitution. For the following reasons, we affirm the judgment of the trial court.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} The facts and procedural history, as set forth in our earlier decision, provide as follows:

On October 18, 2012, appellant was indicted on two counts of felonious assault, in violation of R.C. 2903.11, with accompanying three-year firearm specifications, in violation of R.C. 2941.145. The charges arose from the shootings of

Shawn Walker (Count 1) and William Walker (Count 2) on August 12, 2012.

On October 16, 2013, appellant entered guilty pleas to the felonious assault charges, as alleged in Counts 1 and 2 of the indictment, and a one-year firearm specification, in violation of R.C. 2941.141, corresponding to Count 1. In exchange for the guilty pleas, plaintiff-appellee, State of Ohio, requested that the trial court enter a nolle prosequi on the firearm specification attached to Count 2.

At the plea hearing, the prosecutor provided the following uncontested factual summary. On August 12, 2012, appellant and another man went to the Walkers' residence and engaged in a verbal altercation with Shawn and William over some money. During this incident, appellant produced a handgun but did not use it. Appellant and the man left and went to a nearby store. Appellant later returned to the Walkers' residence with three other men. A physical altercation ensued, during which appellant shot Shawn in the leg, and one of the other men shot William in the arm. Appellant and the three men then fled the scene. Appellant was apprehended on October 10, 2012. Police recovered a gun nearby, which matched bullet casings found at the scene of the shooting.

State v. Jones, 10th Dist. No. 14AP-80, 2014-Ohio-3740, ¶ 2-4.

{¶ 3} The trial court accepted appellant's guilty pleas, found him guilty of two counts of felonious assault, and a one-year firearm specification. Appellant was sentenced to a period of five years of imprisonment on Count 1, with an additional one year for the firearm specification, and a period of four years imprisonment on Count 2, to be served consecutively, for an aggregate ten-year prison term. *Id.* at ¶ 5-8. Additionally, the trial court ordered appellant to pay \$50,000 in restitution but deferred payment until after appellant's release from prison. *Id.* at ¶ 8.

{¶ 4} On appeal to this court, appellant previously argued both that the trial court committed plain error in imposing consecutive sentences without making the necessary findings, pursuant to R.C. 2929.14(C)(4), and that the trial court erred in ordering restitution. We sustained both assignments of error and remanded for resentencing and for an evidentiary hearing on restitution.

{¶ 5} On remand, the trial court held a restitution hearing and placed the victim, William Walker, under oath.¹ Walker testified that he was injured as a result of appellant's actions and that he received treatment at The Ohio State University Wexner Medical Center ("hospital") on several occasions. In support of his testimony, Walker presented documents demonstrating the itemized services he received and which demonstrated that he had an outstanding balance of \$50,608.60. The statements were admitted, over objection, as Exhibits A-1, A-2, and A-3. Walker further testified that he had no health insurance and that the exhibits reflect charges for services he received solely as a result of the injuries he sustained from the incident on August 12, 2012. The trial judge found Walker's testimony to be credible.

{¶ 6} Walker testified that he did not receive bills from the hospital because he did not have a home address. He explained that he visited the hospital two times in an attempt to gather records and received itemized statements (i.e., Exhibits A-1, A-2, and A-3) in response. The trial court observed that the exhibits were not bills but, rather, itemized statements of services rendered by the hospital. During the evidentiary hearing, the trial court telephoned the hospital patient billing customer service center and spoke to a representative on the record. The representative confirmed that Walker had an outstanding balance owed to the hospital of \$50,608.60. The trial court afforded appellant's counsel an opportunity to ask questions of the customer service representative but counsel declined.

{¶ 7} At the conclusion of the hearing, the trial court stated as follows:

[B]ased on the admissions here of the State's Exhibits A-1, 2, and A-3, from The Ohio State University Medical Center, the patient financial services, the court will impose restitution in the amount of \$50,608.60. I'm going to – you know, that's to be paid by the offender to the victim in this case.

(Tr. 36.)

{¶ 8} In a judgment entry filed January 8, 2015, the trial court sentenced appellant to a total of ten years incarceration and payment of "\$50,608.90 [sic]" in restitution.

¹ On remand, the trial court again imposed consecutive sentences. Appellant has not appealed the prison sentences imposed by the trial court at the resentencing hearing.

II. ASSIGNMENTS OF ERROR

{¶ 9} In a timely appeal, appellant asserts the following two assignments of error:

[I.] The trial court erred and impermissibly relieved the State of its burden of proof by locating a witness, eliciting unsworn statements from that witness, and relying upon those statements in ordering Appellant to pay restitution.

[II.] The trial court erred by ordering restitution when the record did not contain competent, credible evidence establishing the amount of loss sustained by the victim.

III. STANDARD OF REVIEW

{¶ 10} In reviewing a trial court's restitution order, an appellate court applies an abuse of discretion standard. *State v. Norman*, 10th Dist. No. 12AP-505, 2013-Ohio-1908, ¶ 67, citing *State v. Whiting*, 2d Dist. No. 20168, 2004-Ohio-5284, ¶ 7. If a restitution amount does not bear a "reasonable relationship to the actual loss suffered" then the trial court abuses its discretion in making the order. *State v. Aliane*, 10th Dist. No. 03AP-840, 2004-Ohio-3730, ¶ 15. An abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

IV. LEGAL ANALYSIS

{¶ 11} Because we find that appellant's second assignment of error is dispositive of this appeal, we will consider it first. In his second assignment of error, appellant contends that the trial court erred by ordering restitution when the record did not contain competent, credible evidence establishing the amount of loss sustained by the victim. We disagree.

{¶ 12} R.C. 2929.18(A)(1) permits a trial court to impose restitution as part of a sentence in order to compensate a victim for economic loss and may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information. However, the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. R.C. 2929.01(L) defines "[e]conomic loss," as relevant here, as "any economic detriment suffered by a victim as a

direct and proximate result of the commission of an offense and includes any * * * medical cost * * * incurred as a result of the commission of the offense."

{¶ 13} "An award of restitution is limited to the actual loss caused by the defendant's criminal conduct for which he [or she] was convicted, and there must be competent and credible evidence in the record from which the court may ascertain the amount of restitution to a reasonable degree of certainty." *Norman* at ¶ 66, citing *State v. Blay*, 10th Dist. No. 10AP-247, 2010-Ohio-4749, ¶ 7; *State v. Strickland*, 10th Dist. No. 08AP-164, 2008-Ohio-5968. The Supreme Court of Ohio recognized in *State v. Lalain*, 136 Ohio St.3d 248, 2013-Ohio-3093, ¶ 27, that a trial court has "discretion to order restitution in an appropriate case." If the record contains competent, credible evidence establishing the amount of loss sustained by the victim, then the trial court does not abuse its discretion in awarding restitution.

{¶ 14} The evidence supporting a restitution order can be either documentary or testimonial evidence. *Jones* at ¶ 23, citing *State v. DeJoy*, 10th Dist. No. 10AP-919, 2011-Ohio-2745, ¶ 33, citing *State v. Holt*, 8th Dist. No. 95520, 2011-Ohio-1582. A victim's testimony alone is sufficient to establish economic loss for a restitution order. *Id.* at ¶ 24, citing *State v. Policaro*, 10th Dist. No. 06AP-913, 2007-Ohio-1469 (other citations omitted).

{¶ 15} Here, not only did Walker testify about the necessary medical treatment he received due to the injuries he sustained as a result of appellant's actions, he also presented the court with documents demonstrating the itemized medical services he received as a result of the October 12, 2012 incident at issue. Walker also testified that he had no health insurance and no ability to pay the outstanding balance owed of \$50,608.60.

{¶ 16} As discussed above, a restitution order may be supported by the victim's testimony alone without documentary corroboration. *Policaro* at ¶ 8. The trial court was presented with not only the victim's testimony but documentary evidence corroborating Walker's testimony. The trial court deemed Walker's testimony to be credible. Determinations of credibility and the weight to be given to the evidence are for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. Accordingly, we conclude the record contains sufficient competent and credible evidence

to establish the amount of monetary loss suffered by Walker. We further find the trial court's order of restitution bears a reasonable relationship to the actual loss suffered by Walker. *Aliane; Norman*. Therefore, we find that the trial court did not abuse its discretion in awarding restitution and overrule appellant's second assignment of error.

{¶ 17} We note the judgment entry provides the amount of restitution is \$50,608.90, rather than the \$50,608.60 as established by the testimony of Walker and the exhibits admitted at the hearing. Therefore, even though we found sufficient competent and credible evidence established the amount of loss, we remand the matter for the trial court to enter a nunc pro tunc judgment entry to correct a typographical error.

{¶ 18} Because we have found that the record contains sufficient competent and credible evidence to establish the amount of loss suffered by Walker, independent of the telephone conversation between the judge and the customer service representative, we need not address appellant's first assignment of error. Accordingly, appellant's first assignment of error is rendered moot by our ruling on the second assignment of error.

V. CONCLUSION

{¶ 19} Having overruled appellant's second assignment of error and rendered appellant's first assignment of error moot, we affirm the judgment of the Franklin County Court of Common Pleas. We remand the matter for the trial court to enter a nunc pro tunc judgment entry to correct a typographical error in the judgment entry to reflect the proper amount of restitution in the amount of \$50,608.60.

*Judgment affirmed;
cause remanded with instructions.*

DORRIAN and BRUNNER, JJ., concur.
