

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 15AP-477
Plaintiff-Appellee,	:	(C.P.C. No. 14CR-3827)
v.	:	
	:	(REGULAR CALENDAR)
Dawn M. Raines,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 8, 2015

Ron O'Brien, Prosecuting Attorney, and *Valerie B. Swanson*,
for appellee.

Yeura R. Venters, Public Defender, and *George M.*
Schumann, for appellant.

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Defendant-appellant, Dawn M. Raines ("appellant"), appeals the April 7, 2015 judgment of the Franklin County Court of Common Pleas convicting her, pursuant to a plea of guilty, and imposing sentence. For the reasons that follow, we affirm the conviction, but reverse the sentence and remand for resentencing.

I. History

{¶ 2} On July 18, 2014, a Franklin County Grand Jury indicted appellant, charging her with two felony counts of receiving stolen property in violation of R.C. 2913.51, both felonies of the fifth degree. Appellant's charges were related to the theft of jewelry on November 27 and December 26, 2012. Both charges stated that the value of the stolen property was between one thousand and seven thousand five hundred dollars.

{¶ 3} On February 26, 2015, appellant pled guilty to both counts in the indictment. On April 2, 2015, the trial court held a sentencing hearing pursuant to R.C. 2929.19. On April 3, 2015, the trial court filed a judgment entry, reflecting the judgment of conviction and sentence, which the trial court amended in an entry on April 7, 2015.

II. Assignments of Error

{¶ 4} Appellant appeals assigning the following two errors for our review:

I. The trial court erred by ordering restitution without first holding a hearing.

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. First Assignment of Error—Restitution Hearing

{¶ 5} In her first assignment of error, appellant argues that the trial court erred by failing to hold a restitution hearing pursuant to R.C. 2929.18 before imposing restitution.

{¶ 6} R.C. 2929.18 provides in part, as follows:

(A) Except as otherwise provided in this division and in addition to imposing court costs pursuant to section 2947.23 of the Revised Code, the court imposing a sentence upon an offender for a felony may sentence the offender to any financial sanction or combination of financial sanctions authorized under this section or, in the circumstances specified in section 2929.32 of the Revised Code, may impose upon the offender a fine in accordance with that section. Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) Restitution by the offender to the victim of the offender's crime or any survivor of the victim, in an amount based on the victim's economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court 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, provided that 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. If the court decides to impose restitution, the court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender.

{¶ 7} Thus, "[a] trial court has discretion to order restitution in an appropriate case and may base the amount it orders on a recommendation of the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, but the amount ordered cannot be greater than the amount of economic loss suffered as a direct and proximate result of the commission of the offense." *State v. Lalain*, 136 Ohio St.3d 248, 2013–Ohio–3093, paragraph one of the syllabus. "Economic loss" is defined as "any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense and includes any * * * property loss * * * incurred as a result of the commission of the offense." R.C. 2929.01(L). See *State v. Jones*, 10th Dist. No. 14AP–80, 2014–Ohio–3740, ¶ 20.

{¶ 8} "The amount of restitution ordered by a trial court must bear a reasonable relationship to the loss suffered." *State v. Norman*, 10th Dist. No. 12AP–505, 2013–Ohio–1908, ¶ 66, citing *State v. Blay*, 10th Dist. No. 10AP–247, 2010–Ohio–4749, ¶ 7. "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 *Blay* at ¶ 7.

{¶ 9} At the plea hearing on February 26, 2015, the prosecutor stated that appellant sold stolen jewelry to two stores in Columbus. At the first store, the prosecutor stated that appellant "sold the victim's set of five 10-karat gold rings and a 14-karat gold neckless, which was valued at \$3,500." (Feb. 26, 2015 Hearing, Tr. 18.) At the second store, the prosecutor stated that appellant "sold four rings, one earring set, and a gold

chain, valued at \$2,000." (Tr. 18.) The prosecutor concluded that "the total amount of restitution is \$5,500." (Tr. 18.)

{¶ 10} At the sentencing hearing on April 2, 2015, a different prosecutor appeared before the trial court, and the following dialogue occurred:

[ASSISTANT PROSECUTOR]: I'm trying to look through discovery here to see if I can figure out what these items were pawned for so we can determine --

THE COURT: Yes. Thank you kindly. This seems to be restitution day. Okay. In the PSI on page 5 there are two sets of values given, the total \$5,500. Okay?

[ASSISTANT PROSECUTOR]: Yes. Counsel accurately points out that since they were pawned, that the victim would have had to have paid the pawned value rather than perhaps the actual value. And what I don't know is if that's the items' value or the pawned value.

THE COURT: Well, it was not so much a pawnshop. They sold to Gold Buyers, which is a little different.

[ASSISTANT PROSECUTOR]: That is. That's true, Your Honor. So it's the weight of the gold.

THE COURT: I would think so, yes.

[ASSISTANT PROSECUTOR]: That may be an accurate number.

THE COURT: Okay. Those are the only figures that I have.

* * *

[ASSISTANT PROSECUTOR]: Your Honor, it looks like the pawned value was \$306, at least for the two necklaces.

THE COURT: Yeah. But the pawned value isn't the restitution, of course. I mean that's maybe what she got for them, but the victim's out -- the value of these was --

[ASSISTANT PROSECUTOR]: Were they melted down, or were they recovered?

THE COURT: Well, if they were recovered, that's something else, again, but I don't know.

* * *

[APPELLANT'S COUNSEL]: Judge, in regard to the restitution, if the record could just note my objection to that amount. The victim was apparently not -- would not respond to a request from the prosecutor to confirm the amount of the loss. The valuation, I don't know what it's based on other than I think them just saying that's what they think it's worth. I don't have any more information in that regard.

THE COURT: I'm going to respectfully disagree because this isn't the victim saying what it's worth. This is what it supposedly sold at Gold Buyers and Cashland for, so I don't know how the victim would know that.

[APPELLANT'S COUNSEL]: That they're saying they resold it for that?

THE COURT: The presentence investigation here indicates that the offender sold the jewelry, page 5.

[APPELLANT'S COUNSEL]: Yes.

THE COURT: Okay? So this isn't a guess and a hope and a let's pump up the value for insurance purposes type of thing. This is what was actually obtained in the transaction.

[APPELLANT'S COUNSEL]: No, no. That's not what she got when she sold it to them.

THE COURT: Okay.

[APPELLANT'S COUNSEL]: She didn't get -- that's what [the Assistant Prosecutor] was saying, I think, that they have the value that she got, which was much lower.

[APPELLANT'S COUNSEL]: The discovery indicates that the defendant obtained \$306, at least from the two necklaces. There's a set of earrings here too, I think.

THE COURT: There's a set of five 10-karat gold rings, the necklace. Then there are four other rings, an earring set, and a gold chain. If she got three-hundred and so dollars for the one necklace, that doesn't begin to cover the landscape.

So I'll tell you what. [Appellant's Counsel], I'll leave this open, but it ought to be a fairly straightforward thing to just find out

from Cashland and Gold Buyers as to what they paid. If you find that out, submit that to me, I will absolutely reconsider the restitution amount.

[APPELLANT'S COUNSEL]: Okay.

THE COURT: All right. Thank you. For right now I'm going to keep it at \$5,500.

(Apr. 2, 2015 Hearing Tr. 2-14.)

{¶ 11} R.C. 2929.18(A)(1) provides that, "[i]f the court decides to impose restitution, the court *shall* hold a hearing on restitution if the offender, victim, or survivor disputes the amount." (Emphasis added.) See *Blay* at ¶ 12; *State v. Woodruff*, 10th Dist. No. 14AP-485, 2015-Ohio-738, ¶ 9. Here, appellant objected to the order of restitution, disputing the amount for which restitution was ordered. The state contends that a separate restitution hearing need not be ordered because the trial court considered evidence of the value of the stolen items at the sentencing hearing. However, as the transcript of the sentencing hearing reflects, there was confusion between the prosecutor and trial court regarding the actual value of the stolen items versus the amount for which the amount was sold. The restitution hearing mandated by R.C. 2929.18(A)(1) affords the state, victim, or offender an opportunity to present competent, credible evidence as to the amount of economic loss suffered as a direct and proximate result of the commission of the offense. Therefore, we disagree with the state's contention that a hearing is not necessary since it is required pursuant to R.C. 2929.18(A)(1) upon the objection of the victim, offender, or survivor, as is the case here.

{¶ 12} Thus, because the trial court did not hold a hearing on restitution in response to appellant's objection, we find that the trial court committed reversible error. *Woodruff* at ¶ 9; *Jones* at ¶ 29; *Blay* at ¶ 12. Upon remand, the trial court shall conduct an evidentiary hearing in compliance with the requirements of R.C. 2929.18(A)(1). Accordingly, we sustain appellant's first assignment of error.

IV. Second Assignment of Error—Restitution Amount

{¶ 13} In her second assignment of error, appellant challenges the amount of restitution ordered by the trial court. Having found that the trial court must conduct a

hearing pursuant to R.C. 2929.18(A)(1) prior to ordering restitution, appellant's second assignment of error is rendered moot.

V. Disposition

{¶ 14} Having sustained appellant's first assignment of error and rendered moot appellant's second assignment of error, we affirm the conviction but reverse the sentence and remand this matter to the Franklin County Court of Common Pleas for resentencing and for further proceedings in accordance with law and consistent with this decision.

*Judgment affirmed in part, reversed in part,
and cause remanded with instructions.*

TYACK and KLATT, JJ., concur.
