

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 14AP-485 (C.P.C. No. 13CR-6178)
Jessica A. Woodruff,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 3, 2015

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

Yeura R. Venters, Public Defender, and *Timothy E. Pierce*, for
appellee.

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Defendant-appellant, Jessica A. Woodruff ("appellant"), appeals the May 20, 2014 judgment of the Franklin County Court of Common Pleas imposing sentence on her pursuant to a guilty plea. For the reasons that follow, we reverse the judgment of the trial court.

I. Facts and Procedural History

{¶ 2} On November 20, 2013, a Franklin County Grand Jury indicted appellant on one count of receiving stolen property in violation of R.C. 2913.51, a felony of the fifth degree. The indictment charged appellant with receiving property with a value between \$1,000 and \$7,500 that had been obtained through the commission of a theft offense. On April 2, 2014, appellant entered an "*Alford* plea" of guilty to the sole count of the indictment. At the plea proceedings, plaintiff-appellee, State of Ohio ("the state"),

indicated that the stolen items at issue were reported to be valued at \$10,394.68 at the time of the theft. The trial court accepted appellant's plea and noted the joint recommendation of the state and appellant that she be placed on community control. The trial court ordered a presentence investigation report and continued the case for a sentencing hearing.

{¶ 3} On May 16, 2014, the trial court held a sentencing hearing. At the hearing, the state requested that appellant remit restitution in the amount of \$10,394.68 and asked the trial court to impose community control as agreed under the joint recommendation. Appellant objected to the state's request for restitution, contending that restitution could not exceed \$7,500 because the indictment stated the property was valued between \$1,000 and \$7,500. Appellant also asserted that the record did not support the value of the property as offered by the state. The trial court overruled appellant's objection to the amount of restitution, sentenced appellant to community control for a period of five years, and ordered appellant to pay \$10,394.68 to the victim in restitution. On May 20, 2014, the trial court filed a judgment entry reflecting appellant's sentence, including restitution in the amount of \$10,394.68.

II. Assignments of Error

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

[I.] The lower court erred and violated R.C. 2929.18(A)(1) as well as Appellant's right to due process of law under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 16 of the Ohio Constitution when it failed to conduct a hearing on restitution after Appellant disputed the restitution amount.

[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.] The lower court's imposition of a restitution sanction which exceeded the value parameters for receiving stolen property as a felony of the fifth degree undermined the knowing, voluntary, and intelligent nature of Appellant's guilty plea thereby violating Crim.R. 11 and Appellant's right to due process of law under the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 16 of the Ohio Constitution.

[IV.] The lower court violated Appellant's right to trial by jury as memorialized in the Sixth and Fourteenth Amendments of the United States Constitution and Article I, Sections 5 and 10 of the Ohio Constitution when it imposed a restitution order that exceeded the value parameters of receiving stolen property as a felony of the fifth degree.

III. First Assignment of Error

{¶ 5} In her first assignment of error, appellant asserts that the trial court erred by failing to hold an evidentiary hearing on the amount of restitution after appellant specifically disputed the amount for which restitution was ordered. The state concedes that the trial court failed to conduct an evidentiary hearing and that the cause must be remanded for that purpose.

{¶ 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.

If the court imposes restitution, the court may order that the offender pay a surcharge of not more than five per cent of the amount of the restitution otherwise ordered to the entity responsible for collecting and processing restitution payments.

The victim or survivor may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate.

{¶ 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." *Id.*, citing *Blay* at ¶ 7.

{¶ 9} 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." Here, appellant objected to the order of restitution, disputing the amount for which restitution was ordered. 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. *Jones* at ¶ 29; *Norman* at ¶ 70; *Lalain* at paragraph two of the syllabus. 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, Third, and Fourth Assignments of Error

{¶ 10} In her second assignment of error, appellant asserts that the record fails to provide competent, credible evidence establishing the amount of loss sustained by the victim. In her third assignment of error, appellant asserts that the trial court's restitution order violated her constitutional due process rights. In her fourth assignment of error, appellant asserts that the trial court's restitution order violated her constitutional right to trial by jury. Because we have sustained appellant's first assignment of error, reversing the trial court's judgment and ordering an evidentiary hearing, we find appellant's second, third, and fourth assignments of error to be moot, and we therefore need not consider them.

V. Disposition

{¶ 11} For the foregoing reasons, appellant's first assignment of error is sustained and her second, third, and fourth assignments of error are moot. We reverse the judgment of the Franklin County Court of Common Pleas and remand this matter to that court for further proceedings consistent with this decision and law.

*Judgment reversed;
cause remanded.*

SADLER and T. BRYANT, JJ., concur.

T. BRYANT, J., retired, of the Third Appellate District,
assigned to active duty under the authority of the Ohio
Constitution, Article IV, Section 6(C).
