

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	CASE NO. CA2014-08-112
Plaintiff-Appellee,	:	
	:	<u>OPINION</u>
- vs -	:	5/4/2015
	:	
MICHAEL ALBERT GELDRICH,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 13CR29717

David P. Fornshell, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

Jeffrey W. Stueve, 12 West South Street, Lebanon, Ohio 45036, for defendant-appellant

S. POWELL, P.J.

{¶ 1} Defendant-appellant, Michael Albert Geldrich, appeals a decision of the Warren County Court of Common Pleas ordering him to pay \$64,216.39 in restitution after he pled guilty to single counts of aggravated murder, aggravated robbery, kidnapping and tampering with evidence. For the reasons outlined below, we reverse and remand for further proceedings.

{¶ 2} On January 6, 2014, a Warren County Grand Jury indicted Geldrich on the

above named offenses. According to the bill of particulars submitted in this case, the charges stemmed from the following:

On or about November 30, 2013 through December 1, 2013 at 11 Vernon Street, Franklin, Warren County, Ohio, Defendants Michael Geldrich and Adam Patrick planned to rob Victim Dione Payne of his drugs and money. They agreed that Defendant Geldrich would use Defendant Patrick's truck as part of the robbery. Among other uses, Defendants Geldrich and Patrick agreed that Defendant Geldrich would use Defendant Patrick's truck to leave Victim Payne at a different location. Because of the planning and use of his truck, Defendants Geldrich and Patrick agreed Defendant Patrick would receive money from the robbery.

Defendant Michael Watson agreed to participate in the robbery with Defendant Geldrich. Defendants Geldrich and Watson used their hands, feet and other objects to strike Victim Payne's head and body. Defendants Watson and Geldrich used their own bodies and other household items to restrain victim Payne of his liberty. Because of the physical force and restraint Defendants Geldrich and Watson placed upon Victim Payne, Defendant Geldrich was able to use an object to penetrate Victim Payne's anal opening. Defendants Geldrich and Watson's force and restraint caused Victim Payne to suffer serious physical harm. Defendants Geldrich and Watson obtained heroin capsules and money from Victim Payne as a result of inflicting this serious physical harm.

After inflicting serious physical harm on Victim Payne, Defendants Geldrich and Watson used Defendant Patrick's truck and released Victim Payne at the Atrium Medical [C]enter. Victim Payne died as a result of the injuries Defendants Geldrich and Watson inflicted upon him. Specifically, Victim Payne died as a result of blunt force trauma to his head.

While at Atrium Medical Center, Defendant Geldrich disposed of items of Victim Payne. After leaving Victim Payne at Atrium Medical Center, Defendants Geldrich and Watson cleaned and otherwise altered evidence of the offenses at 11 Vernon Street.

Defendants Geldrich and Watson returned the truck to Defendant Patrick. Defendants Geldrich and Watson gave Defendant Patrick some of the money stolen from Victim Payne.

{¶ 3} On March 24, 2014, Geldrich filed a motion to suppress, which the trial court denied. Thereafter, on May 8, 2014, Geldrich entered into a plea agreement and pled guilty

to the above named offenses in exchange for his cooperation with the prosecution of his co-defendants, Patrick and Watson. The plea agreement included a jointly recommended sentence of 22-years-to-life in prison.

{¶ 4} On August 20, 2014, the parties reconvened for purposes of sentencing. As part of the sentencing hearing, the state requested the trial court order Geldrich to pay \$64,216.39 in restitution to Payne's mother, Tamiko Payne, for medical costs incurred by her minor son.¹ In support of this claim, the state submitted copies of several medical bills totaling \$64,216.39 then due and owing. Thereafter, once the trial court ordered Geldrich to pay \$64,216.39 in restitution, Geldrich objected and requested the trial court hold a hearing on the matter. The trial court, however, refused to hold a hearing, stating:

Well, I mean, you could have requested [a hearing] this morning before I sentenced him. You could have said I want a hearing on this issue. And then they would have to do something as far as presenting this evidence. But you didn't, you waited until I sentenced him and then you bring this up. I think I sentenced him properly. I think I ordered restitution based on the information that was available.

{¶ 5} Geldrich now appeals from the trial court's decision ordering him to pay \$64,216.39 in restitution, raising one assignment of error for review.

{¶ 6} THE TRIAL COURT ABUSED ITS DISCRETION IN ORDERING RESTITUTION.

{¶ 7} In his single assignment of error, Geldrich argues the trial court erred and abused its discretion by ordering him to pay \$64,216.39 in restitution. In support of this claim, Geldrich raises several challenges to the trial court's restitution order; most notably that the trial court erred by refusing to hold an evidentiary hearing after he objected to the amount of restitution then imposed. In response, the state concedes that the trial court erred

1. We note that Payne was 16 years old at the time of his death.

and abused its discretion by failing to hold an evidentiary hearing after Geldrich disputed the amount of restitution imposed. After a thorough review of the record, we agree that the trial court erred in such regard.

{¶ 8} R.C. 2929.18(A)(1) grants a trial court the authority to order restitution by an offender to a victim, or any survivor of the victim, in an amount commensurate with the victim's economic loss. As defined by R.C. 2929.01(L), the term "economic loss" means "any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense" and includes, among others, medical costs and funeral expenses incurred. R.C. 2929.18(A)(1) further 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." Therefore, as this court has stated previously, "if the court decides to impose restitution, it must hold a hearing if the offender disputes the amount." *State v. Welden*, 12th Dist. Warren No. CA2011-01-005, 2011-Ohio-4345, ¶ 18; *State v. Lalain*, 136 Ohio St.3d 248, 2013-Ohio-3093, ¶ 22 (noting the statute "mandates that the court must hold a hearing on restitution" if the offender disputes the amount of restitution imposed).

{¶ 9} In this case, the record firmly establishes that Geldrich disputed the amount of restitution imposed and explicitly requested an evidentiary hearing on the matter. In turn, pursuant to the requirements found in R.C. 2929.18(A)(1), the trial court was required to hold an evidentiary hearing to determine the appropriate amount of restitution that should be imposed on Geldrich, if any. The trial court's refusal to hold an evidentiary hearing under these circumstances constitutes reversible error. See, e.g., *State v. Jones*, 10th Dist. Franklin No. 14AP-80, 2014-Ohio-3740, ¶ 29 (finding the trial court's refusal to hold an evidentiary hearing after the offender specifically disputed the amount of restitution ordered at sentencing constituted reversible error).

{¶ 10} Again, the state concedes that it was error and an abuse of discretion for the

trial court not to hold an evidentiary hearing after Geldrich disputed the amount of restitution imposed and explicitly requested an evidentiary hearing on the matter. Therefore, Geldrich's single assignment of error is sustained and this matter is remanded to the trial court to conduct an evidentiary hearing in compliance with the requirements of R.C. 2929.18(A)(1).

{¶ 11} In reviewing this decision, we note that as part of his reply brief, Geldrich argues this matter should not be remanded to the trial court to hold an evidentiary hearing since he "raised numerous errors that are dispositive without the necessity of a further hearing." However, as the plain and unambiguous language in R.C. 2929.18(A)(1) makes clear, if the trial court decides to impose restitution, the amount of which is disputed by the offender, such as the case here, the trial court must hold an evidentiary hearing on the matter. In turn, and although it may be true that the trial court did touch on some of Geldrich's other arguments when denying his request for an evidentiary hearing, pursuant to R.C. 2929.18(A)(1), the trial court was nevertheless required to hold an evidentiary hearing once Geldrich disputed the amount of restitution imposed and explicitly requested an evidentiary hearing on the matter. Therefore, based on the facts and circumstances of this case, and without addressing the merits of any of Geldrich's other arguments raised herein, Geldrich's single assignment of error is sustained.

{¶ 12} Judgment reversed and remanded for further proceedings.

RINGLAND and HENDRICKSON, JJ., concur.