

COURT OF APPEALS  
TUSCARAWAS COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN THE MATTER OF: T.B.  
ALLEGED DELINQUENT CHILD

JUDGES:

Hon. W. Scott Gwin, P.J.  
Hon. William B. Hoffman, J.  
Hon. Patricia A. Delaney, J.

Case No. 2014AP0045

OPINION

CHARACTER OF PROCEEDING:

Civil appeal from the Tuscarawas County  
Court of Common Pleas, Case No.  
14JD00203

JUDGMENT:

Reversed and Remanded

DATE OF JUDGMENT ENTRY:

May 29, 2015

APPEARANCES:

For State of Ohio

For T.B.

AMANDA MILLER  
RYAN STYER  
Tuscarawas County Prosecutor  
125 E. High Avenue  
New Philadelphia, OH 44663

SHERYL TRZASKA  
Assistant State Public Defender  
250 East Broad Street, Suite 1400  
Columbus, OH 43215

*Gwin, P.J.*

*Facts and Procedural History*

{¶1} On July 30, 2014, a complaint was filed in the Tuscarawas County Juvenile Court, alleging that seventeen-year-old Tucker B. was delinquent of one count of breaking and entering, in violation of R.C. 2911.13(A)&(C), and a fifth-degree felony if committed by an adult. (T. at 1). The complaint alleged that Tucker entered Brown's Petrol Station and stole "automotive batteries and a cash register." (T. at 1). The police report specifies that four vehicle batteries valued at \$419.00, and a cash register valued at \$500.00, were taken from the station. (7/2/2014 Gnadenhutten Police Report, p. 1; 11). According to the Property and Evidence section of the police report, the batteries and the cash register were recovered.

{¶2} Because Tucker is indigent, the juvenile court appointed an attorney from the county public defender's office to represent him. (T. at 4). On September 26, 2014, Tucker admitted to breaking and entering as alleged in the complaint, and was adjudicated delinquent. (T. at 11). For disposition, the juvenile court committed Tucker to DYS for a minimum period of six months, maximum of his twenty-first birthday, and again ordered him to pay \$1,100.00 in restitution.

{¶3} The amount of restitution was based on the victim's estimated value of the property contained in the victim impact statement, which did not address that the property was recovered:

{¶4} The following is an estimated value of what was taken from me

Labor and materials for building damage	100.00
Antique cash register	500.00

Car batteries and copper tubing	500.00
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Peace of mind and relief from anxiety for

myself, family, and customers of being

robbed again I am seeking minimum of	1000.00
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(T. at 11; 8/29/2014 Victim Impact Statement).

*Assignments of Error*

{¶5} T.B. raises three assignments of error:

{¶6} “I. THE JUVENILE COURT COMMITTED PLAIN ERROR WHEN IT ORDERED TUCKER B. TO PAY AN AMOUNT OF RESTITUTION WHICH EXCEEDED THE ACTUAL ECONOMIC LOSS SUFFERED BY THE VICTIM. R.C. 2152.20(A)(3); FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION; ARTICLE 1, SECTION 16, OHIO CONSTITUTION.

{¶7} “II. THE JUVENILE COURT COMMITTED PLAIN ERROR WHEN IT FAILED TO CONSIDER COMMUNITY SERVICE IN LIEU OF FINANCIAL SANCTIONS BEFORE ORDERING TUCKER B. TO PAY RESTITUTION, IN VIOLATION OF R.C. 2152.20(D); FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION; ARTICLE 1, SECTION 16, OHIO CONSTITUTION.

{¶8} “III. TUCKER B. WAS DENIED THE EFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION OF THE SIXTH, AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION; ARTICLE I, SECTIONS 10 AND 16, OHIO CONSTITUTION.”

## I.

{¶9} In his first assignment of error, T.B. contends that because there was no competent, credible evidence that the juvenile court ordered T.B. to reimburse the victim for his actual economic loss, the juvenile court committed plain error when it ordered T. B. to pay \$1,100.00 in restitution.

{¶10} In its brief, the State of Ohio agrees the restitution order should be vacated and the issue remanded back to the Tuscarawas County Juvenile Court for the purposes of conducting a restitution hearing.

{¶11} Accordingly, T.B.'s first assignment of error is sustained. The order of restitution is vacated and the matter is remanded for an evidentiary hearing on restitution.

## II &amp; III

{¶12} In light of our disposition on T.B.'s first assignment of error remanding this case for an evidentiary hearing on the amount of restitution, we find T.B.'s second and third assignments of error to be premature.

{¶13} The judgment of the Tuscarawas Court of Common Pleas, Juvenile Division concerning restitution is reversed and vacated, and this case is remanded to that Court for an evidentiary hearing on restitution.

By Gwin, P.J.,

Hoffman, J., and

Delaney, J., concur