

[Cite as *State v. Williams*, 2015-Ohio-1957.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 102080

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**MICHAEL A. WILLIAMS**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
REVERSED AND REMANDED

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-14-586864-A

**BEFORE:** E.A. Gallagher, P.J., S. Gallagher, J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** May 21, 2015

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EILEEN A. GALLAGHER, P.J.:

{¶1} Defendant-appellant Michael Williams appeals the order of restitution imposed as part of his sentence for the misdemeanor offense of theft. For the following reasons, we reverse and remand.

{¶2} On July 9, 2014 Williams was indicted for one count of extortion in violation of R.C. 2905.11(A)(2). Pursuant to a plea agreement, the state amended the complaint to a misdemeanor charge of theft in violation of R.C. 2913.02(A)(3) and Williams entered a plea of guilty to that charge.

{¶3} Prior to entering his plea, the state noted that the victim in the case was seeking approximately \$90.00 for a cell phone that was taken but that an agreement on restitution was not part of the plea deal. Furthermore, the state noted that the cell phone was possibly separate and apart from the facts that led to Williams' indictment and plea.

{¶4} On September 22, 2014 the trial court conducted a sentencing hearing and the state detailed the underlying facts of Williams' plea as follows:

[The victim,] Ms. Bascom's daughter went missing and Mr. Williams is a friend, or a friend of a friend of hers, and contacted the victim using her daughter's cell phone and tried to extort money out of her in order to help her locate her daughter and get more information as to where her daughter could be.

This ultimately resulted in Euclid police department becoming involved in setting up almost like a sting operation where they had Mr. Williams meet Ms. Bascom at a gas station. She gave him \$40.00, and he was supposed to help lead her to some - - to where her daughter was. This didn't actually happen, but it ultimately resulted in the extortion charges then also the plea to the misdemeanor theft.

{¶5} Bascom addressed the court and asserted that Williams stole a phone she had purchased for her daughter and used it as part of an effort to extort money from her in exchange for her daughter's location. Bascom testified that the cost to replace the phone would be \$700.00.

{¶6} Williams opposed any restitution relating to the phone asserting that the theft offense to which he plead guilty was related to the \$40.00 and that money had been returned to Bascom. Williams argued that any allegations relating to the theft of the phone were unrelated to the present theft offense and that a separate police report had been filed for the theft of the phone. The prosecutor argued that restitution was appropriate because the missing phone had been used in the commission of the present offense.

{¶7} The trial court sentenced Williams to six months in the county jail, suspended the sentence and placed him on community control for one year. The trial court further ordered restitution in the amount of \$700.00 in favor of Bascom. Williams appeals asserting the following sole assignment of error:

The trial court erred in not determining the amount of restitution due as provided for in Ohio Revised Code 2929.28(A)(1).

{¶8} Williams argues that the trial court erred in imposing restitution for the alleged theft of Bascom's daughter's phone because he did not plead guilty to that offense and, therefore, restitution for it would be inappropriate under R.C. 2929.28(A)(1).

{¶9} We review an order of restitution for an abuse of discretion. *State v. Lalain*, 8th Dist. Cuyahoga No. 95857, 2011-Ohio-4813, ¶ 9, citing *State v. Marbury*, 104 Ohio App.3d

179, 661 N.E.2d 271 (8th Dist.1995). An abuse of discretion means more than a mere error of law or judgment; it implies that the trial court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶10} Pursuant to R.C. 2929.28(A)(1), when a court imposes restitution as part of a criminal sanction for misdemeanor offenses, "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. 2929.28(A)(1); *State v. Lalain*, 136 Ohio St.3d 248, 2013-Ohio-3093, 994 N.E.2d 423, paragraph one of the syllabus.

{¶11} "[R]estitution is limited to the economic loss caused by the defendant's illegal conduct for which he was convicted." *State v. Martemus*, 8th Dist. Cuyahoga No. 96420, 2011-Ohio-5844, ¶ 48, citing *State v. Brumback*, 109 Ohio App.3d 65, 82, 671 N.E.2d 1064 (9th Dist.1996); *State v. Furness*, 8th Dist. Cuyahoga No. 99930, 2014-Ohio-414, ¶ 17; *State v. McRae*, 8th Dist. Cuyahoga No. 96253, 2011-Ohio-6157, ¶ 37. "A trial court abuses its discretion in ordering restitution in an amount that exceeds the economic loss resulting from the defendant's crime." *State v. Moore-Bennett*, 8th Dist. Cuyahoga No. 95450, 2011-Ohio-1937, ¶ 18, citing *State v. Rivera*, 8th Dist. Cuyahoga No. 84379, 2004-Ohio-6648, ¶ 12.

{¶12} In the present instance, the record reflects that Williams' extortion indictment and subsequent plea to the lesser charge of theft did not relate to his alleged theft of the cell phone. In addition to the above quoted statement of facts underlying the conviction

provided by the prosecutor, the extortion indictment stated that Williams threatened to commit an offense of violence with the purpose to obtain any valuable thing or valuable benefit. Furthermore, his plea was to theft *by deception* in violation of R.C. 2913.02(A)(3).

{¶13} Because Williams was not charged with and did not plead guilty to the theft of Bascom's daughter's phone, restitution relating to the loss of the phone is inappropriate in this case because it does not qualify as an economic loss caused by the defendant's illegal conduct for which he was convicted.

{¶14} In reaching this conclusion we are guided by this court's decision in *State v. McDonald*, 8th Dist. Cuyahoga No. 95651, 2011-Ohio-1964. In *McDonald*, the defendant was charged with burglary, passing bad checks, aggravated menacing and criminal damage. McDonald plead guilty to passing bad checks and aggravated menacing and all other charges were dismissed. Nonetheless, the trial court imposed restitution in the amount of \$6,900 relating not just to bad checks but also to unpaid rent and a damaged door. On appeal, this court reversed noting that the back rent was not reasonably related to the actual loss suffered as a result of McDonald's convictions. *Id.* at ¶ 20. More importantly, we held that no restitution could be imposed for the damaged door because the state had dismissed the criminal damaging count. *Id.* at ¶ 20.

{¶15} Similarly, in *State v. Rivera*, 8th Dist. Cuyahoga No. 84379, 2004-Ohio-6648, this court reversed a restitution order where the defendant was charged with, and plead guilty to, receiving stolen property in the form of an automobile motor but was ordered to

pay restitution not just for the motor but the entire vehicle that had been stolen by another party. *Id.* at ¶ 15. We noted that restitution for the entire vehicle was inappropriate because the indictment indicated that the vehicle's motor was the subject of the receiving stolen property charge and the vehicle was not included in the indictment. *Id.* at ¶ 15.

{¶16} We find this case distinguishable from this court's decisions in *State v. Jackson*, 8th Dist. Cuyahoga No. 99059, 2013-Ohio-3136 (restitution was appropriate for individual items stolen during a burglary offense because the losses were the direct and proximate result of the criminal conduct) and *State v. Kane*, 8th Dist. Cuyahoga No. 97765, 2012-Ohio-3372 (restitution was appropriate for the entire amount of damages to victim's fence where defendant plead guilty to one count of criminal mischief because the victim's uncontroverted testimony at the restitution hearing established an inference of ongoing damage).

{¶17} Restitution is particularly inappropriate in this case because Bascom's allegation at sentencing that Williams had come into possession of her daughter's phone illegally was not based on firsthand knowledge. Bascom testified that she was told by police that Williams had admitted to taking the phone and that she needed to file a separate police report regarding it.

{¶18} We conclude that the trial court abused its discretion in ordering restitution relating to the disappearance of Bascom's daughter's phone because it did not qualify as an economic loss caused by the defendant's illegal conduct for which he was convicted.

{¶19} Williams' sole assignment of error is sustained.

{¶20} The judgment of the trial court is reversed and the case is remanded to vacate the restitution order.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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EILEEN A. GALLAGHER, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and  
ANITA LASTER MAYS, J., CONCUR