

[Cite as *State v. McLaurin*, 2016-Ohio-933.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103068

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JEFFREY MCLAURIN

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-14-588007-B

BEFORE: Celebrezze, J., E.T. Gallagher, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: March 10, 2016

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FRANK D. CELEBREZZE, JR., J.:

{¶1} Defendant-appellant, Jeffrey McLaurin (“appellant”), brings this appeal challenging the trial court’s order of restitution. Specifically, appellant argues that the trial court’s restitution order is not supported by any evidence, and that trial counsel rendered ineffective assistance by stipulating to an unsupported amount of restitution. After a thorough review of the record and law, we reverse and remand the matter for further proceedings consistent with this opinion.

I. Factual and Procedural History

{¶2} The instant criminal proceedings arose following an incident at the Honey Do Club in Cleveland, Ohio. On August 1, 2014, a patron was shot inside the club. The victim in the instant matter, a good samaritan with a medical background, heard the gunshots and attempted to assist the victim of the shooting until first responders arrived. After hearing the gunshots, appellant and his codefendants, Robert Barker and Demetrius Craig, ran into the bar and saw the good samaritan on top of the victim. Appellant and his codefendants mistakenly believed that the good samaritan had something to do with the shooting, and proceeded to attack him. During the attack, appellant and codefendants repeatedly punched and kicked the victim in the head.

{¶3} The victim sustained multiple injuries as a result of the attack, including: (1) a head wound requiring 34 stitches, (2) an arm wound requiring 30 staples, (3) a cracked rib, (4) lacerations to his spleen, (5) broken blood vessels of both pupils, and (6)

several contusions and bruises to his body. The medical expenses for his treatment totaled \$10,000, and the victim's out-of-pocket expenses after insurance coverage were \$4,000.

{¶4} The Cuyahoga County Grand Jury returned an indictment charging appellant with two counts of felonious assault, felonies of the second degree, in violation of R.C. 2903.11(A)(1). Appellant was arraigned and pled not guilty to both counts.

{¶5} After exchanging discovery and pretrying the case, the parties reached a plea agreement. Appellant pled guilty to an amended Count 1, attempted felonious assault, a felony of the third degree, and Count 2 was nolle.

{¶6} During the change of plea hearing, trial counsel agreed that appellant and his codefendants would share the victim's medical bills, which totaled \$10,000. During the sentencing hearing, the prosecutor informed the trial court that insurance covered some of victim's medical expenses, and that his out-of-pocket expenses were \$4,000.

{¶7} The trial court ordered appellant to pay restitution in the amount of \$1,333. Appellant filed the instant appeal assigning two errors for review:

- I. The trial court erred in rendering an order of restitution in the absence of any evidence of the amount outstanding and owing by the State.
- II. Trial counsel rendered ineffective assistance in its stipulation to a restitution amount that had no factual support.

II. Law and Analysis

A. Restitution

{¶8} This court reviews an order of restitution under the abuse of discretion standard. *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 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).

{¶9} In his first assignment of error, appellant argues that the trial court erred by ordering him to pay \$1,333 in restitution when there was not any documentation of the victim's medical expenses. Appellant contends that without documentation of the victim's medical expenses, the trial court could not discern the specific amount of restitution to a reasonable degree of certainty.

{¶10} Initially we note that since appellant neither objected to the order of restitution nor the amount of restitution ordered in the trial court, he waived all but plain error. *See State v. Jarrett*, 8th Dist. Cuyahoga No. 90404, 2008-Ohio-4868, ¶ 14, citing *Marbury* at 181.

{¶11} Crim.R. 52(B) provides that "plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." We invoke plain error if we find that the circumstances in the instant case are exceptional and that reversal of the restitution order is necessary to prevent a manifest miscarriage of

justice. *State v. Landrum*, 53 Ohio St.3d 107, 112, 559 N.E.2d 710 (1990). For the reasons that follow, we find plain error in the trial court's restitution order.

{¶12} R.C. 2929.18(A)(1) authorizes a trial court to impose restitution as part of a felony sentence "in an amount based on the victim's economic loss." R.C. 2929.01(L) defines "economic loss" as "any economic detriment suffered by the victim as a result of the commission of a felony and includes any * * * medical cost * * * incurred as a result of the commission of the felony."

{¶13} Prior to ordering restitution, however, a sentencing court must engage in a "due process ascertainment that the amount of restitution bears a reasonable relationship to the loss suffered." *State v. Borders*, 12th Dist. Clermont No. CA2004-12-101, 2005-Ohio-4339, ¶ 36, quoting *Marbury*, 104 Ohio App.3d 179, 661 N.E.2d 271. The court must determine the amount of restitution to a reasonable degree of certainty, ensuring that the amount is supported by competent, credible evidence. *State v. Warner*, 55 Ohio St.3d 31, 69, 564 N.E.2d 18 (1990). "When an award of restitution is not supported by such evidence, it is an abuse of discretion by the court that alters the outcome of the proceeding, thus constituting plain error." *State v. Peck*, 6th Dist. Sandusky No. S-12-046, 2013-Ohio-4835, ¶ 19.

{¶14} In the instant matter, appellant argues that no documentation was submitted from which the trial court could discern the specific amount of restitution to a reasonable degree of certainty. We agree.

{¶15} At the change of plea hearing, the parties discussed restitution as being part of the plea agreement and appellant explicitly agreed to pay restitution when questioned by the trial court.

{¶16} During the change of plea hearing, the prosecutor explained the terms of the plea agreement as follows:

It is the state's understanding that at this time all three defendants desire to withdraw their previously entered plea of not guilty and enter a plea of guilty to the following amended indictment.

Count one will be amended to attempted felonious assault, making that a felony of the third degree, your Honor. And the attempt statute is 2923.02.

State would also be nolleing count two. And there is also restitution to be split between all three defendants in the amount of \$3,300, your Honor.

{¶17} The trial court inquired whether the three defendants were jointly and severally liable for the restitution amount, or whether the defendants had a separate obligation to pay restitution. The prosecutor advised the trial court that "each defendant is obligated to pay \$3,300 separately" and that the defendants were not jointly and severally liable for the restitution order. Furthermore, the trial court inquired whether or not the restitution amount was agreed upon by the parties. The trial court concluded as follows:

What I hear then is that it's agreed upon that the amount will be not in excess of \$10,000 in medical bills to be shared severally by each of the

defendants in the amount of \$3,300 each, *subject to documentation presented at sentencing.*

(Emphasis added.)

{¶18} At the sentencing hearing, the prosecutor amended the amount of restitution:

At the plea it was placed on the record it was \$10,000 for restitution not to exceed \$10,000. In speaking with the victim, and after his insurance covered some of the medical expenses, he did inform me of his out-of-pocket expenses were \$4,000.

I did have this discussion with the attorneys prior to us coming in for sentencing. It was agreed the \$4,000 will be split amongst the three Defendants in this matter.

I will contact the victim and *have him forward the paperwork to me so that I can forward it to you, your Honor, as well as the probation department.*

(Emphasis added.)

{¶19} The trial court imposed the following restitution order during the sentencing hearing:

You're also going to have to pay restitution in this matter to [the victim] in the amount of \$1,333, which is \$4,000 divided by three.

It is my understanding each counsel and each of their clients, each of you have agreed to pay the amount not covered by insurance. And each of your obligations is \$1,333.

Furthermore, the trial court explained:

Restitution obligation is contingent upon getting verification of \$4,000

which is the deductible amount that [the victim] has to pay himself. And upon receipt of that information, that will be shared to each counsel. But if there are any issues about that, we'll hold a separate hearing.

(Emphasis added.)

{¶20} The trial court's sentencing journal entry, however, does not indicate that the order of restitution is contingent upon verification of the victim's medical bills. Instead, the journal entry provides "state to provide documentation of victim's \$4,000 obligation to pay medical expenses" and "restitution ordered in the amount of \$1,333.00 to [the victim]."

{¶21} In *State v. Hody*, 8th Dist. Cuyahoga No. 94328, 2010-Ohio-6020, this court held that the parties' stipulation as to the amount of restitution "served as a sufficient basis to support the trial court's order and precludes defendant from complaining about it now on appeal." *Id.* at ¶ 25, citing *State v. Sancho*, 8th Dist. Cuyahoga No. 91903, 2009-Ohio-5478. In the instant matter, however, the parties did not stipulate to an amount of restitution. Instead, at the change of plea hearing, the parties agreed that (1) the amount of restitution would not exceed \$10,000, and (2) the state would provide the trial court with documentation of the victim's medical bills at the sentencing hearing.

{¶22} In *State v. Roberts*, 8th Dist. Cuyahoga No. 99755, 2014-Ohio-115, it was undisputed that the victim suffered severe injuries requiring extensive medical treatment.

Id. at ¶ 10. However, at the time of sentencing, the trial court did not have evidence of the amount of damages suffered by the victim. *Id.* at ¶ 2. Nevertheless, the trial court “ordered restitution in an indefinite amount for payment of the victim’s medical bills.” *Id.* On appeal, this court reversed the order of restitution, holding that the trial court “committed plain error in ordering an indefinite amount of restitution without documentation or testimony evidencing the actual economic loss suffered by the victim.” *Id.* at ¶ 11.

{¶23} After reviewing the record, we find that the trial court misapplied R.C. 2929.18, and abused its discretion in ordering restitution at the sentencing hearing without documentation of the victim’s medical bills.

{¶24} R.C. 2929.18(A)(1) permits a trial court to *modify* a restitution order based upon evidence presented after sentencing. However, when there is not competent and credible evidence to support an order of restitution at sentencing, R.C. 2929.18(A)(1) does not authorize a trial court to order restitution contingent upon receiving documentation of the victim’s economic loss at a later time.

{¶25} In the instant matter, aside from the prosecutor’s statement that the victim informed her that “his out-of-pocket expenses were \$4,000,” the state failed to introduce any evidence regarding the value of the economic loss suffered by the victim at the sentencing hearing. Despite the lack of evidence documenting the victim’s medical expenses, the trial court, like *Roberts*, ordered restitution in the amount of \$1,333.

Accordingly, we find that the trial court abused its discretion, and committed plain error, by ordering restitution without any documentation of the victim's medical bills to support the trial court's order. Even if the trial court received documentation of the victim's medical bills after the sentencing hearing, it does not change the fact that the trial court ordered restitution at a time when it did not have documentation of the victim's medical bills to support the restitution order. Rather than ordering restitution contingent upon the state presenting documentation of the medical bills after the fact, the trial court should have either postponed sentencing, held a hearing on restitution once the state obtained documentation of the victim's medical bills, or had the parties stipulate to the amount of restitution without the contingency of receiving documentation of the victim's medical bills.

{¶26} The trial court did not have competent and credible evidence of the victim's medical bills at the sentencing hearing to support its order of restitution. Accordingly, we find that the trial court abused its discretion, and committed plain error, by ordering restitution in the amount of \$1,333. The trial court's order of restitution is vacated and the matter is remanded to the trial court for an evidentiary hearing on the amount of restitution.

{¶27} Appellant's first assignment of error is sustained.

{¶28} The reversal of the order of restitution and a remand for a restitution hearing renders appellant's second assignment of error regarding his claim of ineffective

assistance of counsel moot. See *In re T.C.*, 8th Dist. Cuyahoga No. 102632, 2015-Ohio-4384, ¶ 19; *State v. Kellogg*, 2013-Ohio-4702, 1 N.E.3d 457, ¶ 18 (8th Dist.).

III. Conclusion

{¶29} The trial court misapplied R.C. 2929.18(A)(1) by ordering restitution contingent upon receiving documentation of the victim's medical bills from the state after the sentencing hearing. The trial court did not have competent and credible evidence of the victim's medical bills at the sentencing hearing to support its order of restitution. Furthermore, because the parties' stipulation that the amount of restitution would not exceed \$10,000 was contingent upon receiving documentation of the victim's medical bills, the parties did not adequately stipulate to the amount of restitution. Accordingly, we find that the trial court abused its discretion, and committed plain error, by ordering restitution in the amount of \$1,333.

{¶30} The trial court's order of restitution is vacated, and the matter is remanded to the trial court for an evidentiary hearing on the amount of restitution.

It is ordered that appellant recover of said 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.

FRANK D. CELEBREZZE, JR., JUDGE

EILEEN T. GALLAGHER, P.J., and
MELODY J. STEWART, J., CONCUR