

[Cite as *State v. Norman*, 2017-Ohio-752.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 104936

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**LAKISHA M. NORMAN**

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-16-604823-A

**BEFORE:** Celebrezze, J., Stewart, P.J., and Boyle, J.

**RELEASED AND JOURNALIZED:** March 2, 2017

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FRANK D. CELEBREZZE, JR., J.:

{¶1} Defendant-appellant, Lakisha Norman (“appellant”), brings this appeal challenging the trial court’s order of restitution. Specifically, appellant argues that there was no documentation supporting the trial court’s restitution order and that the trial court erred by imposing restitution without holding a hearing. After a thorough review of the record and law, we vacate the trial court’s restitution order and remand the matter for further proceedings consistent with this opinion.

### **I. Factual and Procedural History**

{¶2} The instant matter arose from a February 2016 incident during which appellant got into a motor vehicle accident while she was driving her mother’s car without permission. The vehicle was damaged in the accident and impounded thereafter.

{¶3} On April 5, 2016, the Cuyahoga County Grand Jury returned a six-count indictment charging appellant with (1) receiving stolen property, in violation of R.C. 2913.51(A); (2)-(3) endangering children, in violation of R.C. 2919.22(A); (4)-(5) endangering children, in violation of R.C. 2919.22( )(1); and (6) criminal damaging or endangering, in violation of R.C. 2909.06(A)(1).

{¶4} The parties reached a plea agreement under which the state amended Count 1 to unauthorized use of a vehicle, in violation of R.C. 2913.03(A). On July 27, 2016, appellant pled guilty to the amended Count 1 and Counts 2 through 6 as charged in the

indictment.

{¶5} During the change of plea hearing, the state informed the trial court that appellant agreed to pay restitution to the victim for the damage to her vehicle. The state indicated that the victim had recommended restitution in the amount of \$1,500. Appellant's counsel disputed the victim's restitution recommendation and requested the state to produce documentation of the victim's economic losses. The parties agreed that the amount of restitution would be determined at the time of sentencing. The trial court ordered a presentence investigation report and set the matter for sentencing.

{¶6} The trial court held a sentencing hearing on August 17, 2016. The trial court sentenced appellant to a jail term of six months on all six misdemeanor counts. The trial court ordered the six counts to run concurrently. The trial court suspended execution of the sentence and placed appellant on probation for one year. Furthermore, the trial court ordered appellant to pay restitution to the victim in the amount of \$1,500. The trial court's sentencing journal entry provides, in relevant part, "restitution ordered in the amount of \$1,500.00 to [the victim.]"

{¶7} Appellant filed a motion to reconsider the trial court's judgment on September 1, 2016. In her motion, appellant requested that the trial court "reconsider and modify" its orders requiring appellant to pay restitution to the victim and participate in the home detention GPS monitoring program. The record reflects that the trial court did not rule on appellant's motion to reconsider.

{¶8} On September 9, 2016, appellant filed the instant appeal challenging the trial

court's restitution order. She assigns one error for review:

I. The trial court erred by imposing restitution without holding a hearing under [R.C.] 2929.18.

## **II. Law and Analysis**

### **A. Restitution**

{¶9} In her sole assignment of error, appellant argues that the trial court erred by imposing restitution without holding a hearing.

{¶10} 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).

{¶11} Initially, we note that appellant's reliance on R.C. 2929.18 is misplaced. R.C. 2929.18 governs financial sanctions imposed for felony offenses. In the instant matter, appellant pled guilty to six misdemeanors of the first degree. Thus, R.C. 2929.28, governing financial sanctions imposed for misdemeanor offenses, is applicable.

{¶12} R.C. 2929.28(A)(1) authorizes a trial court to impose restitution as part of a misdemeanor sentence. The statute provides, in relevant part:

[i]f the court imposes restitution, the court shall determine the amount of restitution to be paid 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.

R.C. 2929.01(L) defines “economic loss” as “any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense \* \* \*. ‘Economic loss’ does not include non-economic loss or any punitive or exemplary damages.”

{¶13} In the instant matter, the victim recommended restitution in the amount of \$1,500. The state communicated this recommendation to the trial court during the change of plea and sentencing hearings. Appellant’s counsel acknowledged that appellant agreed to pay restitution, but disputed the victim’s restitution recommendation.

{¶14} During the change of plea hearing, appellant’s counsel requested “some type of documentation” reflecting the victim’s damages. (Tr. 7.) When the state failed to produce documentation supporting the victim’s restitution recommendation at the sentencing hearing, appellant’s counsel renewed the objection to the \$1,500 restitution recommendation: “we are disputing any restitution at this time without any actual proof of what was paid out of pocket for any kind of repairs.” (Tr. 19.) Despite appellant’s objections to the \$1,500 restitution recommendation and the lack of evidence

documenting the victim's economic loss, the trial court ordered restitution in the amount of \$1,500.

{¶15} After reviewing the record, we find that the trial court abused its discretion by ordering restitution in the amount of \$1,500. It is undisputed that the victim suffered economic loss as a result of appellant's conduct. Appellant's counsel acknowledged that the victim's vehicle was damaged in the car accident and confirmed appellant's willingness to pay restitution for the damage that she caused. Nevertheless, when an offender disputes the amount of restitution, R.C. 2929.28(A)(1) provides that "the court *shall* hold an evidentiary hearing on restitution[.]" (Emphasis added.)

{¶16} Appellant argues, and the state concedes, that the trial court ordered appellant to pay restitution without holding a hearing, as required, to determine the appropriate amount of restitution. Furthermore, although there is no dispute that the victim's vehicle was damaged in the car accident, the record is devoid of any evidence regarding the value of the economic loss that the victim suffered.

{¶17} Accordingly, appellant's sole assignment of error is sustained.

{¶18} 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

MELODY J. STEWART, P.J., and  
MARY J. BOYLE, J., CONCUR