

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 27421

Appellee

v.

AMANDA M. SHARIER

Appellant

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 14 04 0919

DECISION AND JOURNAL ENTRY

Dated: June 30, 2015

MOORE, Judge.

{¶1} Defendant-Appellant, Amanda Sharier, appeals from her convictions in the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} Roxanne Robinson is the owner of a house on 25th Street Northwest in Barberton. The house consists of three stories and, prior to the incident giving rise to this appeal, had aluminum awnings on all of its windows. Ms. Robinson purchased her house in 2008, and the awnings were already there at that time. According to one of Ms. Robinson's neighbors, the awnings had been on Ms. Robinson's house since at least 2004.

{¶3} In March 2014, Ms. Robinson was renting her house to her niece, Ms. Sharier. A neighbor called Ms. Robinson and reported having seen someone leaning out of the windows of Ms. Robinson's house and removing her awnings. Ms. Robinson asked a family member to call the police, and Officer Benjamin Knorr responded to the scene. Through his investigation,

Officer Knorr ultimately discovered that Ms. Sharier and a male friend had removed several of Ms. Robinson's awnings and had sold them to a scrap metal business for \$34. Ms. Robinson confirmed that eight awnings had been removed from her home.

{¶4} A grand jury indicted Ms. Sharier on one count of theft, a fifth-degree felony, and one count of obstructing official business, a second-degree misdemeanor. Ms. Sharier waived her right to a jury trial, and a bench trial ensued. At the conclusion of the trial, the court found Ms. Sharier guilty of obstructing official business, but not guilty of felony theft. Instead, the court found Ms. Sharier guilty of the lesser-included offense of petty theft, a first-degree misdemeanor. The court sentenced her to two years of probation and ordered her to pay \$999.00 in restitution to Ms. Robinson.

{¶5} Ms. Sharier now appeals from her convictions and raises one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT COMMITTED REVERSIBLE AND PLAIN ERROR IN ORDERING [MS.] SHARIER TO PAY RESTITUTION IN THE AMOUNT OF \$999.00.

{¶6} In her sole assignment of error, Ms. Sharier argues that the trial court erred when it ordered her to pay \$999 in restitution. Specifically, she argues that there was no evidence to support the \$999 figure that the court ordered.

{¶7} R.C. 2929.28 vests trial courts with the discretion to impose financial sanctions upon offenders who commit misdemeanors. One type of financial sanction a court may impose is "restitution by the offender to the victim of the offender's crime * * * in an amount based on the victim's economic loss." R.C. 2929.28(A)(1).

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. If the court decides to impose restitution, the court shall hold an evidentiary hearing on restitution if the offender, victim, or survivor disputes the amount of restitution.

Id. “If a defendant fails to object to the restitution order the court imposes, he [or she] forfeits any error in the court’s order, save for a claim of plain error.” *State v. Ford*, 9th Dist. Summit No. 26073, 2012-Ohio-1327, ¶ 6, citing *State v. Ratliff*, 194 Ohio App.3d 202, 2011-Ohio-2313, ¶ 14 (2d Dist.) (“A defendant who does not dispute an amount of restitution, request a hearing, or otherwise object waives all but plain error in regards to the order of restitution.”).

{¶8} Ms. Sharier failed to object to the court’s imposition of restitution at her sentencing hearing and did not request a hearing so as to dispute the amount of restitution that the court ordered her to pay. In fact, she specifically declined the court’s offer to hold a restitution hearing because the court indicated that it would revoke her bond and hold her in jail until that hearing could occur. The State argues that, by declining the court’s offer to hold a hearing, Ms. Sharier waived rather than forfeited her right to contest the court’s restitution order. Yet, we need not decide that issue to resolve this appeal. That is because, even assuming that Ms. Sharier preserved a claim of plain error for appeal, she has not shown that the court committed plain error in its restitution order.

{¶9} “Notice of plain error under Crim.R. 52(B) is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.” *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus. Further, to correct a plain error, all of the following elements must apply: “First, there must be an error, i.e., a deviation from the

legal rule. * * * Second, the error must be plain. To be ‘plain’ within the meaning of Crim.R. 52(B), an error must be an ‘obvious’ defect in the trial proceedings. * * * Third, the error must have affected ‘substantial rights[]’ [to the extent that it] * * * affected the outcome of the [proceeding].” *State v. Roper*, 9th Dist. Summit No. 27025, 2014-Ohio-4786, ¶ 6, quoting *State v. Bennett*, 9th Dist. Lorain No. 12CA010286, 2014-Ohio-160, ¶ 64, quoting *State v. Hardges*, 9th Dist. Summit No. 24175, 2008-Ohio-5567, ¶ 9.

{¶10} At the sentencing hearing, the prosecutor informed the trial court that he had spoken with Ms. Robinson and the police about the replacement cost of the awnings. Because the estimated replacement cost of the awnings was approximately \$250 per awning, the State asked the court to impose restitution in the amount of \$2,000. The defense did not take any position on the appropriate amount of restitution in this matter.

{¶11} The court noted that it had found Ms. Sharier guilty of petty theft because the State had not proven that the fair market value of the awnings was an amount equal to or in excess of \$1,000. *See* R.C. 2913.02(B)(2). *See also* R.C. 2913.61(D)(3) (fair market value defined as “the money consideration that a buyer would give and a seller would accept for property or services”). Even so, the court noted that it could take replacement cost into account when determining the appropriate amount of restitution. *See* R.C. 2929.28(A)(1) (restitution based on victim’s economic loss); R.C. 2929.01(L) (economic loss defined as “any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense[,] include[ing] * * * any property loss * * *”). The court accepted that it would cost Ms. Robinson more than \$1,000 to replace her awnings. Emphasizing that it could not order Ms. Sharier to pay \$1,000 or more in restitution for a petty theft offense, the court ordered her to pay \$999. *See*

Ford, 2012-Ohio-1327, at ¶ 9. (“A court may not order an offender to pay an amount of restitution in excess of the monetary parameters of his [or her] offense.”).

{¶12} Ms. Sharier argues that the court committed plain error when it ordered her to pay \$999 in restitution because there was no evidence in the record to support that figure. Pursuant to R.C. 2929.28(A)(1), however, “[a] court may base the amount of restitution it orders on an amount recommended by the victim” provided that the recommended amount does not exceed the victim’s economic loss. Ms. Robinson recommended an amount of restitution in excess of \$999 because the replacement cost of the awnings would be closer to \$2,000. Ms. Sharier did not produce any evidence tending to show that the awnings could be replaced at a lower cost. Moreover, the trial court only ordered her to pay \$999 in restitution. Ms. Sharier has not shown that the amount the court ordered her to pay exceeded Ms. Robinson’s economic loss. Because Ms. Sharier has not shown that the court erred in its restitution order, she cannot demonstrate plain error. *See Roper*, 2014-Ohio-4786, at ¶ 6. Her sole assignment of error is overruled.

III.

{¶13} Ms. Sharier’s sole assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

HENSAL, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

SHUBHRA N. AGARWAL, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.