

[Cite as *State v. Blay*, 2010-Ohio-4749.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 10AP-247
v.	:	(C.P.C. No. 08CR-08-6809)
	:	
Tina M. Blay,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on September 30, 2010

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Shaw & Miller, and *Mark J. Miller*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} This is an appeal by defendant-appellant, Tina M. Blay, from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas following appellant's guilty plea to one count of aggravated burglary.

{¶2} On September 15, 2008, appellant was indicted on one count of aggravated burglary and one count of aggravated robbery. Both counts of the indictment carried a firearm specification. On September 28, 2009, appellant entered a guilty plea to one

count of aggravated burglary, without specification. On February 12, 2010, the trial court conducted a sentencing hearing.

{¶3} The trial court filed a judgment entry on February 18, 2010, in which the court found appellant guilty of one count of aggravated burglary, without specification, and entered a nolle prosequi as to Count 2 of the indictment. The trial court imposed a five-year period of community control, and ordered appellant to pay restitution in the amount of \$6,000.

{¶4} On appeal, appellant raises the following assignment of error for this court's review:

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT FAILED TO CONDUCT AN EVIDENTIARY HEARING PURSUANT TO OHIO REVISED CODE SECTION 2929.18(A)(1), AFTER APPELLANT SPECIFICALLY OBJECTED TO THE AMOUNT OF RESTITUTION ORDERED.

{¶5} Under her single assignment of error, appellant argues that the trial court erred in failing to conduct a hearing on restitution when she disputed the amount of restitution. Appellant maintains that a hearing was required pursuant to R.C. 2929.18.

{¶6} R.C. 2929.18(A)(1) states in relevant part:

If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made 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. If the court decides to impose restitution, the

court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount.

{¶7} The amount of restitution ordered by a trial court " 'must bear a reasonable relationship to the loss suffered.' " *State v. Broud*, 6th Dist. No. WD-08-070, 2009-Ohio-2922, ¶3, quoting *State v. Marbury* (1995), 104 Ohio App.3d 179, 181. An award of restitution is "limited to the actual loss caused by the defendant's criminal conduct for which he [or she] was convicted," and "[t]here must be competent and credible evidence in the record from which the court may ascertain the amount of restitution to a reasonable degree of certainty." *Id.*, citing *State v. Brumback* (1996), 109 Ohio App.3d 65, 82, and *State v. Warner* (1990), 55 Ohio St.3d 31.

{¶8} In general, "[a]n appellate court's review of the amount of restitution ordered by a trial court is governed by an abuse of discretion standard." *State v. Whiting*, 2d Dist. No. 20168, 2004-Ohio-5284, ¶7, citing *State v. Williams* (1986), 34 Ohio App.3d 33, 35.

{¶9} In the instant case, the state argues that appellant failed to timely object to the court's imposition of restitution; therefore, the state contends, the standard of review should be plain error. We disagree.

{¶10} A review of the sentencing hearing indicates that, after a brief discussion of the events at issue, the trial court noted: "I also have \$6,000 restitution; is that correct?" (Tr. 6.) Counsel for the state explained that the amount was for "vet bills." (Tr. 6.) The \$6,000 amount appeared in a notation in appellant's pre-sentence investigation report (noting the victim "has a total of \$6,000.00 in veterinary bills * * * owed to the Ohio State University"). Following that dialogue, the trial court pronounced sentence from the bench, stating: "I'll place her on probation for five years. * * * She's ordered to pay \$6,000 to [the

victim]." (Tr. 6.) Counsel for appellant then stated: "Your Honor, * * * regarding the restitution, I haven't seen any vet bills or anything, so if you could please just note my objection for the record." (Tr. 7.) The trial court responded: "All right." (Tr. 7.)

{¶11} Thus, the record indicates that counsel for appellant made an objection to the amount of restitution immediately after the court pronounced the amount. We agree with appellant that the plain language of the statute contains no requirement that counsel dispute the amount of restitution at any particular time during the sentencing hearing. Under these facts, counsel's decision to wait until the court announced the imposition as well as the amount of restitution prior to challenging that amount does not, in our view, constitute an untimely objection.

{¶12} R.C. 2929.18(A)(1) "expressly provides that a trial court *shall* hold a hearing on restitution if the victim, offender, or survivor disputes the amount." (Emphasis sic.) *State v. Lamere*, 3d Dist. No. 1-07-11, 2007-Ohio-4930, ¶10. See also *State v. Aliane*, 10th Dist. No. 03AP-840, 2004-Ohio-3730, ¶17 (although trial court may consider pre-sentence investigation report when ordering restitution, because appellant and his counsel objected to the amount of restitution ordered, court committed reversible error by failing to comply with the hearing requirements of R.C. 2929.18). In the instant case, because counsel for appellant specifically disputed the amount of restitution, the trial court was required to hold an evidentiary hearing to determine the appropriate amount, and the failure to do so constituted reversible error. *Lamere; Aliane*.

{¶13} Based upon the foregoing, we sustain appellant's single assignment of error, the judgment of the Franklin County Court of Common Pleas Court is reversed, and

this matter is remanded to the trial court for further proceedings in accordance with law, consistent with this decision.

Judgment reversed and cause remanded.

TYACK, P.J., and SADLER, J., concur.
