

[Cite as *State v. Hill*, 2010-Ohio-2508.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 23343
Plaintiff-Appellee	:	
	:	Trial Court Case No. 07-CR-4461
v.	:	
	:	(Criminal Appeal from
JOE HILL, III	:	Common Pleas Court)
	:	
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 4th day of June, 2010.

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MATHIAS H. HECK, JR., by MICHELE D. PHIPPS, Atty. Reg. #0069829,
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BROGAN, J.

{¶ 1} Joe Hill has appealed a trial court's order that he pay restitution to the victim of his crime. He argues that he had no opportunity to dispute the amount, a violation of his due process rights. We agree.

{¶ 2} On October 24, 2007, officers from the Riverside Police Department

were dispatched to investigate a possible break-and-enter at a trailer-sales business.

A witness had seen two men lifting a trailer over a fence and attaching it to a truck. Officers saw the truck pulling away so they turned on their overhead lights and siren, but the truck did not stop. The officers gave chase. Eventually, the truck abruptly pulled over and two men jumped out and ran, one of whom was Hill. Hill was soon located and arrested. The trailer was returned to the owner. On December 21, 2007, under a plea agreement, Hill pleaded guilty to a charge of failure to comply with a signal of a police officer (serious physical harm/substantial risk). On January 29, 2008, the trial court sentenced Hill to a two-year prison term and ordered him to pay \$1,171.29 in restitution to the owner of the trailer.

{¶ 3} On March 24, 2009, Hill filed a motion with this court requesting leave to file a delayed appeal of the trial court's restitution order, which we granted. That appeal is now before us with a single assignment of error.

{¶ 4} Hill contends that the trial court erred by ordering him to pay restitution because the court did not provide him a chance to dispute the amount or advise him of his right to do so. This failure, Hill argues, violated his due-process rights. The state contends that by not objecting to the restitution order at sentencing Hill has waived his right to appeal all but plain error. See Crim.R. 52(B). The state asserts that Hill fails to show plain error.

{¶ 5} At a sidebar with Hill's counsel and the prosecutor just before sentence was imposed, the prosecutor, apparently filling in for the prosecutor actually assigned to the case, said, "Chris has restitution on this that's pretty hefty, 1171, but I'll bet he already told the judge that, so I'm probably getting ahead of everyone." (Sentencing

Tr. 11). Nothing more was said about restitution until the trial court imposed sentence.

Although the transcription of the hearing does not show that the trial court ordered restitution, the video recording of the hearing, which is in the record, and which we carefully examined, reveals that immediately after the next case was called, while Hill was being handcuffed, the court returned to Hill and ordered restitution in the amount of \$1,171.29.¹ Neither Hill nor counsel objected to the restitution order.

{¶ 6} A trial court has statutory authority to order restitution in felony cases. See R.C. 2929.18(A)(1) (“Financial sanctions that may be imposed pursuant to this section include * * * [r]estitution by the offender to the victim of the offender’s crime * * *”). By failing to object to the restitution order, Hill waived all but plain error. See *Dayton v. Santos* (Jan. 12, 2001), Montgomery App. No. 18324. The trial court, in its Termination Entry, ordered Defendant “to pay complete restitution to Donald A. Taubert, 2812 Brandt Pike, Dayton, OH 45404 for economic loss in the amount of \$1,171.29 * * * through the Montgomery County Clerk of Courts.”

{¶ 7} R.C. 2929.18(A)(1) authorizes the court to order a defendant convicted of an offense to pay restitution to the **victim** of the offense for the amount of any

¹App.R. 9(A) states, “When the transcript of proceedings is in the videotape medium, counsel shall type or print those portions of such transcript necessary for the court to determine the questions presented, certify their accuracy, and append such copy of the portions of the transcripts to their briefs.” Although the part of the hearing in which the trial court ordered restitution is not in the written transcription, we exercised our discretion and examined the DVD-recording of the hearing. But we caution that we need not have done so. See *Shields v. Englewood*, 172 Ohio App.3d 620, 2007-Ohio-3165, at ¶22 (saying that “[w]hile [appellant] has filed videotapes and DVDs of the proceedings herein, he has not provided typed or printed portions of those transcripts, as required by App.R. 9(A),” and concluding that “the lack of a transcript precludes us from reviewing [appellant’s] specific arguments”). The state, here, rather than citing the location on the DVD should have attached to its brief a proper

economic loss the victim suffered as a result. That section permits the court to base its order on information from several different sources in determining the restitution it orders, including the PSI.

{¶ 8} The indictment charged three offenses. Count I charged Defendant with trespassing on the property of DLI Trailers with purpose to commit a felony. Count II charged Defendant with theft of a trailer owned by DLI. Count III charged Defendant with fleeing a police officer after being ordered to stop, “and the operation of the motor vehicle was a proximate cause of serious physical harm to persons or property or caused a substantial risk of harm to persons or property.” R.C. 2921.331(C)(5).

{¶ 9} The court’s statement while Defendant was being led away doesn’t identify the person to whom the restitution would be paid. More fundamentally, to the extent that Donald A. Taubert is a victim in some way of the fleeing offense of which Defendant was convicted, there is no basis in the record to find that he suffered any economic loss for purposes of R.C. 2929.18(A)(1). Indeed, the PSI, which that section identified as a source on which the court may rely, states that Taubert suffered no economic loss. The pre-sentence report contains a notation that the Riverside officer’s canine was injured. The investigative officer Andrew Gough recommended that Riverside Police receive restitution in the amount of \$1,171.29.

{¶ 10} We find the trial court’s order that Hill pay restitution to Donald Taubert was plain error. Hill’s assignment of error is Sustained. The judgment of the trial court is Reversed and Remanded for Re-sentencing.

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transcription of the trial court’s ordering of restitution.

GRADY and FROELICH, JJ., concur.

Copies mailed to:

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Hon. A. J. Wagner