

COURT OF APPEALS OF OHIO, FIRST APPELLATE DISTRICT, HAMILTON COUNTY

State v. Dunn

2026-Ohio-241 · No. C-250257 · Decided January 28, 2026

SUMMARY

The Ohio First District Court of Appeals reversed the Hamilton County Municipal Court’s refusal to award restitution to victims whose vehicle was stolen and damaged by Faith Dunn. The court held that the victims had a right to restitution under Ohio Constitution Article I, Section 10a(A)(7), and that the trial court lacked a sufficient basis to conclude that Dunn could not pay. The case was remanded for further proceedings concerning the amount of restitution, third-party reimbursement, and insurance-related reductions.

CASE DETAILS

COURT	Court of Appeals of Ohio, First Appellate District, Hamilton County
WRITING FOR THE COURT	Bock, Presiding Judge; Nestor, Judge; Moore, Judge
JURISDICTION	Ohio Court of Appeals, First Appellate District, Hamilton County
DECIDED	January 28, 2026
DOCKET	C-250257
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The victims appealed the Hamilton County Municipal Court's denial of their request for restitution after Faith Dunn pleaded guilty to unauthorized use of a motor vehicle and was sentenced.
STANDARD OF REVIEW	A nonfelony restitution order is reviewed for abuse of discretion; constitutional-interpretation issues are reviewed de novo.
PRECEDENTIAL VALUE	published
PARTIES	P.H., W.C. v. State of Ohio, Faith Dunn

TOPICS

- restitution criminal
- appellate procedure
- standard of review
- statutory interpretation
- constitutional law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the trial court violated the victims' rights under Ohio Constitution article I, section 10a(A)(7), and R.C. 2929.28 by denying restitution based on an unsupported conclusion that Dunn could not pay.
2. Whether the appellate court could affirm on the alternative ground that the victims failed to establish the amount of economic loss when the trial court made no factual findings and held no evidentiary hearing.
3. What issues concerning third-party reimbursement and insurance payments must be considered on remand in calculating restitution.

HOLDINGS

1. The trial court abused its discretion by declining to award restitution based on Dunn's inability to pay when Dunn had stated that she could pay and the record contained no evidence supporting the court's conclusion that she could not pay.
2. The appellate court would not resolve factual disputes concerning the amount of restitution because the trial court held no evidentiary hearing and made no findings relevant to the restitution amount.
3. On remand, the trial court must consider evidence concerning third-party reimbursement and payments made or due under insurance or governmental programs when determining the proper restitution amount.

KEY QUOTATIONS

“Among the rights that Marsy’s Law provides a victim is the right “to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim.”” (¶ 12)

“The trial court erred in declining to award restitution based on Dunn’s inability to pay because the trial court lacked any basis to conclude that Dunn could not pay restitution.” (¶ 18)

“appellate jurisdiction does not authorize this court to conduct a trial on issues of fact unless such a trial has been had in the court of first instance.” (¶ 22)

FACTUAL BACKGROUND

Faith Dunn stole and crashed the victims' 2004 Acura MDX and pleaded guilty to unauthorized use of a motor vehicle. The victims requested \$6,175 in restitution, supported by a Kelley Blue Book private-party valuation, but their submission did not specify the vehicle's mileage or the extent of the damage. Dunn stated that she could and would pay restitution, but the trial court disbelieved her, believed the victims had insurance, and awarded no restitution without holding an ability-to-pay or evidentiary hearing.

PROCEDURAL HISTORY

Dunn was charged with obstructing official business and unauthorized use of a motor vehicle. She pleaded guilty to the unauthorized-use charge in exchange for dismissal of the other charge. The victims submitted a victim-impact statement requesting \$6,175 in restitution, but the trial court awarded no restitution based on its belief

that Dunn could not pay and its observation that the victims had insurance. The First District reversed and remanded for further restitution proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must conduct further restitution proceedings, including determining Dunn's ability to pay, establishing the amount of the victims' economic loss, considering any third-party reimbursement, and receiving evidence concerning any insurance policy, insurance payments made or due, policy limits, and related economic loss.

CASES CITED

- State v. Haskett, 2024-Ohio-5933, ¶ 13 (1st Dist.)
- Johnson v. Abdullah, 2021-Ohio-3304, ¶ 34
- State v. Anderson, 2025-Ohio-1226, ¶ 24 (5th Dist.)
- City of Centerville v. Knab, 2020-Ohio-5219, ¶ 13
- State v. Yerkey, 2022-Ohio-4298, ¶ 12
- City of Cleveland v. Rudolph, 2022-Ohio-2363, ¶ 16 (8th Dist.)
- State v. Folson, 2023-Ohio-55, ¶ 10 (1st Dist.)
- State v. Dupuis, 2013-Ohio-2128, ¶ 42 (6th Dist.)
- State v. Queen, 2020-Ohio-618, ¶ 12 n.1 (3d Dist.)
- State v. Hinsch, 2024-Ohio-4984, ¶ 34 (1st Dist.)
- State v. Russell, 2017-Ohio-7923, ¶ 8 (9th Dist.)
- Mulholland v. Paul, 120 Ohio App. 59, 61 (1st Dist. 1963)
- Cincinnati Gas & Elec. Co. v. Chevrolet, 2003-Ohio-1367, ¶ 19 (1st Dist.)
- State v. Reynoso, 2025-Ohio-3119, ¶ 25 (11th Dist.)
- State v. Thomas, 2025-Ohio-4534, ¶ 35 (11th Dist.)
- State v. Thornton, 2017-Ohio-4037, ¶ 20 (1st Dist.)
- State v. Adams, 2019-Ohio-3597, ¶ 14 (1st Dist.)

OPINION

State v. Dunn

2026 Ohio 241

PER CURIAM.

[Cite as State v. Dunn, 2026-Ohio-241.]

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

STATE OF OHIO, : APPEAL NO. C-250257

TRIAL NO. 24/CRB/21777/A

Plaintiff-Appellee, : and :

JUDGMENT ENTRY

VICTIMS P.H. AND W.C., : Appellants, : vs. : FAITH DUNN, : Defendant-Appellee. : This cause was heard upon the appeal, the record, the briefs, and arguments. For the reasons set forth in the Opinion filed this date, the judgment of the trial court is reversed and the cause is remanded. Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed to Appellee Dunn. The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27. To the clerk: Enter upon the journal of the court on 1/28/2026 per order of the court. By: _____ Administrative Judge
[Cite as State v. Dunn, 2026-Ohio-241.]

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

STATE OF OHIO, : APPEAL NO. C-250257

TRIAL NO. 24/CRB/21777/A

Plaintiff-Appellee, : and :

OPINION

VICTIMS P.H. AND W.C., : Appellants, : vs. : FAITH DUNN, : Defendant-Appellee. : Criminal Appeal From: Hamilton County Municipal Court Judgment Appealed From Is: Reversed and Cause Remanded Date of Judgment Entry on Appeal: January 28, 2026 Emily Smart Woerner, City Solicitor, William T. Horsley, Chief Prosecuting Attorney, and Phoebe Cates, Assistant Prosecuting Attorney, for Plaintiff-Appellee, Ohio Crime Victim Justice Center and Morgan Galle, for Appellants, Derek W. Gustafson, for Defendant-Appellee.

OHIO FIRST DISTRICT COURT OF APPEALS

BOCK, Presiding Judge. {¶1} Defendant-appellee Faith Dunn pleaded guilty to criminal damaging after she stole and crashed victims-appellants P.H. and W.C.'s ("Victims") car. The Victims sought restitution from Dunn. At sentencing, Dunn stated that she was prepared to pay whatever amount of restitution the trial court ordered. But the trial court did not believe Dunn could pay restitution and did not award the Victims any restitution. The Victims now appeal, arguing that the trial court violated their rights under Ohio Const., art. I, § 10a(A)(7) and R.C. 2929.28. {¶2} Because the Victims had a right to restitution under Ohio Const., art. I, § 10a(A)(7) and R.C. 2929.28, and because the trial court lacked any evidence that Dunn could not pay a restitution award, we sustain the Victims' assignment of error, reverse the trial court's judgment, and remand for further proceedings. I. Factual and Procedural History {¶3} The State indicted

Dunn on one count of obstructing official business, a second-degree misdemeanor, and one count of unauthorized use of a motor vehicle, a first-degree misdemeanor. {¶4} Dunn pleaded guilty to the unauthorized-use charge in exchange for the dismissal of the obstructing-official-business charge. The trial court continued the case for sentencing and a victim-impact statement. {¶5} The Victims, who were not present at Dunn’s sentencing hearing, provided a victim-impact statement in which they sought \$6,175 in restitution from Dunn for the damage she had caused to their vehicle. The victim-impact statement included a printout of a Kelly Blue Book estimate for a 2004 Accura MDX showing a “Private Party Value” of \$6,175, “valid as of 03/28/2025,” which was shortly before the hearing. The victim-impact statement asserted that the car was in “excellent 3

OHIO FIRST DISTRICT COURT OF APPEALS

condition,” but it did not disclose the mileage on the car or the degree of damage caused by Dunn to the car. {¶6} Dunn told the trial court that she was prepared to take responsibility for her actions and indicated that she was able to pay restitution. The trial court questioned Dunn, appearing to disbelieve Dunn’s statement that she was able to pay the restitution request. The trial court further explained that “money is never my biggest concern” and observed that the Victims “ha[d] insurance, and I’m of the belief that’s what insurance is for.” {¶7} The trial court did not award restitution to the Victims. It sentenced Dunn, imposed costs, and waived fines. {¶8} The Victims appealed. II. Analysis {¶9} In their sole assignment of error, the Victims argue that the trial court erred by not awarding them restitution in violation of their rights under Ohio Const., art. I, § 10a(A)(7) and R.C. 2929.28. A. Standard of review {¶10} This court reviews a nonfelony restitution order for an abuse of discretion. *State v. Haskett*, 2024-Ohio-5933, ¶ 13 (1st Dist.). A trial court abuses its discretion where it acts in an unreasonable, arbitrary, or unconscionable manner. *Id.*, quoting *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 34. A trial court lacks discretion to make errors of law. *Id.* {¶11} Appellate courts review issues of constitutional interpretation de novo. *State v. Anderson*, 2025-Ohio-1226, ¶ 24 (5th Dist.). B. Restitution {¶12} Ohio Const., art. I, § 10a, commonly referred to as “Marsy’s Law,” was 4

OHIO FIRST DISTRICT COURT OF APPEALS

added to the Ohio Constitution to “give crime victims and their families meaningful and enforceable rights.” *City of Centerville v. Knab*, 2020-Ohio-5219, ¶ 13. Among the rights that Marsy’s Law provides a victim is the right “to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim.” Ohio Const., art. I, § 10a(A)(7). {¶13} It is undisputed that the Victims are victims under Marsy’s Law and are entitled to restitution under its provisions. {¶14} Marsy’s Law does not establish a mechanism for ordering restitution and instead “merely states that a victim may assert his or her constitutional rights in any proceeding involving the underlying criminal act.” *Knab* at ¶ 18. So, Ohio’s restitution statutes continue to control restitution awards in criminal cases. *State v. Yerkey*, 2022-Ohio-4298, ¶ 12. But Marsy’s Law now “imposes a legal duty on the trial court to provide ‘full and timely restitution’” in accordance with the applicable restitution statutes. *City of Cleveland v. Rudolph*,

2022-Ohio-2363, ¶ 16 (8th Dist.). {¶15} R.C. 2929.28, which governs restitution after a misdemeanor conviction, provides that “the trial court may order the defendant to pay restitution ‘to the victim . . . in an amount based on the victim’s economic loss.’” Haskett, 2024-Ohio- 5933, at ¶ 14 (1st Dist.), quoting R.C. 2929.28(A)(1). “Economic loss” is “any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense.” R.C. 2929.01(L). The victim seeking restitution has the burden of establishing the amount of restitution by a preponderance of the evidence. *State v. Folson*, 2023-Ohio-55, ¶ 10 (1st Dist.); Haskett at ¶ 15.

1. There was no evidence that Dunn is unable to pay restitution

{¶16} Dunn argues that the trial court did not abuse its discretion because R.C. 2929.28(B) permits a sentencing court to waive restitution based on a defendant’s

OHIO FIRST DISTRICT COURT OF APPEALS

inability to pay restitution. {¶17} Under R.C. 2929.28(B), a trial court may hold a hearing to determine whether an offender has the ability to pay restitution, or if the offender likely will be able to pay in the future. “If the court determines that the offender is indigent and unable to pay the financial sanction or court costs, the court shall consider imposing and may impose a term of community service . . . in lieu of imposing a financial sanction or court costs.” R.C. 2929.28(B).

{¶18} Dunn never raised her inability to pay as an issue below. In fact, she asserted several times that she could pay restitution and was willing to do so. Instead, the trial court disbelieved her without holding a R.C. 2929.28(B) hearing to determine Dunn’s ability to pay restitution. The trial court lacked any basis to conclude that Dunn could not afford to pay the restitution award. See *State v. Dupuis*, 2013-Ohio-2128, ¶ 42 (6th Dist.) (“[I]ndigency ‘does not prevent imposition of financial sanctions, including restitution.’”). The trial court erred in declining to award restitution based on Dunn’s inability to pay because the trial court lacked any basis to conclude that Dunn could not pay restitution. {¶19} Arguing that Marsy’s Law supersedes any statute allowing a reduction in a restitution award based on a defendant’s inability to pay, the Victims assert that Dunn has no right to a hearing regarding her ability to pay. But because the trial court has not made a proper determination regarding Dunn’s ability to pay, we need not resolve the issue of whether Marsy’s Law supersedes R.C. 2929.28(B). See *State v. Queen*, 2020-Ohio-618, ¶ 12, fn. 1 (3d Dist.) (explaining that because “we have determined that the defendant has the ability to pay,” the trial court’s R.C. 2929.19(B)(5) analysis did not interfere with the victim’s Marsy’s Law rights and “[i]n 6

OHIO FIRST DISTRICT COURT OF APPEALS

the absence of such a conflict, we do not need to further consider the effect that Marsy’s Law has on the operation of R.C. 2929.18(A)(1) or R.C. 2929.19(B)(5).”).

2. We will not evaluate evidence in the first instance

{¶20} Dunn also argues that this court should affirm the trial court’s judgment because the Victims failed to present competent credible evidence supporting their restitution request. Dunn

acknowledges that she did not challenge the amount of restitution awarded below, but she argues that a judgment that is correct for a different reason than that relied on by the trial court should be affirmed on appeal. See *State v. Hinsch*, 2024-Ohio-4984, ¶ 34 (1st Dist.); see also App.R. 3(C)(2) (allowing appellees to defend a trial court’s order “on a ground other than that relied on by the trial court” without filing a cross-appeal provided they do not seek to change the order). {¶21} The Victims counter that it would be improper for this court to consider the issue in the first instance because the trial court did not make any findings relevant to the restitution amount. As discussed above, Dunn did not contest restitution below. In fact, she appeared to specifically decline a restitution hearing when her counsel stated, “I could set this for a restitution hearing, I guess, but Ms. Dunn is more interested in being released . . . and paying restitution, your honor.” {¶22} The trial court did not hold an evidentiary hearing below, so we decline to evaluate the limited record in this case. Generally, an appellate court will not resolve factual issues not reached by the trial court. See *State v. Russell*, 2017-Ohio-7923, ¶ 8 (9th Dist.) (remanding for trial court to determine if defendant was “in custody” and required Miranda warnings); *Mulholland v. Paul*, 120 Ohio App. 59, 61 (1st Dist. 1963) (“appellate jurisdiction does not authorize this court to conduct a trial on issues of fact unless such a trial has been had in the court of first instance.”). {¶23} Appellate courts may, in some circumstances, resolve factual disputes 7

OHIO FIRST DISTRICT COURT OF APPEALS

in the first instance, but “‘factual conclusions reached by a Court of Appeals must be based upon evidence in the record.’” (Emphasis added.) *Cincinnati Gas & Elec. Co. v. Chevrolet*, 2003-Ohio-1367, ¶ 19 (1st Dist.). While the rules of evidence do not apply at restitution hearings, courts have held that some type of evidence must support the award. See *State v. Reynoso*, 2025-Ohio-3119, ¶ 25 (11th Dist.); see also *State v. Thomas*, 2025-Ohio-4534, ¶ 35 (11th Dist.) (discussing the types of evidence a victim might submit to prove a restitution award). {¶24} Here, neither party submitted evidence to the trial court and we will not resolve factual disputes without any evidence in the record.

3. The Victims may have been compensated by a third-party and may have insurance coverage {¶25} Because we remand this matter to the trial court for further consideration of the Victims’ restitution request, in the interest of judicial economy, we pause to note that it appears the Victims may have been compensated by a third-party and owned an insurance policy that would pay for damage to their vehicle. a. Third-Party reimbursement {¶26} “[W]here a victim has been fully reimbursed by a third party, a trial court errs by granting restitution to the victim that ‘would result in an impermissible windfall and would frustrate the purposes of restitution.’” *Haskett*, 2024-Ohio-5933, at ¶ 18 (1st Dist.), quoting *State v. Thornton*, 2017-Ohio-4037, ¶ 20 (1st Dist.). Further, a trial court may not award restitution to a third-party not named as a victim in the case. See *State v. Adams*, 2019-Ohio-3597, ¶ 14 (1st Dist.). {¶27} In her victim-impact statement, C.H. said that she borrowed money from her sister to buy a car to replace the car Dunn had stolen and crashed. She explained, “If [Dunn] was ordered to pay

restitution, it would be wonderful to 8

OHIO FIRST DISTRICT COURT OF APPEALS

reimburse my sister for the money she lent me.” {¶28} There is no evidence in the record indicating the cost of the replacement vehicle, the amount of money that the Victims received from C.H.’s sister, or under what terms C.H.’s sister provided that money, such as whether and when the Victims had to repay the money. On remand, the trial court should establish whether the circumstances require it to reduce the restitution award based on a third-party reimbursement. b. R.C. 2929.281(A)’s reductions for insurance payments {¶29} R.C. 2929.281(A) provides that restitution awards “shall be reduced by any payments to the victim for economic loss made or due under a policy of insurance or governmental program.” (Emphasis added.) In other words, the statute requires a trial court to reduce a restitution award for both realized and potential insurance payments, even if the victim had not been paid by the insurer at the time of the hearing. {¶30} We pause to acknowledge that a victim’s insurance premiums may increase due to the insured making a claim on the policy. But the General Assembly made the choice to require trial courts to reduce restitution awards for any payments “due” under an insurance policy. This court cannot rewrite the statute—only the General Assembly can do that. {¶31} The Victims cite Haskett, 2024-Ohio-5933, at ¶ 20 (1st Dist.), pointing out that this court held that crime victims cannot be compelled to file insurance claims. We note that the Haskett court specifically acknowledged R.C. 2929.281(A), but it observed that neither party had cited that statute. *Id.* at ¶ 22, fn. 1. Because neither party cited R.C. 2929.281(A), this court did not consider that provision’s effect on its analysis. *Id.* {¶32} Unlike the defendant in Haskett, Dunn specifically cites R.C. 9

OHIO FIRST DISTRICT COURT OF APPEALS

2929.281(A) and argues that it requires the trial court to reduce a restitution award based on a victim’s insurance. But while the trial court stated that the Victims “ha[ve] insurance” and the entry denying restitution reflects that the denial was based on the Victims having insurance, the record contains no evidence of an insurance policy. {¶33} On remand, at the restitution hearing, the trial court should permit the parties to present evidence about any insurance policy the Victims maintained that covered their vehicle, such as the existence of such a policy, its limits, insurance payments due under the policy, whether the Victims’ making a claim will cause them economic loss, or any other evidence relevant to how the existence of an insurance policy covering the vehicle affects restitution. III. Conclusion {¶34} We sustain the Victims’ assignment of error, reverse the trial court’s judgment, and remand the cause for further proceedings. Judgment reversed and cause remanded. NESTOR and MOORE, JJ., concur. 10