

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-170047
Plaintiff-Appellee,	:	TRIAL NO. C-16CRB-30823
vs.	:	<i>JUDGMENT ENTRY.</i>
SAMIRA ABEBE-HOLT,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Following a bench trial, defendant-appellant Samira Abebe-Holt appeals from the trial court’s judgment finding her guilty of criminal damaging and imposing, as part of her sentence, an order to pay restitution in the amount of \$687.15. Abebe-Holt had visited the shop of her former employer, Alysa Croxton, to obtain her final paycheck. A confrontation took place between the two women. As she left, Abebe-Holt caused damage to the gas cap of Croxton’s vehicle.

Croxton, the complaining witness, and the investigating police officer testified at trial. In defense, Abebe-Holt’s boyfriend testified that Croxton had struck Abebe-Holt while pushing her toward the door of the shop. After the defense rested, the state called Croxton’s mother, Alice, to testify that no physical altercation had occurred and that as Abebe-Holt had left the shop, she had kicked her daughter’s vehicle and damaged the gas cap.

Croxton offered a repair estimate from her automobile-insurance company as evidence of the value of her economic loss. The trial court then inquired, “Anything from the defense with regard to restitution?” After defense counsel inquired of her client

whether she wanted a hearing on the matter, counsel informed the court that “I’m not sure if I have anything, Your Honor.” The trial court ultimately imposed sentence as appears of record, including restitution in the amount identified in the repair estimate—\$687.15.

In her first assignment of error, Abebe-Holt argues that the trial court abused its discretion by ordering restitution without conducting a hearing on the amount of economic loss, particularly as the repairs to Croxton’s vehicle had yet to be performed.

R.C. 2929.18(A)(1) permits a trial court to order an offender to pay restitution to the victim of the offender’s crime “in an amount based on the victim’s economic loss.” The court “may base the amount of restitution it orders on * * * estimates or receipts indicating the cost of repairing or replacing property.” R.C. 2929.18(A)(1); *see State v. Lalain*, 136 Ohio St.3d 248, 2013-Ohio-3093, 994 N.E.2d 423, paragraph one of the syllabus. A trial court must hold a hearing on restitution only if the victim, offender or survivor disputes the amount. *See* R.C. 2929.18(A)(1); *see also Lalain* at paragraph two of the syllabus.

Here, given the statute’s broad standard for determining the amount of restitution, we hold that the victim’s insurance repair estimate was more than sufficient to establish the amount of restitution. *See State v. Meyers*, 12th Dist. Butler No. CA2004-09-219, 2005-Ohio-4919, ¶ 15. Thus, credible evidence supports the trial court’s determination that the victim incurred \$687.15 of economic loss “as a direct and proximate result of the commission of the offense.” *See* R.C. 2929.28(A)(1); *see also State v. Andrews*, 1st Dist. Hamilton No. C-110735, 2012-Ohio-4664, ¶ 25.

Because this was the only evidence presented of the victim’s economic loss, it is beyond cavil that Abebe-Holt knew that the trial court was prepared to order restitution in the amount demonstrated by the repair estimate. But before doing so, the trial court inquired whether the defense wished to contest the amount of restitution. In light of defense counsel’s statement that “I’m not sure if I have anything, Your Honor,” we hold that Abebe-Holt relinquished her right to a hearing. *See Andrews* at ¶ 26; *see also State v.*

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Morgan, 181 Ohio App.3d 747, 2009-Ohio-1370, 910 N.E.2d 1075, ¶ 25 (1st Dist.). Therefore, the trial court did not err in failing to hold a hearing, and did not abuse its discretion in ordering restitution in the amount of \$687.15. The first assignment of error is overruled.

In her second assignment of error, Abebe-Holt asserts that the trial court erred in allowing Alice Croxton to testify on rebuttal as her testimony was actually part of the state's case-in-chief. The decision to vary the order of proceedings set forth in R.C. 2945.10, including the decision to allow a party to offer additional proof, is consigned to the trial court's sound discretion. *See State v. Mahoney*, 34 Ohio App.3d 114, 123, 517 N.E.2d 957 (1st Dist.1986); *see also State v. Salaam*, 1st Dist. Hamilton No. C-020324, 2003-Ohio-1021, ¶ 13. Here, the trial court did not abuse its discretion by allowing Croxton to testify after the defense had rested, because she had been unavailable to testify during the state's case, and because she offered testimony to rebut the testimony of Abebe-Holt's boyfriend that the complaining witness had struck Abebe-Holt. The second assignment is overruled.

Therefore, we affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., MILLER and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on March 30, 2018
per order of the court _____.
Presiding Judge