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

STATE OF OHIO,	:	APPEAL NO. C-250664 TRIAL NO. B-2501459
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY*
DEVONTE SWEETEN,	:	
Defendant-Appellant.	:	

This cause was heard upon the appeal, the record, and the briefs.

For the reasons set forth in the Opinion filed this date, the sentence is vacated in part 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 100% to Appellee.

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 9/30/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer A. Hensley
Administrative Judge

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STATE OF OHIO,	:	APPEAL NO. C-250664 TRIAL NO. B-2501459
Plaintiff-Appellee,	:	
vs.	:	*O P I N I O N*
DEVONTE SWEETEN,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Sentence Vacated in Part and Cause Remanded

Date of Judgment Entry on Appeal: September 30, 2026

Connie Pillich, Hamilton County Prosecuting Attorney, and *John D. Hill, Jr.,* Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Angela W. Chang, Hamilton County Public Defender, *Margaret Kane* and *Jessica Moss*, Assistant Public Defenders, for Defendant-Appellant.

CROUSE, Judge.

{¶1} Defendant-appellant Devonte Sweeten got his hands on a stolen gun and was convicted of receiving stolen property. After a restitution hearing, the trial court ordered that the gun be returned to its original owner, and that Sweeten pay the owner $213.66 in restitution. Because the State failed to introduce any evidence that would support this amount—or any amount—of restitution, we vacate the court's restitution order and remand the cause for a new restitution hearing.

I. Background

{¶2} In 2018, Q.D. purchased a "black Glock 19, Gen 5" handgun at a gun show for personal protection. She testified that the gun cost her $680, but that she had no proof of this purchase price. In March 2024, her gun went missing. This caused Q.D. some concern, as she was experiencing harassment from some of her neighbors. So, on March 18, 2024, Q.D. purchased a replacement gun for $466.44.

{¶3} According to his indictment, Sweeten "receive[d], retain[ed] or dispose[d] of" Q.D.'s gun on March 25, 2025. One week later, Sweeten was charged with receiving stolen property in violation of R.C. 2913.51(A). He pled guilty, and the trial court held a restitution hearing. At the hearing, Q.D. testified that her original gun was now in police custody, and that she would have it back at the conclusion of the criminal proceedings. She testified that she had no idea if it had been rendered inoperable. The police *had* informed her, however, that the gun had been painted blue. She made quite clear that she did not wish for her gun to be blue.

{¶4} Q.D. (and the State) requested restitution in the amount of $466.44—the purchase price of Q.D.'s replacement gun. The State argued that Q.D. had been without her firearm for roughly a year, and that the cost of the substitute gun was "an out-of-pocket expense that [Q.D.] cannot recuperate," akin to "when your car is broken

down and you have rental car expenses." The State also argued that the blue paint devalued the original gun. The defense argued that Q.D. could and likely would obtain her original gun from the police; that there was no evidence the original gun was inoperable; that the restitution statute does not mention the cost of replacement; and that Q.D. had offered inadequate proof of the replacement gun's price.

{¶5} The trial court sentenced Sweeten to a two-year term of community control, ordered the State to return the gun in custody to Q.D., and ordered Sweeten to pay $213.66 in restitution. In reaching its decision on restitution, the court said it felt "like there should be some compensation for the amount of time that [Q.D. had] not had the firearm and she had to go out and replace the firearm." The court also noted that Q.D. had testified that "she didn't buy a blue firearm; now it's blue."

II. Analysis

{¶6} Sweeten now appeals. In his sole assignment of error, he challenges the $213.66 restitution award. We will vacate or modify an award of restitution imposed as part of a felony sentence if we "clearly and convincingly" find that it is "contrary to law." *State v. Thornton*, 2017-Ohio-4037, ¶ 12-13 (1st Dist.).

{¶7} Under R.C. 2929.18(A)(1), a sentencing court may require a defendant to pay restitution "to the victim of the offender's criminal offense or the victim's estate, in an amount based on the victim's economic loss." However, "[t]he 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." *Id.* The amount ordered in restitution must be supported "by a preponderance of the evidence." *Id.*

{¶8} In other words, a court awarding restitution must find (1) that the recipient is a "victim of the offender's criminal offense" (or that victim's estate), (2)

that the recipient suffered "economic loss" as a "direct and proximate result of the commission of the offense," and (3) that a preponderance of the evidence shows that the award corresponds to the amount of said "economic loss." *See* R.C. 2929.18(A)(1).

{¶9} "'Economic loss' means any economic detriment suffered by a victim as a direct and proximate result of the commission of an offense," but it does not include "non-economic loss or any punitive or exemplary damages." R.C. 2929.01(L). The Revised Code offers several examples of economic loss, including "any property loss." *Id.*

{¶10} Below and in its brief, the State offered two broad theories of Q.D.'s "economic loss." It argued that Q.D. was entitled to recover (A) for the diminished value of her original firearm, and (B) for the cost of temporarily replacing that firearm with a new one. The trial court nodded to both theories in its oral ruling but did not specify on which theory its $213.66 restitution award was based.

A. Painting as Economic Loss

{¶11} The State argues (and the trial court suggested) that the gun's blue paint job constitutes "economic loss" for which Q.D. could receive restitution. But the State failed to produce evidence to prove this contention.

{¶12} *First*, the State introduced no evidence that the blue paint job rendered the gun inoperable. Nor did the State introduce any evidence that the paint job reduced the value of the gun. And even if we assume the paint job *did* devalue the gun, the State did not introduce any evidence to establish *by how much*. Nor was any evidence introduced regarding how much it would cost to remove the blue paint and restore the gun's original appearance. *See, e.g., State v. Borger*, 2023-Ohio-1124, ⁋ 21-23 (1st Dist.) (affirming restitution for repairs for modifications made to a motorcycle where testimony showed and evidence established the modifications and the resulting repair

costs); *State v. Hoy*, 2021-Ohio-4098, ⁋ 20-21 (5th Dist.) (holding that cosmetic damage to a still-operable vehicle constituted economic loss where the victim identified the damage and presented an estimate of the cost to repair).

{¶13} *Second*, even if the State had proved that Q.D. suffered economic loss because of the blue paint job, it introduced no evidence that *Sweeten* caused the gun to be painted blue. Sweeten can only be ordered to pay restitution for loss suffered as a "direct and proximate result of the commission of the offense" for which he was convicted. *See* R.C. 2929.18(A)(1). Economic loss is a "direct . . . result" of criminal conduct if it "would not have occurred 'but for' the conduct." *State v. Lovelace*, 137 Ohio App.3d 206, 216 (1st Dist. 1999); *accord State v. McNear*, 2020-Ohio-4686, ¶ 8 (1st Dist.). This is not a case where the circumstances alone suggest that, "[w]ithout [defendant's] unauthorized use, the modifications would not have occurred." *State v. Borger*, 2023-Ohio-1124, ¶ 19 (1st Dist.). Sweeten was convicted of receiving or retaining the gun, not stealing it. *See* R.C. 2913.51(A). And Sweeten was only accused of receiving or retaining the gun on March 25, 2025—a year after it was stolen and a week before his indictment. Nothing in the record suggests that Sweeten, rather than the original thief or some intervening individual, painted the gun.

{¶14} We therefore hold that the State failed to offer any evidence sufficient to show that Sweeten had caused Q.D. to suffer any economic loss—let alone $213.66 in loss—by virtue of the gun's blue paint job.

B. Cost of Replacement Gun

{¶15} The State also argues that Q.D. was entitled to restitution for the cost of purchasing a firearm to replace the gun that was stolen. Sweeten, however, argues that reimbursing Q.D. for the replacement gun *and* giving her back the original would provide Q.D. with a windfall.

{¶16} A victim has a right to "full and timely restitution." Ohio Const., art. I, § 10a(A)(7). But a victim may not, under the guise of "restitution," obtain a windfall or a double recovery for the losses she suffered. *Thornton*, 2017-Ohio-4037, at ¶ 19-20 (1st Dist.); *State v. Haskett*, 2024-Ohio-5933, ¶ 18-19 (1st Dist.). If an individual suffers damage to or loss of property as a result of a crime but is promptly made whole from another source, then that individual's total economic loss is zero. An award of *further* restitution to such an individual would thus "exceed the amount of the economic loss suffered by" that individual. *See* R.C. 2929.18(A)(1). Accordingly, this court has held that a defendant who had forged the victim's signature to pass bad checks could not be required to pay restitution to the victim where the bank had already reimbursed the victim for the amounts fraudulently withdrawn. *Thornton* at ¶ 20.

{¶17} Per the trial court's order, Q.D. was going to get her gun back. The State introduced no evidence that the gun had diminished in value between the time it was stolen and the time it was returned. And, generally, "if a victim's stolen property is returned to him, and the property's value when returned is the same as the property's value at the time it was stolen, then the victim has not suffered 'economic loss' for which restitution can be ordered, at least as to the value of that property." *State v. Perkins*, 2014-Ohio-2242, ¶ 26 (3d Dist.); *see State v. Rohrbaugh*, 2010-Ohio-6375, ¶ 20 (3d Dist.) (restitution was improper where "officers recovered the entire amount of cash for which Rohrbaugh was convicted of receiving" and returned it to the victim).

{¶18} Q.D. was not entitled to, and she did not receive, the full value of the replacement gun. Nevertheless, Q.D. *did* suffer some economic detriment. She owned a firearm for personal protection and testified to the particular facts that motivated that choice. It was reasonable (and reasonably foreseeable) that she would seek a

replacement to protect herself after her gun was stolen. That replacement cost money.

{¶19} But there are two key limitations on restitution. *First*, Q.D. is only entitled to restitution for the cost of a *temporary* replacement. *See Perkins* at ¶ 26 (noting that even if a victim's property is returned, they can recover other costs in restitution, "such as costs to rent replacement property until the stolen property was returned"). When Q.D. receives her *original* gun back, she will have two guns. Q.D.'s total "economic loss" is the net amount of money out of Q.D.'s pocket that it cost her to have a gun during the time her original gun was missing. The goal of criminal restitution is simply to put Q.D.'s finances back to where they would have been if the theft had never happened.

{¶20} *Second*, Sweeten can only be required to pay for the economic losses that *he directly and proximately caused*. Although Q.D. paid to replace her gun for over a year, Sweeten stands convicted of possessing that gun for only a matter of days. Thus, the trial court needed to determine what portion of Q.D.'s total economic loss was directly and proximately caused by Sweeten. *Compare State v. Littlefield*, 2003-Ohio-863, ¶ 21-22 (4th Dist.) (defendant convicted of receiving stolen car may be required to pay restitution for damage that occurred while in his possession, but not damage caused by initial theft).

{¶21} We hold that the record below lacked evidence upon which the trial court could compute a proper restitution figure. While the trial court did not explain its arithmetic, its $213.66 figure appears to be approximately the difference between the purchase prices of the original gun ($680) and Q.D.'s replacement gun ($466.44). But subtracting these two numbers does not produce the amount Q.D. lost; it simply compares the prices of two different guns. Restitution based on such a figure is not rationally related to the harm Sweeten's criminal conduct caused. *See State v.*

Stamper, 2010-Ohio-1939, ¶ 17 (12th Dist.) ("Due process requires that the amount of restitution ordered bear a reasonable relationship to the actual loss suffered by the victim."), citing *State v. Bowman*, 2009-Ohio-1281, ¶ 10 (2d Dist.). And it certainly does not represent "the economic loss suffered by [Q.D.] as a direct and proximate result" of Sweeten's unlawful conduct. *See* R.C. 2929.18(A)(1).

III. Conclusion

{¶22} We therefore hold that the record contains no evidence that could support the trial court's order directing Sweeten to pay Q.D. $213.66 in restitution. That order was therefore contrary to law. Accordingly, we vacate the portion of the sentence imposing restitution and remand the cause for a new restitution hearing consistent with the law and this opinion.

Sentence vacated in part and cause remanded.

ZAYAS, P.J., and **BOCK, J.,** concur.