

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DANIEL JACOBS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D08-4528

Opinion filed June 24, 2009.

An appeal from the Circuit Court for Liberty County.

L. Ralph Smith, Jr., Judge.

Nancy A. Daniels, Public Defender, and David A. Davis, Assistant Public Defender, Tallahassee, for Appellant.

Bill McCollum, Attorney General, and Joshua R. Heller, Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Daniel Jacobs appeals a restitution order arguing that the trial court abused its discretion in ordering him to pay \$21,000 in restitution when the State produced no evidence that the tupelo honey which he was charged with fraudulently taking

from the victim was worth \$1.47 per pound rather than \$1.25 per pound. The State concedes that the trial court's award of restitution was based on speculation and contends the proper remedy is to reverse the order and allow the State to provide supplemental evidence that the proper measure of damages is \$1.47 per pound or, in the absence of further evidence, the trial court should enter a restitution order in the amount of \$16,252. We agree. Forlano v. State, 964 So. 2d 246 (Fla. 1st DCA 2007); Aboyoun v. State, 842 So. 2d 238, 240 (Fla. 2d DCA 2003).

REVERSED and REMANDED for further proceedings consistent with this opinion.

WOLF, KAHN, AND VAN NORTWICK, JJ., CONCUR.