

[Cite as *State v. Graham*, 2015-Ohio-2875.]

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

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 26468
	:	
v.	:	T.C. NO. 13CR1133/1
	:	
DAWON H. GRAHAM	:	(Criminal appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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**OPINION**

Rendered on the 17th day of July, 2015.

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Third Street, 5<sup>th</sup> Floor, Dayton, Ohio 45422  
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DONOVAN, J.

{¶ 1} This matter is before the Court on the Notice of Appeal of Dawon H. Graham, filed November 12, 2014. Graham was indicted on April 18, 2013, on one count of aggravated burglary, two counts of felonious assault, one count of aggravated robbery, and one count of kidnapping, each with a firearm specification, and he was

convicted on all counts following a jury trial. On September 18, 2013, Graham was sentenced to an aggregate term of 18 years, which included consecutive sentences for aggravated robbery and felonious assault, and he was ordered to pay \$1,500.00 in restitution to Chad Durant.

{¶ 2} On September 26, 2014, on Graham’s direct appeal, this Court reversed the trial court, finding that the “matter must be remanded to the trial court for further consideration of whether consecutive sentences are appropriate under R.C. 2929.14(C)(4) and, if so, to enter the proper findings on the record and in the judgment entry.” *State v. Graham*, 2d Dist. Montgomery No. 25934, 2014-Ohio-4250 ¶ 45. Graham was resentenced on October 29, 2014 to concurrent sentences totaling seven years with an additional 3 years for the firearm specifications for an aggregate term of 10 years. At the resentencing, he was ordered to pay a different amount of restitution, to wit: \$1,992.00 to Chad Durant as well as \$6.00 in restitution to Zachary Malone.

{¶ 3} Graham asserts a single assignment of error herein as follows:

THE TRIAL COURT ORDERED APPELLANT TO PAY AN AMOUNT OF RESTITUTION WITHOUT CONDUCTING A HEARING AND WITHOUT BASING ITS ORDER ON ANY PROOF OR DOCUMENTATION FOR THE AMOUNT ORDERED.

{¶ 4} On June 19, 2015, the State filed a “Notice of Agreed Error,” and in its brief the State asserts as follows:

Where an issue of law is raised and adjudicated on appeal, that adjudication becomes the law of the case. *Nolan v. Nolan* (1984), 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984). The doctrine of the law of the case

provides that “the decision of a reviewing court in a case remains the law of that case on the legal questions involved for all subsequent proceedings in the case at both the trial and reviewing levels.” *State v. Pritchett*, 2d Dist. Montgomery No. 24967, 2012-Ohio-4626, ¶ 12, citing *Nolan v. Nolan*, supra.

On direct appeal, this [C]ourt affirmed the conviction in all respects, including the award of restitution in the amount of \$1500 to Chad Durant, *except* for the imposition of consecutive sentences. The remand directed the trial court to further consider whether consecutive sentences were appropriate under the law. Because the remand was limited, the trial court lacked the authority to raise the amount of restitution to be awarded to Durant or to add an award to Zachary Malone. The awards of restitution must be vacated and the case remanded with instruction to the trial court to award restitution in the amount of \$1500.00, as stated in the original judgment.

{¶ 5} Pursuant to the law of the case doctrine as set forth above, the State correctly concedes the trial court’s error, and Graham’s assigned error is accordingly sustained. The judgment of the trial court as to restitution is vacated and the matter is remanded for the trial court to re-enter its original judgment as to restitution.

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FAIN, J. and WELBAUM, J., concur.

Copies mailed to:

Carley J. Ingram  
Kirsten Knight

Hon. Timothy N. O'Connell