

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA13-633  
NORTH CAROLINA COURT OF APPEALS

Filed: 3 December 2013

STATE OF NORTH CAROLINA

v.

Halifax County  
No. 12 CRS 52276

WILLIAM ROUNDTREE, III,  
Defendant.

Appeal by defendant from judgment entered 9 January 2013 by Judge J. Carlton Cole in Halifax County Superior Court. Heard in the Court of Appeals 18 November 2013.

*Roy Cooper, Attorney General, by Elizabeth Leonard McKay, Special Deputy Attorney General, for the State.*

*Jarvis John Edgerton, IV, for defendant-appellant.*

MARTIN, Chief Judge.

Defendant William Roundtree, III, appeals from a judgment entered upon a jury verdict finding him guilty of assault inflicting serious injury. Defendant contends that the trial court erred in ordering him to pay \$482.79 in restitution. For the following reasons, we remand for rehearing on the issue of restitution.

The State's evidence tended to show that in March 2012, Walter F. Johnson, Jr., who handled nuisance complaints for the City of Roanoke Rapids Public Works Department, sent a letter to defendant directing him to remove appliances and other materials from defendant's property. Mr. Johnson subsequently drove by defendant's property and saw improvement.

On 1 May 2012, Mr. Johnson drove by defendant's property on the way to investigate a nuisance complaint at another address, saw defendant in the yard, and decided to stop and talk to defendant. Mr. Johnson exited his car, put on his safety vest, and entered defendant's yard. Defendant informed Mr. Johnson he was trespassing and that he felt harassed by the city. Defendant told Mr. Johnson "I just as soon kick your ass right now" and then punched Mr. Johnson in the face. Defendant punched Mr. Johnson a few more times, and called the police to report the fight. Mr. Johnson received treatment at a hospital for contusions and abrasions sustained during the fight and missed work from Tuesday through Friday.

A jury found defendant guilty of assault inflicting serious injury. The trial court sentenced defendant to seventy-five days in the custody of the Halifax County Sheriff, suspended the sentence, and placed defendant on supervised probation for

thirty-six months. The court also ordered defendant to pay restitution in the amount of \$482.79. Defendant appeals.

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In his sole argument, defendant contends that the trial court erred in ordering him to pay \$482.79 in restitution because there was not sufficient evidence to support the specific award. The State concedes the error.

Our courts have repeatedly held that the restitution amount requested by the State must be supported by "evidence adduced at trial or at sentencing." *State v. Wilson*, 340 N.C. 720, 726, 459 S.E.2d 192, 196 (1995). "[T]he quantum of evidence needed to support a restitution award is not high. When . . . there is some evidence as to the appropriate amount of restitution, the recommendation will not be overruled on appeal." *State v. Moore*, 365 N.C. 283, 285, 715 S.E.2d 847, 849 (2011) (citation and internal quotation marks omitted), *appeal after remand*, \_\_\_ N.C. App. \_\_\_, 739 S.E.2d 627 (2013). However, "there must be something more than a guess or conjecture as to an appropriate amount of restitution." *State v. Daye*, 78 N.C. App. 753, 758, 338 S.E.2d 557, 561, *aff'd per curiam*, 318 N.C. 502, 349 S.E.2d 576 (1986).

Here, the prosecutor submitted a restitution worksheet to the trial court for \$482.79 and informed the court that the amount represented compensation for lost wages, and a pair of jeans. However, there was no evidence presented at trial or sentencing regarding the value of the jeans or the amount of lost wages. Because there is insufficient evidence as to the specific amount of restitution, we "remand for the trial court to determine the amount of damage proximately caused by defendant's conduct and to calculate the correct amount of restitution." *Moore*, 365 N.C. at 286, 715 S.E.2d at 849-50.

No error as to the conviction; vacated and remanded as to the restitution.

Judges HUNTER, JR. and DILLON concur.

Report per Rule 30(e).