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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-21

Filed: 2 June 2020

Union County, No. 16CRS53801

STATE OF NORTH CAROLINA

v.

KATRINA ANN TAYLOR, Defendant.

Appeal by Defendant from judgments entered 3 May 2018 by Judge Casey M. Viser in Superior Court, Union County. Heard in the Court of Appeals 3 September 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Brent D. Kiziah, for the State.

Edward Eldred for Defendant-Appellant.

McGEE, Chief Judge.

Katrina Ann Taylor (“Defendant”) was convicted of robbery with a dangerous weapon and felonious breaking and entering on 3 May 2018. During sentencing, the State argued that Defendant should pay \$768.90 in restitution based on injuries sustained by Jennifer James (“James”) and services rendered by Carolina Healthcare System to James for her physical injuries. The State gave the trial court a restitution

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worksheet allegedly supporting the requested amount of restitution. James did not testify at sentencing, and Defendant's counsel did not contest the State's requested restitution amount. The trial court then orally ordered Defendant to pay \$268.90 in restitution to Carolina Healthcare System and \$500 directly to James. In its written judgments on 3 May 2018, the trial court, in pertinent part, rendered Defendant jointly and severally liable with her accomplice, Tyler Greco ("Greco"), ordered Defendant to pay the restitution amount, and sentenced her to concurrent prison terms in the presumptive ranges of 78-106 and 9-20 months.

Defendant appeals the trial court's restitution order.

Analysis

Defendant argues on appeal is that there was insufficient evidence to support the trial court's judgment ordering her to pay \$768.90 in restitution. We agree.

Although Defendant's counsel did not object to the trial court's order of restitution, "the portion of [a trial court's] judgment ordering restitution may be reviewed on appeal without an objection to the trial court's ruling." *State v. Mumford*, 364 N.C. 394, 402, 699 S.E.2d 911, 917 (2010). This Court reviews *de novo* whether sufficient evidence supported the restitution order. *State v. Watkins*, 218 N.C. App. 94, 107, 720 S.E.2d 844, 853 (2012).

As an initial matter, the State argues that Defendant stipulated to the restitution award by remaining silent after the trial court informed her that she had

to pay \$768.90 in restitution. Though silence can be deemed assent in certain circumstances, “a stipulation’s terms must . . . be definite and certain in order to afford a basis for judicial decision, and it is essential that they be assented to by the parties or those representing them.” *State v. Mauer*, 202 N.C. App. 546, 552, 688 S.E.2d 774, 778 (2010) (quotations and citations omitted). The State concedes there is no record evidence that Defendant signed any stipulation agreement or that the trial court specifically asked Defendant or her counsel if Defendant contested the restitution amount. This Court has held the fact that a Defendant fails to object to the amount of restitution ordered does not, alone, “constitute a ‘definite and certain’ stipulation as required by North Carolina law.” *State v. Smith*, 210 N.C. App. 439, 444-45, 707 S.E.2d 779, 783 (2011) (citation omitted). Therefore, Defendant’s failure to object to the amount of restitution ordered in this case does not constitute a waiver of her right to appeal this issue. *See State v. Replogle*, 181 N.C. App. 579, 584, 640 S.E.2d 757, 761 (2007) (holding that the defendant’s silence did not bar his appeal of the trial court’s award of restitution). We therefore address the merits of Defendant’s issue on appeal.

Any amount of restitution “must be supported by evidence adduced at trial or at sentencing.” *State v. Hunt*, 250 N.C. App. 238, 253, 792 S.E.2d 552, 563 (2016) (citation omitted). When reviewing a trial court’s restitution order: (1) the order must be vacated if *no* evidence supports the award; (2) “the award will not be disturbed” if

specific testimony or documentation supports the award; and (3) if “some evidence” supports a restitution award, but the evidence *lacks sufficient specificity*, we remand for a new hearing to determine the appropriate amount. *State v. Hammonds*, 243 N.C. App. 602, 621, 777 S.E.2d 359, 371 (2015) (citations and quotations omitted), *vacated on other grounds*, 368 N.C. 906, 789 S.E.2d 1 (2016). While the “quantum of evidence needed to support a restitution award is not high,” *State v. Moore*, 365 N.C. 283, 285, 715 S.E.2d 847, 849 (2011), restitution worksheets are “insufficient to support an order of restitution” when they are unsupported by sufficient relevant testimony or documentation. *Mauer*, 202 N.C. App. at 552, 688 S.E.2d at 778 (citations omitted).

In *Moore*, the defendant was convicted of obtaining property by false pretense and was ordered to pay \$39,332.49 in restitution as a condition of his probation. *Moore*, 365 N.C. at 284, 715 S.E.2d at 848. The evidence supporting the restitution amount was the property owner’s testimony that “she had obtained an estimate for repairs to the house, which totaled [t]hirty-something thousand dollars.” *Id.* at 285, 365 S.E.2d at 849. The property owner “verified that she had ‘submitted to the district attorney’s office an estimate for repairs,’” but the record on appeal did not contain the alleged estimate. *Id.* The defendant also testified that he had received \$1,500 in rent. *Id.* On review, our Supreme Court vacated and remanded the trial court’s restitution order. Although “the testimony [was] not too vague to support *any*

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award,” the evidence “was not specific enough to support the award of \$39,332.49.” *Id.* at 849, 365 S.E.2d at 286. (emphasis in original).

In the present case, there is less evidence than was introduced in *Moore* to supporting the trial court’s restitution order of \$268.90 to Carolina Healthcare and \$500 to James. While evidence was presented showing James had received medical services for her wounds, there is no record evidence of the type of services received or how much those services cost. There is also no record evidence that Carolina Healthcare was mentioned during the hearing at all. There was ample evidence that Defendant damaged or stole property belonging to James. Evidence showed that James’ house was broken into, her handguns and ammunition were stolen, her cell phone was broken, and that various items in her house were treated in a manner likely resulting in damage. Yet the only specific evidence adduced at trial ostensibly supporting the \$500 restitution award was Greco’s testimony that he and Defendant sold one of the stolen handguns for \$300.00 and “an 8 ball of coke.” This testimony was not sufficient to support the amount included in the State’s restitution worksheet and there was also no documentary corroboration. We hold that the trial court erred in ordering Defendant to pay \$768.90 in restitution because that amount was unsupported by sufficient evidence admitted at sentencing.

Conclusion

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For the foregoing reasons, we vacate the trial court's restitution portion of its judgments and remand for a new sentencing hearing as to the appropriate amount of restitution. *See, e.g., State v. Buchanan*, 260 N.C. App. 616, 624, 818 S.E.2d 703, 710 (2018); *Mauer*, 202 N.C. App. at 552, 688 S.E.2d at 778.

VACATED AND REMANDED.

Judges BRYANT and BROOK concur.

Report per Rule 30(e).