An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-287-2

Filed: 5 June 2018

Rowan County, No. 15 CRS 055547

STATE OF NORTH CAROLINA

v.

DYQUAON KENNER BRAWLEY, Defendant.

Appeal by Defendant from judgment entered 21 September 2016 by Judge Christopher W. Bragg in Rowan County Superior Court.

Originally heard in the Court of Appeals 7 September 2017. By opinion entered 17 October 2017, this Court vacated the trial court's judgment against Defendant. *State v. Brawley*, ___ N.C. App. ___, 807 S.E.2d 159 (2017).

By opinion entered 6 April 2018, the Supreme Court of North Carolina reversed this Court's opinion and remanded this case to this Court for consideration of a previously unresolved issue raised in Defendant's appeal. *State v. Brawley*, ___ N.C. ___, 811 S.E.2d 144 (2018).

Attorney General Joshua H. Stein, by Special Deputy Attorney General Elizabeth Leonard McKay, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Amanda S. Zimmer, for the Defendant.

DILLON, Judge.

This case comes to us on remand from the Supreme Court of North Carolina, which reversed this Court's prior decision, for the purpose of considering Defendant's arguments concerning the restitution ordered by the trial court. On remand, after carefully reviewing Defendant's argument, we remand for further proceedings regarding restitution.

I. Background

In 2015, Defendant stole multiple items of clothing from a Belk's department store. After a jury trial, the trial court entered judgment convicting Defendant of larceny from a merchant. The trial court ordered Defendant to pay $134.50 to Belk's as restitution for the stolen clothing.

This background is provided for the understanding of the issues addressed in this opinion. Additional information regarding this case may be found in this Court's prior opinion. *Brawley*, ___ N.C. App. ___, 807 S.E.2d 159.

II. Analysis

Defendant contends that the trial court erred in ordering him to pay the amount of $134.50 in restitution to Belk's because no evidence was presented in support of the prosecution's request for restitution. The State offers no evidence in its brief on appeal supporting the trial court's calculations. The State notes that

Defendant did not object to the valuation at trial, but otherwise essentially concedes that there was insufficient evidence to support the ordered restitution.

"[T]he amount of restitution recommended by the trial court 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). "[N]o objection is required to preserve for appellate review issues concerning the imposition of restitution." *State v. Smith*, 210 N.C. App. 439, 443, 707 S.E.2d 779, 782 (2011) (citing *State v. Mumford,* 364 N.C. 394, 402-03, 699 S.E.2d 911, 917 (2010)). Review of a restitution award is a fact-specific inquiry with "two general approaches: (1) when there is *no* evidence, documentary or testimonial, to support the award, the award will be vacated, and (2) when there is specific testimony or documentation to support the award, the award will not be disturbed." *State v. Moore*, 365 N.C. 283, 285, 715 S.E.2d 847, 849 (2011) (emphasis in original).

Here, the State presented the same number as a valuation for the stolen clothes at each stage of Defendant's prosecution. The $134.50 total appeared on the arrest warrant, the indictment, and the restitution worksheet. However, the only evidence offered in support of this valuation was the unsworn statement of the prosecutor. The "restitution worksheet, unsupported by testimony or documentation[,] is insufficient to support an order of restitution[,] *State v. Davis*, 206 N.C. App. 545, 552, 696 S.E.2d 917, 922 (2010), and "[t]he unsworn statement of

the prosecutor is insufficient to support the amount of restitution ordered." *State v. Shelton*, 167 N.C. App. 225, 233, 605 S.E.2d 228, 233 (2004). Though "the quantum of evidence needed to support a restitution award is not high[,]" there must be some sufficient evidence. *Moore*, 365 N.C. at 285, 715 S.E.2d at 849. Absent sufficient evidence as to the value of the stolen clothing, the trial court's valuation was insufficient to support an order of restitution.

We vacate the order of restitution entered by the trial court, and we remand for additional proceedings on restitution consistent with both the Supreme Court's opinion and this opinion.

VACATED AND REMANDED.

Judges HUNTER, JR., and ARROWOOD concur.

Report per Rule 30(e).