

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HOLLY ANN STAPLETON,

Defendant-Appellant.

UNPUBLISHED

May 30, 1997

No. 191409

Oakland Circuit Court

LC No. 95-138435-FH

Before: Neff, P.J., and Wahls and Taylor, JJ.

MEMORANDUM.

Defendant pleaded nolo contendere to felonious assault, MCL 750.82; MSA 28.277, and was sentenced to two years' probation. As a condition of her probation, defendant was ordered to pay the victim \$1,445.36 in restitution for medical bills incurred plus an additional \$1,000 in restitution for pain and suffering. Defendant appeals by leave granted. We reverse that portion of the probation order providing for pain and suffering damages.

The \$1,000 amount the trial court required defendant to pay was unsupported by any evidence or even an assertion by the victim of psychological damages. The award of restitution for pain and suffering was essentially arbitrary and an abuse of discretion. *People v White*, 212 Mich App 298, 316; 536 NW2d 876 (1995); *People v Tyler*, 188 Mich App 83, 89-90; 468 NW2d 537 (1991). Despite this, however, the county is not required to reimburse the defendant for amounts already paid. *People v Diermier*, 209 Mich App 449, 451; 531 NW2d 762 (1995).

That portion of the probation order providing for pain and suffering damages is reversed. In all other respects, defendant's conviction and sentence are affirmed.

/s/ Janet T. Neff

/s/ Myron H. Wahls

/s/ Clifford W. Taylor