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**DISTRICT IV**

July 5, 2017

To:

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Circuit Court Judge  
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You are hereby notified that the Court has entered the following opinion and order:

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2016AP2079-CR                      State of Wisconsin v. Tanya R. Hohlstein (L.C. # 2014CF100)

Before Kloppenburg, P.J., Sherman and Blanchard, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Tanya Hohlstein was convicted, following a plea, of causing injury by intoxicated use of a motor vehicle, arising from a collision in which M.K. was injured. Hohlstein appeals an amended judgment of conviction that incorporated another order that required her to pay \$164,082.08 in restitution as “special damages” to compensate M.K. for the amount that the parties agreed M.K.’s settlement with M.K.’s uninsured motorist carrier had been reduced to settle a subrogation claim by M.K.’s health insurance provider. The circuit court reasoned that

M.K. could use the settlement proceeds to cover future medical expenses. The State concedes that the circuit court erroneously exercised its discretion by entering the restitution order without a sufficient evidentiary basis for the amount awarded.

Hohlstein asks this court to vacate the restitution order. The State asks for a remand, and Hohlstein has not filed a reply brief objecting to a remand. We agree that Hohlstein is entitled to an evidentiary hearing at which M.K. will bear the burden of proving the amount of her damages recoverable under the restitution statute by a preponderance of the evidence, which could not include any future medical expenses covered by insurance. *See State v. Madlock*, 230 Wis. 2d 324, 336, 602 N.W.2d 104 (Ct. App. 1999); WIS. STAT. § 973.20(14)(a) (2015-16).<sup>1</sup>

Accordingly,

IT IS ORDERED that the restitution component of the amended judgment of conviction is summarily reversed under WIS. STAT. RULE 809.21(1), and this matter is remanded to have the circuit court hold an evidentiary hearing on restitution. The vacation of the restitution order does not otherwise affect the original judgment of conviction, which remains in effect.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.