

RESTITUTION

Prosecutor's Unsworn Statement Was Insufficient by Itself to Support Award of Restitution

State v. Swann, ___ N.C. App. ___, ___ S.E.2d ___ (19 May 2009).

The court ruled that the trial court erred in ordering the defendant to pay restitution because the award was not supported by competent evidence. The prosecutor presented a restitution worksheet without any supporting documentation. The victim did not testify. The defendant did not stipulate to the award. The prosecutor's unsworn statement about the reason for restitution was insufficient by itself to support the award of restitution.

Trial Court Erred in Ordering Restitution to Murder Victims' Families When Defendant Was Convicted of Accessory After Fact of First-Degree Murder and There Was No Direct and Proximate Causal Link Between Defendant's Actions and Harm Cause to Victims' Families

State v. Best, ___ N.C. App. ___, 674 S.E.2d 467 (3 February 2009).

The defendant was convicted of three counts of accessory after the fact to first-degree murder. The court examined the evidence in this case and ruled that the trial court erred in ordering restitution to the murder victims' families when there was no direct and proximate causal link between the defendant's actions and harm cause to victims' families.

Trial Judge Erred in Awarding Restitution

State v. Southards, 189 N.C. App. 152, 657 S.E.2d 419 (4 March 2008).

The defendant was convicted of felonious possession of stolen goods. The court ruled that the trial judge erred in awarding restitution to the victim. The defendant could not be required to make restitution for the victim's unrecovered tools or lost wages when those losses were neither related to the criminal offense for which the defendant was convicted nor supported by evidence in the record.

(1) Trial Judge Did Not Err in Awarding Restitution

(2) Court Sets Out Allocation of Burdens of Proof Concerning Award of Restitution

State v. Tate, 187 N.C. App. 593, 653 S.E.2d 892 (18 December 2007).

(1) The court ruled that the trial judge did not err in awarding restitution in the amount of \$40,588.60 for damages resulting from felonious assault and other offenses for which the defendant was convicted. The court noted that although the trial judge did not make specific findings of fact concerning the defendant's ability to pay restitution, such findings were not required [see G.S. 15A-1340.36(a)], and it was clear from the record that the trial judge considered the defendant's financial ability to pay restitution. The defendant failed to present evidence showing that he would not be able to make the required restitution payments. (2) Concerning the allocation of burdens of proof for an award of restitution, the court agreed with an analogous federal statute. The burden proof on showing the amount of loss is on the state. The burden of proof on showing the defendant's financial resources is on the defendant as well as the financial needs of the defendant's dependents.

Trial Judge Did Not Err in Ordering Defendant to Pay Restitution to One of Five Victims of Felonious Hit and Run For Which Defendant Was Convicted, Even Though Jury Was Unable to Reach Verdict on Felonious Assault of Same Victim

State v. Valladares, 182 N.C. App. 525, 642 S.E.2d 489 (3 April 2007).

The defendant was convicted of one count of felonious hit and run involving five victims. The court ruled that the trial judge did not err in ordering the defendant to pay restitution to one of those five victims, even though the jury was unable to reach a verdict on a felonious assault of the same victim.

Sentencing -- Involuntary Manslaughter -- Restitution -- Unsworn Statements of Prosecutor

State v. Replogle, 181 NC App 579 (06-152) (6 February 2007).

The trial court erred in an involuntary manslaughter case by ordering defendant to pay restitution to the victim's father in the amount of \$12,850, because: (1) the amount of restitution recommended by the trial court must be supported by evidence adduced at trial or at sentencing; (2) the unsworn statements of the prosecutor do not constitute evidence and cannot support the amount of restitution recommended; (3) even though defendant did not specifically object to the trial court's entry of an award of restitution, this issue was preserved for appellate review under N.C.G.S. § 15A-1446(d)(18); and (4) while it is true that silence under some circumstances may be deemed assent, a stipulation's terms must nevertheless be definite and certain in order to afford a basis for judicial decision.

Criminal Law § 1600 (NCI4th) - Restitution - Medicaid - recommendation by court

State v. Ray, 125 N.C. App. 721 (1997)

The trial court did not err by recommending that defendant make restitution to Medicaid for payments made on behalf of the victim where defendant did not object or challenge the existence or amount of the Medicaid payment. The trial court can recommend restitution as a condition of work release or parole, but the Secretary of the Department of Correction and the Parole Commission determines whether defendant should pay restitution as a condition of work release or parole at the time he is released.

Criminal Law § 1649 (NCI4th Rev.) - Second-degree murder - Funeral expenses - Restitution - Insufficient findings

State v. Clifton, 125 N.C. App. 471 (1997)

The trial court erred in ordering defendant to pay the victim's father \$3,000 in restitution for funeral expenses where the record revealed no evidence of the cost of victim's funeral, or who paid it. A trial court's order of restitution must be supported by competent evidence in the record; restitution is not intended to punish defendants, but to compensate victims.

Criminal Law § 1599 (NCI4th) restitution of funeral expenses insufficiency of evidence to support

State v. Wilson, 340 N.C. 720 (1995) ___ S.E.2d ___

The procedure for recommending restitution as a condition of work release or parole is: 1) the trial court must determine if it is going to recommend restitution; 2) the amount of restitution must be supported by the evidence adduced at trial or sentencing; and 3) the determination of defendant's ability to pay will be made either by the Department of Correction or by the Parole Commission at the time restitution is actually ordered. In this case, the trial court did not err in failing to find defendant's ability to pay, but did err in ordering restitution of funeral expenses of \$4,000 based only on the prosecutor's unsworn testimony that these expenses were \$4,000.