

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority.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

NO. COA06-872

NORTH CAROLINA COURT OF APPEALS

Filed: 6 February 2007

STATE OF NORTH CAROLINA

v.

Wake County
Nos. 05 CRS 1490-92

CHRISTOPHER WAYNE BINGHAM

Appeal by defendant from judgments entered 10 June 2005 by Judge Carl R. Fox in Wake County Superior Court. Heard in the Court of Appeals 22 January 2007.

Attorney General Roy Cooper, by Assistant Attorney General Sandra Wallace-Smith, for the State.

Winifred H. Dillon for defendant-appellant.

MARTIN, Chief Judge.

Defendant Christopher Wayne Bingham was indicted on charges of assault with a deadly weapon with intent to kill inflicting serious injury, discharging a firearm into occupied property, and possession of a weapon of mass destruction. He was convicted of assault with a deadly weapon inflicting serious injury, discharging a firearm into occupied property, and possession of a weapon of mass destruction. He appeals from judgments entered upon those convictions which included the requirement that defendant make restitution to the victim in the amount of \$47,804.00.

As facts relevant to the issues raised on appeal, the evidence at trial tended to show: On 8 January 2006, defendant fired a shotgun into a vehicle occupied by Neil Anderson. Anderson received two gunshot wounds to his face. One entry wound was over his right cheek and the shot entered his upper jaw and lodged in his sinus. The second entry wound entered his lower jaw and lodged beneath his tongue, causing fractures to his lower jaw. The bullet fragment was removed from his sinus, and braces were put on his teeth and his jaws were wired together.

Defendant's sole argument on appeal is that there was insufficient evidence to support the amount of the restitution award. We agree. "A trial court's award of restitution must be supported by competent evidence in the record." *State v. Clifton*, 125 N.C. App. 471, 480, 481 S.E.2d 393, 399 (citing *State v. Wilson*, 340 N.C. 720, 459 S.E.2d 192 (1995)). See also *State v. Buchanan*, 108 N.C. App. 338, 341, 423 S.E.2d 819, 821 (1992); *State v. Daye*, 78 N.C. App. 753, 756, 338 S.E.2d 557, 560, affirmed, 318 N.C. 502, 349 S.E.2d 576 (1986).

Here, Anderson's mother stated at the sentencing hearing that he had "no health insurance and has incurred \$47,000 worth of medical bills." Although she stated that Anderson had lost wages, no evidence was presented as to the actual amount lost. Thus, there was no evidence of record to support the remaining \$804.00 of the restitution award. Accordingly, the restitution award is vacated and this matter is remanded to the trial court for an appropriate restitution award based on the evidence presented.

No error in defendant's trial; remanded for a new restitution award.

Judges MCGEE and HUNTER concur.

Report per Rule 30(e).