

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )

IN THE COURT OF GENERAL SESSIONS  
INDICTMENT NUMBER 2013GS38-245

**RECEIVED**

MAY 26 2015

**SC Court of Appeals**

**RESTITUTION ORDER**

FILED FOR RECORD  
WINNIE A. CLARK  
CLERK OF COURT  
ORANGEBURG, SC

2014 NOV 17 PM 12:00

THE STATE OF SOUTH CAROLINA )

Vs. )

**CHRISTOPHER GREENE,**  
Defendant )

The above named defendant pled guilty on May 19, 2014 to Possession of a Stolen Vehicle greater than \$10,000, Section 16-21-80, Code of Laws of South Carolina and received a sentence of 2 years, suspended upon 1 year probation, with restitution to be determined by a restitution hearing and the option to extend probation if restitution is found and ordered, by the Honorable Diane S. Goodstein. On June 16, 2014, a restitution hearing was held in front of Judge Goodstein. Harrison Bell, Senior Assistant Solicitor, was present for the State, and Nick Thomas was present representing the defendant. The defendant was not present and his presence was waived by his attorney.

The State presented two witnesses at the hearing. The first was Richard Henthorne, the victim, who testified that in October of 2012 a truck, trailer, 2 lawn mowers, and other lawn care equipment were stolen from his workplace in Charleston County. He further testified that he was notified that his truck was found in Orangeburg County in the possession of the defendant in January of 2013. He testified that the lawn mowers were worth approximately \$9,

000 and \$13,000. He further testified and offered a list, which was submitted as State's 1 without objection, lost wages, items that were with the truck, insurance loss, and costs of operating the truck for 6 months that he did have use of the truck as a result of this incident. The amounts he testified to were \$1940 in lost wages from his state job, his lawn mowing business and accounts lost as a result of his truck and equipment being stolen; \$3332.45 in equipment from the truck that were taken; \$940.34 in insurance costs, including his deductible, insurance betterment, and costs of 6 months of insurance on the truck during the time he could not use it; and \$2786.76 of expenses paid for the 6 months loss of use of the truck, including truck payments, taxes, and new tags. The total of which is \$8999.55.

Investigator Johnny Thrower was the second state's witness that testified. He stated that he found the stolen truck, along with a stolen motorcycle, at the defendant's sister's house. He testified that he talked to the defendant after giving him his Miranda warnings. The defendant told him that he bought the truck for \$1,000 and had an idea that it was stolen. He also stated that he bought 2 lawn mowers and a trailer but traded them for a motorcycle around the same time.

In South Carolina, restitution is governed by Section 17-25-322, Code of Laws of South Carolina, 1976, as amended. That section states in part, "... when a defendant is convicted of a crime which has resulted in pecuniary damages or loss to a victim, the court must hold a hearing to determine the amount of restitution due the victim of the defendant's criminal act." "A restitution hearing is to be governed by the same rules as a sentencing hearing, therefore any evidence the court deems to have probative value shall be received regardless of its admissibility under the rules of evidence." State v. Gullede, 487 S.E.2d 590, 595 (1997). Also, among the factors that the court may consider under Section 17-25-322 are, "(4) any

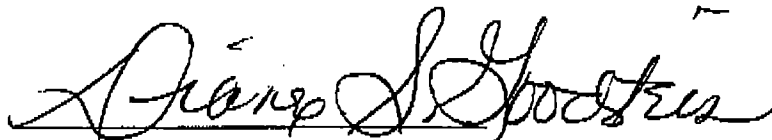
burden or hardship upon the victim as a *direct or indirect result of the defendant's criminal acts* (emphasis added), and (5) the mental, physical, and financial well being of the victim."

*deposed* <sup>RR</sup> The court has considered all the testimony presented. The court finds that the victim is <sup>and direct RR</sup> out \$30999.55 as an indirect result of the criminal acts of the defendant. The victim gave probative evidence as to the pecuniary loss of the truck and lawn mowers. Investigator Thrower testified that the defendant had acquired two lawn mowers and a trailer at the time he bought the truck, which he traded for the motorcycle that was found. Even though it was not proved the trailer and the lawn mowers were the same that were stolen, that testimony is circumstantial evidence beyond a preponderance of the evidence that the defendant had contact with the victim's <sup>RR trailer and</sup> mowers. Therefore, the Court finds that the lawn mowers and trailer stolen from the victim were the same lawnmowers and trailer that the defendant took physical possession of and traded for the motorcycle that was found in the defendant's possession. The loss of the lawnmowers and trailer is therefore directly connected to the defendant's criminal action and restitution is ordered in an amount to compensate the victim for his losses. Further, the victim testified that he had to take a loan from his retirement account in order to replace the stolen items, thereby showing that the victim's financial well being is not substantial enough to absorb the loss. There was no testimony presented about the defendant's ability or inability to pay restitution.

Therefore the court finds that the defendant is to pay the victim restitution in the amount of \$30999.55. The defendant's term of probation is extended to 5 years in order for him to make restitution. The Department of Probation, Parole and Pardon Services shall set up a reasonable payment plan for the defendant to make restitution. Probation will terminate if

the defendant makes full restitution and fulfills all other conditions and requirements of probation.

**IT IS SO ORDERED**

A handwritten signature in cursive script, reading "Diane S. Goodstein". The signature is written in black ink and is positioned above the printed name.

Diane S. Goodstein

Presiding Judge  
Orangeburg County

AT Chambers  
St. George, South Carolina  
November 9, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Orangeburg
STATE VS. Christopher Jared Greene
AKA:
Race: BLACK Sex: M Age: 26
DOB: SS#
Address:
City, State, Zip: Eutawville, SC 29048
DL#: SID#

INDICTMENT/CASE#: 2013GS38-0245
A/W#: 2013A3810700018
Date of Offense: 1/3/2013
S.C. Code §: 16-21-0080
CDR Code #: 3468

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Possess, conceal, sell, or dispose of stolen vehicle, value \$10,000 or more

in violation of § 16-21-0080 of the S.C. Code of Laws, bearing CDR Code # 3468
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
Bell, Harrison SC Bar# 7863 Defendant Attorney for Defendant SC Bar# 76457

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 2 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 5-19-2014
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP 40 days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ca, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk V. Glenn
Court Reporter: Ruth L. Mott
SCCA/217 (03/2011)

Presiding Judge Diane S. Lott
Judge Code: 2115
Sentence Date: 5-19-2014

**Can a defendant be ordered to pay restitution for an item (or items) that he did not steal; have in his possession; and was never criminally charged or indicted for stealing or having in his possession?**

In South Carolina, restitution is governed by § 17-25-322, Code of Laws of South Carolina, 1976, as amended. Subsection (A) states in part, "When a defendant is convicted of a crime which has resulted in pecuniary damages or loss to a victim, the court must hold a hearing to determine the amount of restitution due the victim or victims of the defendant's criminal acts." The defendant in this case pleaded guilty to two counts of Possession of a Stolen Vehicle; a Ford truck and a Kawasaki motorcycle. In State v. Gullede, 487 S.E.2d 590 (S.C. 1997), the Supreme Court ruled that the trial court "may conduct an inquiry broad in scope, largely unlimited either as to the kind of information it may consider or the source from which the information may come, to assist it in determining the amount of restitution to be imposed.", however, a verbal assertion by the victim that he is entitled to restitution for two lawn mowers that the defendant was not charged or indicted with stealing or possessing, nor was transcribed in the victim's handwritten account of missing items and lost pay, is too far removed from the offenses for which the defendant was charged and therefore too vague to be considered by the Court. The causal chain has missing links. Since this defendant was not charged or indicted with any crimes other than the two in which he pleaded guilty, the only criminal acts at play in this hearing should be for possession of a stolen Ford truck and possession of a stolen Kawasaki motorcycle.

The Fifth Amendment to the U.S. Constitution entitles every person to due process before the government can deprive them of life, liberty, or property. The restitution hearing, while legally broad in scope and with great judicial discretion in its application, still does not provide

this defendant with proper procedural due process. In the case at the bar, for the defendant to be held accountable for restitution to a victim for items he never stole or possessed, nor was ever indicted or charged with the theft or possession thereof, would deny him of the rights afforded him under the Fifth Amendment.

**The controlling factors for determining restitution under S.C. Code Ann. § 17-25-322(B)**

**(1996):**

§17-25-322(B) In determining the manner, method, or amount of restitution to be ordered, the court may take into consideration the following:

- (1) the financial resources of the defendant and the victim and the burden that the manner or method of restitution will impose upon the victim or the defendant;
- (2) the ability of the defendant to pay restitution on an installment basis on other conditions to be fixed by the court;
- (3) the anticipated rehabilitative effect on the defendant regarding the manner of restitution or the method of payment;
- (4) any burden or hardship upon the victim as a direct or indirect result of the defendant's criminal acts;
- (5) the mental, physical, and financial well-being of the victim.

The defendant would like to draw the Court's attention to Items (1), (2), and (3). In regard to Item (1), the amount of restitution due was ordered to be \$30,999.55. This figure represents an amount that would be overly burdensome to the defendant. The defendant has a high school education and has been employed at a wage which if calculated after taxes would scarcely amount to the full figure of restitution argued by the State if the defendant applied every cent earned over a two-year period of employment to his restitution.

For Item (2), the defendant does not have the ability to pay restitution on an installment basis even if his probationary term was stretched to five (5) years. Restitution in any amount over what the defendant argues is justifiable would be economically impossible, thereby setting

off a series of events, including a potential probation violation, a revocation of a portion of the defendant's suspended sentence (which in turn would remove him from the workforce while adding an economic burden on the State), and finally a conversion to a civil judgment which may or may not ever be collected.

Item (3) should also be considered by the Court since a key element of the criminal justice system is the rehabilitative effect a criminal punishment has upon a defendant. In the case at the bar, testimony was given by Investigator Johnny Thrower regarding this defendant's honest and candid confession given to law enforcement. The record should reflect that the defendant cooperated fully, including providing police with the name and location of the party from whom he purchased the stolen items, the amounts paid, and the admission of his wrongdoing. Punishing this defendant with a restitution amount that would be overly burdensome could have a potentially devastating effect on his rehabilitation. It would send the message that admitting fault and cooperating with law enforcement will only be met with additional hardships, especially financial, and thus drawing the economically challenged into greater financial despair.

May 21, 2015

**RECEIVED**

MAY 26 2015

SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

RE: State of South Carolina v. Christopher Jared Greene, Case No. 2013-GS-38-245, 2013-GS-38-245

Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the respondent.
- (2) A copy of the order of judgment which is to be challenged on appeal.
- (3) An attached explanation showing that there is an issue which can be reviewed on appeal.

May 21, 2015



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