

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County  
The Honorable D. Craig Brown, Circuit Court Judge  
Appellate Case No 2017-001207

**RECEIVED**

MAY 18 2018

SC Court of Appeals

THE STATE,

Respondent,

v.

CARISA MARCHE WEAVER-LAWRENCE,

Appellant.

**INITIAL BRIEF OF RESPONDENT**

ALAN WILSON  
Attorney General

DEBORAH R.J. SHUPE  
Senior Assistant Deputy Attorney General  
S.C. Bar No. 5098

Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ISAAC MCDUFFIE STONE, III  
Solicitor, Fourteenth Judicial Circuit

Post Office Box 1880  
Bluffton, South Carolina 29910  
(843) 779-8477

ATTORNEYS FOR RESPONDENT

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## **STATEMENT OF ISSUE ON APPEAL**

The circuit court properly considered all the evidence presented in light of the statutory factors for restitution, and acted within its discretion in setting the restitution amount.

**STATEMENT OF THE CASE**

The State concurs with Appellant's procedural Statement of the Case.

## STATEMENT OF FACTS

On January 27, 2017, Appellant Caria Marche Weaver-Williams waived grand jury presentation and pled guilty to one count of breach of trust between \$2000 and \$10,000, relating to money and goods she stole while employed at a Dollar General Store. The matter was called for a plea hearing before the Honorable Carmen T. Mullen, Circuit Court Judge, who accepted Appellant's plea, and sentenced her to five years incarceration, suspended to forty-five days time served and five years probation.<sup>1</sup> The court advised Appellant the amount of restitution she would have to pay would be determined at a subsequent hearing. (January 27, 2017 Plea Hearing Transcript [PHT], pp. 1-9; Record on Appeal [R.], pp. \_\_\_\_\_).

The matter was called for a restitution hearing on March 2, 2017, before the Honorable Craig Brown, Circuit Court Judge. Appellant was present and represented by counsel.

Phillip Howard, Regional loss prevention manager for Dollar General Corporation, testified he was asked to investigate significant shortages at a Dollar Store in Lady's Island, South Carolina. He provided documentation reflecting monetary shortages from that store between March and December, 2016, based on information supplied by the company's headquarters in Tennessee. He compared the loss dates to employee schedules from the time in question, and discovered Appellant was working every day a loss was recorded. He then prepared a handwritten summary of the loss amounts by month, resulting in a total loss amount of \$8,213.82. (March 2, 2017 Restitution Hearing Transcript [RHT], pp. 1-6, Court's Exhibit 1; R., pp. \_\_\_\_\_).

Mr. Howard interviewed Appellant about the losses on December 7, 2016, and she admitted stealing the entire \$8,213.82. She further admitted stealing \$500 in merchandise from

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<sup>1</sup>Appellant does not challenge the validity of her guilty plea.

the store, for a total loss of \$8,813.82. She also signed a written statement admitting the thefts and amounts. (RHT, pp. 6-7, Court's Exhibit 1; R., pp. \_\_\_\_\_).

Appellant objected to admission of the documents marked as Court's Exhibit 1, asserting they contained hearsay. The court overruled the objection, finding there was sufficient testimony regarding the source of the information contained in the documents. (RHT, pp. 7-11; R., pp. \_\_\_\_\_).

Appellant testified she took the money from Dollar General, and she knew she had to pay the money back. She admitted Mr. Howard told her the amount missing was over \$8000, and stated she signed the statement contained in the documents provided by Mr. Howard, in which she admitted to stealing \$8,813.82. (RHT, pp. 15-22; R., pp. \_\_\_\_\_).

Appellant denied taking any money between March and July 2016, and stated she only took \$900 between August and September 2016, \$300 in October 2016, and \$100 in December 2016. She further admitted stealing merchandise from the store. She testified that the total amount of money and merchandise she stole was \$1600, but again admitted on cross-examination she signed the December 7, 2016, statement reflecting a total amount of \$8,813 in stolen money and merchandise. (RHT, pp. 22-27; R., pp. \_\_\_\_\_).

The circuit court ordered restitution in the amount of \$8,813.82, based on the testimony and evidence presented. The court indicated it considered the required statutory factors to be considered in setting restitution, and made findings on each factor. (RHT, pp. 31-34; R., pp. \_\_\_\_\_).

Appellant filed a Motion to Reconsider Restitution on March 13, 2017, asserting the amount awarded was contrary to the evidence, and the court failed to properly consider the statutory factors as to Appellant's financial resources. (Motion to Reconsider Restitution, filed

March 13, 2017; R., pp. \_\_\_\_\_). The court denied the motion by Order filed May 15, 2017. (Order Denying Motion to Reconsider Restitution, filed May 15, 2017; R., pp. \_\_\_\_\_). This appeal followed.

## ARGUMENT

**The circuit court properly considered all the evidence presented in light of the statutory factors for restitution, and acted within its discretion in setting the restitution amount.**

Appellant contends the circuit court erred in relying on testimony and evidence presented by Dollar General's loss prevention investigator, and ordering her to pay restitution in an amount greater than what she testified she stole from her employer. To the contrary, the circuit court followed the applicable law, and acted within its discretion in setting the restitution amount.

### **A. Standard of Review**

The circuit court has wide discretion in determining what sentence to impose, and the appellate court will overturn the sentence imposed only when the circuit court's conclusions have no evidentiary support. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896, 898 (1976); State v. Pagan, 369 S.C. 201, 631 S.E.2d 262, 265 (2006). "A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law." State v. Dawson, 402 S.C. 160, 740 S.E.2d 501, 502 (2013).

### **B. Restitution**

A restitution hearing is part of the sentencing proceeding, and the trial court may consider information which may be inadmissible under evidentiary rules. State v. Gulledge, 326 S.C. 220, 487 S.E.2d 590, 594 (1997) (internal citations omitted); State v. Morgan, 417 S.C. 338, 790 S.E.2d 27, 29 (Ct. App. 2016) (same); *see also* S.C. Code Ann. §17-25-322 (2014) ("in addition to any other sentence which it may impose, the court shall order the defendant make restitution.") (emphasis added).

Appellant's argument regarding the amount of restitution is premised primarily on conclusory assertions Mr. Howard's testimony and the documentation provided were insufficient to connect Appellant to the amount of losses, she only signed the statement in December 2016

because she had been confronted by two men without warning and she wanted to keep her job, and she testified she only took \$1600 in cash and merchandise. In addition to being conclusory, these assertions are insufficient to establish an abuse of discretion.

As a threshold matter, Appellant's assertion regarding the court's consideration of her testimony at the hearing about the amount she stole overlooks one very vital fact. On January 27, 2017, Appellant admitted under oath that she stole between \$2,000 and \$10,000, and pled guilty to a charge to that effect. She cannot subsequently indirectly disavow that plea by now admitting she stole less than \$2,000, and her attempts to do so in the circuit court and this Court go directly to her credibility.

As to the evidence considered by the court in determining the amount of restitution, "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." Gulledge, 487 S.E.2d at 594. In Gulledge, the defendant objected to a handwritten summary of the victim's losses, and the Court of Appeals and Supreme Court held the trial court properly admitted and considered the summary in determining a restitution amount. *Id.* at 594-595.

Mr. Howard obtained information from Dollar General's home office about the missing amounts, compared the dates with Appellant's work schedule, and prepared a written summary showing the individual monthly amounts and the total amount. He testified at the restitution hearing about how he gathered the information and reached the totals reflected on his summary, and Appellant had ample opportunity to cross-examine him. While Appellant makes the conclusory assertion the evidence was not "trustworthy and reliable," the circuit court was in the

best position to determine Mr. Howard's credibility, and the trustworthiness of information he provided.<sup>2</sup>

The circuit court acted well within its discretion in considering the statutory factors and basing the restitution amount on the evidence presented.<sup>3</sup> In the absence of any evidence the circuit court abused its discretion, the restitution ordered by the circuit court should be affirmed.

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<sup>2</sup>Appellant takes issue with Mr. Howard's math skills. Appellant had Mr. Howard's documentation prior to the restitution hearing, and was free to cross-examine him regarding his calculations. Rather than present the purported math error at the appropriate time, however, Appellant uses the assertion on appeal in an attempt to impugn his entire testimony.

<sup>3</sup>Appellant does not assert the circuit court's findings on the statutory factors were not supported by the evidence.

CONCLUSION

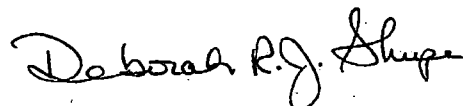
Based on the foregoing, Respondent respectfully submits the restitution ordered by the circuit court should be affirmed.

Respectfully submitted,

ALAN WILSON  
Attorney General

DEBORAH R.J. SHUPE  
Senior Assistant Deputy Attorney General  
S.C. Bar No. 5098

ISAAC MCDUFFIE STONE, III  
Solicitor, Fourteenth Judicial Circuit



BY: \_\_\_\_\_  
Deborah R.J. Shupe

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 18, 2018

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CARISA MARCHE WEAVER-LAWRENCE,

Appellant.

**PROOF OF SERVICE**

I, Sally Ellison, certify I served the Initial Brief of Respondent and Designation of Matter on Appellant by depositing copies in the United States mail, postage prepaid, addressed to:

Taylor D. Gilliam  
Assistant Appellate Defender  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211

I further certify all parties required by Rule to be served have been served.

This 18<sup>th</sup> day of May, 2018.

  
SALLY ELLISON  
Legal Assistant

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727



ALAN WILSON  
ATTORNEY GENERAL

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SC Court of Appeals

Taylor D. Gilliam  
Assistant Appellate Defender  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211

RE: State v. Timothy Wayne Wheeler  
Appellate Case No.2017-000152

Dear Mr. Gilliam:

Enclosed are two copies of the Initial Brief of Respondent and Designation of Matter, with proof of service, in the above-referenced case. If you have any questions, please do not hesitate to contact me.

Sincerely,

Deborah R.J. Shupe  
Senior Assistant Deputy Attorney General

Enclosures

cc:  Honorable Jenny A. Kitchings (original and one enclosed)  
Victim Services