

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Beaufort County

Honorable D. Craig Brown, Circuit Court Judge

RECEIVED
JUN 27 2018
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CARISA MARCHE WEAVER-LAWRENCE,

APPELLANT

APPELLATE CASE NO 2017-001207

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in ordering restitution, where the determination of the amount was based on unreliable and untrustworthy evidence, where Appellant alone was blamed for the entirety of missing funds although other employees had access to the money, and where Appellant disputed the amount she took from her employer?

STATEMENT OF THE CASE

On January 27, 2017, Appellant pled guilty to breach of trust with fraudulent intent, more than two thousand dollars but less than ten thousand dollars, before the Honorable Carmen T. Mullen in Beaufort County.¹ R. 1. Benjamin Tripp represented Appellant, and Sarah C. Fowler appeared on behalf of the State. Judge Mullen accepted Appellant's guilty plea and sentenced her to five years' incarceration suspended upon forty-five days' time served and probation for three years. R. 7, ll. 6 – 16; R. 8, l. 10 – R. 9, l. 5.

Because Appellant disagreed with the amount of restitution owed, a separate hearing with the same attorneys was held on March 2, 2017 before the Honorable D. Craig Brown. R. 11. Judge Brown ordered Appellant to pay restitution in the amount of \$8,813.82. R. 41, ll. 8 – 18.

On or about March 31, 2017, Appellant filed a Motion for Reconsideration. R. 61-66. On April 25, 2017, Judge Brown issued his order denying Appellant's Motion. R. 67-68.

This appeal follows.

¹ The transcript from Appellant's guilty plea on January 27, 2017 is nine pages long. There is a separate thirty-four transcript from the subsequent restitution hearing on March 2, 2017.

ARGUMENT

The trial court erred in ordering restitution, where the determination of the amount was based on unreliable and untrustworthy evidence, where Appellant alone was blamed for the entirety of missing funds although other employees had access to the money, and where Appellant disputed the amount she took from her employer.

Phil Howard would do anything to help protect Dollar General's assets. R. 14, ll. 12 – 20. While investigating missing funds from a store in Lady's Island, he contacted the Dollar General cash audit department in Tennessee to determine the exact amount that was missing. R. 14, l. 24 – R. 16, l. 8. He testified about the missing amounts and concluded that the sum was \$8,213.82. R. 16, ll. 9 – 22; R. 46-60.² Nothing other than Howard's conclusions substantiated the amounts. R. 23, ll. 19 – 23.

He believed that Appellant was responsible for the entire sum and claimed that she admitted as such. R. 17, ll. 1 – 19. Howard took a written statement from Appellant. R. 17, l. 10 – R. 21, l. 7; R. 46-60.

Appellant admitted that she owed Dollar General some money for restitution. R. 25, l. 18 – R. 26, l. 7. Appellant's rent at the time that she took money from Dollar General was \$865 each month. R. 33, ll. 11 – 12. She took money to cover her rent and to pay her bills after a hurricane hit the coast of South Carolina. R. 33, l. 1 – R. 35, l. 15. She was evicted and traveled to Greenville to stay in a hotel. Id. In total, she admitted to taking approximately \$1,600. Id.

² The undersigned produced a different sum when adding the numbers listed by Howard. There is also a discrepancy of one cent between the amount+ stated for June in Howard's testimony and the amount listed in Howard's handwritten worksheet, Court's Exhibit 1.

On December 7, 2016, Appellant recalled meeting Howard for the first time. R. 26, l. 8 – R. 28, l. 5. She met with him and the district manager in a break room at the back of the Dollar General where she worked. Id.

Appellant denied outright Howard's allegation that she had been taking money since March; she admitted that she began in August. R. 28, l. 23 – R. 29, l. 15; R. 32, ll. 17 – 25. She questioned Howard's methods for placing the blame for the entirety of the missing funds on her and indicated that she never worked alone; other employees had access to the money as well. R. 29, l. 16 – R. 30, l. 5.

Towards the end of the meeting, Howard suggested that Appellant "write a statement saying that [she] did this and ... maybe [she] could keep her job." R. 30, l. 15 – R. 31, l. 1. Because she wanted to keep her job, Appellant complied. R. 31, ll. 2 – 21; R. 46-60. She did not retain her position at Dollar General. R. 32, ll. 4 – 16.

The facts giving rise to Appellant's arrest presented by the State at Appellant's guilty plea were as follows:

On December 7, 2016, law enforcement officers met with employees of a Dollar General Store. Phil Howard, the regional loss prevention manager, claimed that he had been become aware of missing funds since March 2016. He alleged that money went missing each time Appellant worked. Howard confronted Appellant and suggested that she admitted to stealing money. Notably, Appellant admitted **only** that she stole food, diapers, and beverages. Nonetheless, Dollar General employees suggested that Appellant was responsible for \$8,813 in restitution. R. 4, l. 19 – 5, l. 9.

During Appellant's plea, the plea judge pointed out that Appellant was "not necessarily in agreement about the restitution amount" but indicated that Dollar General would be required to produce proof of what was lost. R. 5, ll. 10 – 22.

At the outset of the restitution hearing, the court reminded the State that it had the burden to "put up what is owed." R. 13, ll. 12 – 13.

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, 163, 740 S.E.2d 501, 502 (2013). In State v. Gullede, our Supreme Court explained, "the restitution hearing is part of the sentencing proceeding." 326 S.C. 220, 228, 487 S.E.2d 590, 594 (1997); see S.C. Code Ann. § 17-25-322(A): "[A]nd in addition to any other sentence which it may impose, the court shall order the defendant to make restitution or compensate the victim for any pecuniary damages."

As set forth in Gullede:

Although the trial judge is allowed broad discretion in conducting the restitution hearing, the statute contemplates an adversarial hearing to prove the amount of restitution. Therefore, under the due process clause of both the South Carolina Constitution and the United States Constitution, the defendant must receive notice of the hearing, and during the hearing, the defendant must be given the opportunity to be heard and to cross-examine witnesses. Further, the **evidence admitted during the restitution hearing must be reliable and trustworthy.**

State v. Gullede, 326 S.C. 220, 487 S.E.2d 590, 595 (1997) (internal citations and footnote omitted) (emphasis added).

Howard's math was unreliable and untrustworthy. He accounted for an additional eighty-seven dollars when calculating a total. As argued by counsel during the restitution hearing:

We have no explanation for this amount other than in that [break] room what Mr. Howard apparently said and then he has come in here and said something. I don't have any reason to mistrust Mr. Howard. I don't know him from Adam, but these numbers just may not be right, the numbers he has. [There] may be some kind of error from the accounting or they have

not done their homework, they haven't done their due diligence in figuring out who took what money. And that shouldn't affect her. She said she owes money. She admits it. Here's what I owed. I will pay it back.

To leave it up to ... bare suspicion as to what these amounts are based ... is very troubling, Your Honor.

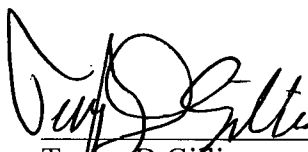
R. 40, ll. 10 – 25.

Other than Appellant's statement, written with the hopes of keeping her job, the State did not present any evidence linking Appellant to the entire sum of missing funds provided by Howard. Other employees were working at the same time as Appellant, and she denied taking any amount over \$1,600. The State suggested that Appellant "would turn her back to the [surveillance] camera and stick the money in her bra." R. 5, ll. 2 – 6. However, the numbers listed by Howard were not even dollar amounts—each month the Dollar General was allegedly missing change as well. Ostensibly Appellant was stuffing her bra with pennies, nickels, dimes, and quarters as well.

Appellant admitted to taking less than two thousand dollars. The remaining amount was pinned on her without any probative evidence that she was responsible for it. Coupled with Howard's adding error, Appellant was ordered to pay an amount of restitution which exceeded what she took.

CONCLUSION

Appellant respectfully requests this Court reverse the amount of restitution owed and remand this matter to the Beaufort County Court of General Sessions for a hearing on the actual amount owed by Appellant.

A handwritten signature in black ink, appearing to read "Taylor D. Gilliam", written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of June, 2018.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 27, 2018



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