

2-17-2010

## State v. Blair Appellant's Brief Dckt. 36328

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, )  
 )  
 Plaintiff-Respondent, )  
 )  
 v. )  
 )  
 JOANNA C. BLAIR, )  
 )  
 Defendant-Appellant. )  
 \_\_\_\_\_ )

NO. 36328

APPELLANT'S BRIEF

COPY

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**BRIEF OF APPELLANT**  
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APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF TWIN FALLS

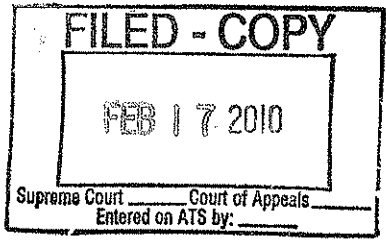
\_\_\_\_\_  
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## STATEMENT OF THE CASE

### Nature of the Case

Joanna C. Blair appeals from both the district court's Judgment of Conviction Upon a Plea of Guilty to One Felony Count, and Order of Retained Jurisdiction, I.C. § 19-2901(4), I.C.R. 33(b), and Order of Commitment and the Order of Restitution. Ms. Blair was convicted of one count of grand theft, sentenced to a unified sentence of ten years, with three years fixed, ultimately suspended for a probationary term, and ordered to pay \$5,831.43 of restitution to Snake River Glass. Ms. Blair asserts that the district court violated her right to due process of law when it denied her motion for a restitution hearing and ordered restitution at her sentencing hearing, without allowing her an opportunity to present evidence regarding the challenged restitution amount.

### Statement of the Facts and Course of Proceedings

On May 20, 2008, Ms. Blair was charged with one count of grand theft. (R., pp.32-33.) The charges arose from Ms. Blair's alleged issuance of unauthorized checks to herself from Snake River Glass. (Presentence Investigation Report (*hereinafter*, PSI), pp.1-2.) Ms. Blair entered a not guilty plea and the case proceeded to trial. (R., pp.36, 157-160.) The jury returned a guilty verdict. (R., p.156.)

At the sentencing hearing, Ms. Blair informed the district court that she wanted to contest the requested restitution and asked for a restitution hearing. (Tr. p.799, Ls.16-20.) The district court denied the request for a hearing, imposing restitution "consistent with the testimony presented at trial." (Tr. p.805, Ls.1-7.) Ms. Blair was sentenced to a unified sentence of ten years, with three years fixed, the district court retained

jurisdiction for 180 days, and Ms. Blair was ordered to pay \$5,831.43 in restitution to Snake River Glass. (R., pp.171-180.) She filed a Notice of Appeal timely from both the district court's Judgment of Conviction Upon a Plea of Guilty to One Felony Count, and Order of Retained Jurisdiction, I.C. § 19-2901(4), I.C.R. 33(b), and Order of Commitment and the Order of Restitution. (R., pp.187-192.) Following a successful period of retained jurisdiction, Ms. Blair was placed on probation for a ten year period. (Augmentation: Order Upon 180-Day Review Hearing, I.C. § 19-2601(4).)

## ISSUE

Did the district court violate Ms. Blair's right to due process of law when it denied her motion for a restitution hearing and ordered restitution without allowing her to present evidence to challenge the restitution amount?

## ARGUMENT

### The District Court Violated Ms. Blair's Right To Due Process Of Law When It Denied Her Motion For A Restitution Hearing And Ordered Restitution Without Allowing Her To Present Evidence To Challenge The Restitution Amount

In the case at hand, Ms. Blair objected to the restitution and asked for a hearing because she wished to challenge the requested restitution. (Tr. p.799, Ls.13-20.) Ms. Blair asserted that a large portion of the money requested was actually earned during her employment with Snake River Glass and that she had worked many additional hours for which she had not yet been compensated. (Tr. p.799, Ls.13-17.) The district court disregarded the objection and stated that:

I will impose restitution of \$5,831.43. That is the figure that is consistent with the testimony presented at trial. I am not going to grant you a restitution hearing in this case. There is nothing to have a hearing about. I make findings based upon the trial evidence that that is an appropriate restitution figure.

(Tr. p.805, Ls.1-7.) The district court's denial of a restitution hearing violated Ms. Blair's right to due process of law and Idaho Code § 19-5304 which provides that defendants should be accorded an opportunity to present evidence of the actual amount of restitution owed.

Due process is guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, § 13 of the Idaho Constitution. Additionally, the Idaho Supreme Court has "applied the United States Supreme Court's standard for interpreting the due process clause of the United States Constitution to art. I, Section 13 of the Idaho Constitution." *Maresh v. State, Dept. of Health and Welfare ex rel. Caballero*, 132 Idaho 221, 227, 970 P.2d 14, 20 (1998), citing *Smith v. Idaho Dep't of Correction*, 128 Idaho 768, 771, 918 P.2d 1213, 1216 (1996).



It is firmly established that due process requires notice and a meaningful opportunity to be heard. *Armstrong v. Manzo*, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965); *Cole v. Arkansas*, 333 U.S. 196, 68 S.Ct. 514, 92 L.Ed. 644 (1948). The Due Process Clause of the Fourteenth Amendment also protects against arbitrary and capricious acts of the government. *Godfrey v. Georgia*, 446 U.S. 420, 100 S.Ct. 1759, 64 L.Ed.2d 398 (1980). Due process requires that judicial proceedings be "fundamentally fair." *Lassiter v. Department of Soc. Serv. of Durham Cty.*, 452 U.S. 18, 24, 101 S.Ct. 2153, 2163, 68 L.Ed.2d 640 (1981).

*State v. Card*, 121 Idaho 425, 445, 825 P.2d 1081, 1101 (1991), *overruled on other grounds by State v. Wood*, 132 Idaho 88, 967 P.2d 702 (1998). "The essence of due process is the right to be heard at a meaningful time and in a meaningful manner." *State, Bureau of Child Support Services v. Garcia*, 132 Idaho 505, 510, 975 P.2d 793, 798 (Ct. App. 1999), *citing Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971); *Sweitzer v. Dean*, 118 Idaho 568, 573, 798 P.2d 27, 32 (1990).

Awards for the payment of restitution to crime victims are governed by I.C. § 19-5304. See *In re Doe*, 146 Idaho 277, 283-284, 192 P.3d 1101, 1107 - 1108 (Ct. App. 2008). The policy behind the statute favors full compensation of crime victims who suffer economic loss. *Id.* Restitution may be ordered only for actual economic loss suffered by a victim. I.C. §§ 19-5304(1)(a), (2). Idaho Code Section 19-5304(6) provides that determination of economic loss be based upon the civil preponderance of evidence standard. *Id.*; *State v. Smith*, 144 Idaho 687, 695, 169 P.3d 275, 283 (Ct. App. 2007). As such, the amount of the award must be supported by substantial evidence. *Id.*; *State v. Hamilton*, 129 Idaho 938, 943, 935 P.2d 201, 206 (Ct. App. 1997).

Specifically, I.C. 19-5304(6) states:

Restitution orders shall be entered by the court at the time of sentencing or such later date as deemed necessary by the court. Economic loss shall be based upon the preponderance of evidence submitted to the court by the prosecutor, defendant, victim or presentence investigator. **Each party shall have the right to present such evidence as may be relevant to the issue of restitution**, and the court may consider such hearsay as may be contained in the presentence report, victim impact statement or otherwise provided to the court.

*Id.* (emphasis added).

Therefore, the statute specifically allows the defendant to present evidence regarding the amount of the restitution award. The district court denied Ms. Blair her opportunity to present evidence by denying her a restitution hearing and, as a result, also violated her right to due process.

Although Ms. Blair was allowed to present evidence at trial, the motivation and goals of presenting such evidence were not the same as her goals in presenting evidence in a restitution hearing. At trial, Ms. Blair was attempting to show her innocence of the crime. She was not attempting to present evidence of the specific amount over the \$1,000.00 for grand theft, for which she may be required to pay as restitution.

Ms. Blair presented testimony that she may have been legally entitled to some of the money. (Tr. p.456, L.1. – p.666, L.23.) It cannot be determined from the jury's verdict the amount, over the \$1,000.00 required for conviction, the jury believed was actually wrongfully obtained by Ms. Blair. Certainly, if the district court had only ordered a restitution award of \$1,000.00, a hearing may not be necessary as a jury has already determined that Ms. Blair would be financially responsible for this amount. However, awarding \$5,831.43 without affording Ms. Bair her due process rights was error. As such, Ms. Blair urges this Court to find that a hearing is necessary to allow her to

present evidence regarding the actual economic loss suffered and to determine an appropriate amount of restitution owed.

CONCLUSION

Ms. Blair respectfully requests that this Court vacate her restitution order and remand her case to the district court for the purpose of conducting a restitution hearing.

DATED this 17<sup>th</sup> day of February, 2010.

*for*   
\_\_\_\_\_  
ELIZABETH ANN ALLRED  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

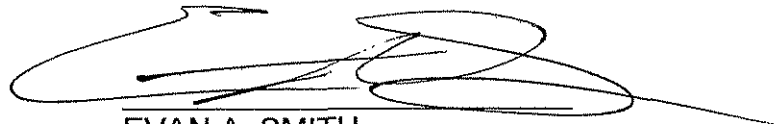
I HEREBY CERTIFY that on this 17<sup>th</sup> day of February, 2010, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JOANNA C BLAIR  
INMATE # 92211  
857 BLUE LAKES BLVD SOUTH #7  
TWIN FALLS ID 83301

RANDY J STOKER  
DISTRICT COURT JUDGE  
E-MAILED COPY OF BRIEF

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A handwritten signature in black ink, appearing to read 'Evan A. Smith', written over a horizontal line.

EVAN A. SMITH  
Administrative Assistant

EAA/eas

