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State v. Blair Respondent's Brief Dckt. 36328

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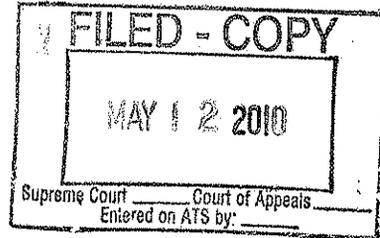
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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
 vs.)
)
 JOANNA C. BLAIR,)
)
 Defendant-Appellant.)

NO. 36328



BRIEF OF RESPONDENT

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

HONORABLE RANDY J. STOKER
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Joanna C. Blair appeals from both the Judgment of Conviction Upon a Plea of Guilty to One Felony Court, and Order of Retained Jurisdiction, I.C. § 19-2601(4), I.C.R. 33(b), and Order of Commitment¹ and the separate Restitution Order entered upon her conviction by jury for grand theft.

Statement Of The Facts And Course Of The Proceedings

Blair was convicted following a jury trial of one count of grand theft. (R., p. 156.) At sentencing, the state requested restitution in the amount presented to the jury at trial. (Tr., p. 793, L. 24 – p. 794, L. 4.) The district court determined the restitution was appropriate based upon the evidence presented at trial and ordered Blair to pay the amount requested by the state. (Tr., p. 805, Ls. 1-7; R., pp. 174-178, 179-180.) Blair timely appeals. (R., pp. 187-192.)

¹ Following the initial entry of the Judgment of Conviction Upon a Plea of Guilty to One Felony Court, and Order of Retained Jurisdiction, I.C. § 19-2601(4), I.C.R. 33(b), and Order of Commitment (R., pp. 174-178), the district court filed an Amended Judgment of Conviction Upon a Jury Verdict of Guilty to One Felony Court, and Order of Retained Jurisdiction, I.C. § 19-2601(4), I.C.R. 33(b), and Order of Commitment (R., pp. 182-186) which appears to mirror the first judgment of conviction in all but the title reflecting the nature of the conviction being as a result of a jury trial.

ISSUE

Blair states the issue on appeal as:

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?

(Appellant's brief, p.3.)

The state rephrases the issue as follows:

Has Blair failed to establish that the district court violated her right to due process in entering a restitution order based on the evidence presented at trial?

ARGUMENT

Blair Has Failed To Show That Her Rights Were Violated By The Entry Of A Restitution Order At Her Sentencing Hearing Based On The Evidence Presented At Jury Trial

A. Introduction

Blair argues on appeal that the district court violated her right to due process of law at sentencing. (Appellant's brief, p. 1.) Specifically, Blair argues that her rights were violated when the district court "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." (Appellant's brief, p. 1.)

Blair has failed to show the district court violated her rights in ordering restitution in an amount proven by the evidence presented at trial and upon which Blair was convicted.

B. Standard Of Review

"The standard of review for claims of constitutional violations is one of deference to factual findings supported by substantial evidence, but we exercise free review in the application of the constitutional principles to the facts once established." State v. Avelar, 124 Idaho 317, 322, 859 P.2d 353, 358 (Ct. App. 1993).

C. Blair Has Failed To Show Her Rights Were Violated When The District Court Entered A Restitution Order Based Upon The Evidence Presented At Blair's Trial

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides that “[n]o state shall . . . deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. It is well understood that the Due Process Clause provides for certain procedural protections before a state may deprive a person of his property or his liberty. Stated another way, procedural due process requires that, except in extraordinary circumstances, a person must receive notice and a meaningful opportunity to be heard before he is deprived of any significant property or liberty interest. Rudd v. Rudd, 105 Idaho 112, 115, 666 P.2d 639, 642 (1983). Procedural due process is not a rigid concept but, rather, it “is flexible and calls for such procedural protections as the particular situation demands.” Aeschliman v. State, 132 Idaho 397, 402, 973 P.2d 749, 754 (Ct. App. 1999). Blair’s claim of a due process violation fails as she was afforded the right to be heard before the district court’s entry of the restitution order in this case.

I.C. § 19-5304 provides that “[r]estitution orders shall be entered by the court at the time of sentencing or such later date as deemed necessary by the court.” I.C. § 19-5304 (6). Further, the statute provides

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.

I.C. § 19-5304 (6). "The appropriate amount of restitution is a question of fact for the trial court, whose findings will not be disturbed if supported by substantial evidence." State v. Card, 146 Idaho 111, 114, 190 P.3d 930, 933 (Ct. App. 2008).

Blair claims the district court denied her due process when it did not grant her request for a separate restitution hearing and "ordered restitution without allowing her to present evidence to challenge the restitution amount." (Appellant's brief, p. 3.) Blair's claim fails because she had already fully availed herself of the opportunity "to present such evidence as may be relevant" when she presented a detailed defense to the charge that she had embezzled funds from her employer. As such, the district court's determination of the appropriate amount of restitution is supported by the substantial evidence it considered while presiding over the three-day jury trial.

In this case, a jury convicted Blair of stealing from her employer after hearing evidence presented over a three-day period. The witnesses who testified included the co-owners and the office manager of the business Blair stole from when employed as their bookkeeper. (See generally Tr., pp. 92-678.) These witnesses provided extensive testimony to establish Blair made unauthorized adjustments to her pay, wrote unauthorized checks to herself and others, and took funds she was not entitled to or authorized to take from the business.

In direct response to the evidence presented by the state, Blair herself took the stand to refute all allegations that she took money from the company

that was not due her. (See generally Tr., pp. 456-666.) Specifically, after going through timecards and checks and pay stubs in detail, Blair testified that she never made unauthorized adjustments to her pay, never wrote unauthorized checks to herself or others, and never took funds that she was not entitled to or authorized to take from the company. (Tr., p. 598, L. 16 – p. 599, L. 4.)

At the sentencing hearing, the state requested restitution in the amount of the loss to Blair's employer, the same amount that it had established with the presentation of its evidence at trial. (Tr., p. 793, L. 24 – p. 794, L. 4.) Blair objected and requested a separate hearing on restitution, but did not identify what evidence, in addition to the evidence she presented when fighting the conviction itself, she still wished to present. In fact, before objecting to the amount of restitution and requesting a separate hearing, Blair's counsel acknowledged the thoroughness of the evidence she presented at trial:

Obviously, Miss Blair testified at her trial. She explained her position. She explained, you know, why she did what she did. She explained why she signed the checks that she signed. She explained on each and every one of the checks, you know, *probably a little ad nauseam* why each of those checks was written and what each was for and why she felt she was authorized to make out each of them. She explained why she felt that she was authorized to give herself a raise. She explained a conversation which, of course, now her boss didn't remember. Of course, it was a very short conversation. She didn't go to the trouble of getting verification of it from her boss. But, she explained why she felt that she really had been authorized to give herself a raise.

(Tr., p. 794, Ls. 11-25.) Her position at sentencing and in objection to the amount of restitution simply summarized her defense at trial: "Miss Blair does feel that she, you know, a lot of that money that was paid was because she was

owed it.” (Tr., p. 799, Ls. 14-16.) The court ordered the restitution as requested by the state:

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.)

I.C. § 19-5304 requires only that “each party shall have the right to present such evidence as may be relevant to the issue of restitution,” not that each party is entitled to a separate restitution hearing when the parties have already presented such evidence. Here, the district court presided over a three-day trial and heard all of the evidence presented in support of the state’s request for the restitution amount as well as that presented by Blair contradicting her theft of over five thousand dollars from her employer. When presented with the restitution amount at sentencing, the court found that it was supported by the trial testimony and ordered Blair responsible for the full amount. The court made findings based on the evidence presented at trial that the amount had been proven. (Tr., p. 805, Ls. 1-7.) The evidence was extensive and included witnesses for the state and witnesses for Blair, including Blair herself, testifying about specific amounts which were the subject of the grand theft charge. Blair’s position at sentencing that “a lot of that money that was paid was because she was owed it,” (Tr., p. 799, Ls. 15-16), is the same argument she made when she testified at her trial. (See generally Tr., p. 481, L. 9 – p. 498, L. 20 (Blair’s

testimony regarding her financial problems and her need to work overtime in contravention to company policy or get a raise in order to pay her personal bills).)

Blair was afforded the right to present “such evidence as may be relevant to the issue of restitution” and has not identified what additional evidence she would present if given a separate hearing. Instead, she argues that her goal at trial was different, in that she was trying to prove her innocence and not trying to prove the appropriate amount of restitution. (Appellant’s brief, p. 6.) However, at trial, Blair’s defense was that she did not steal *any* of the money she was alleged to have stolen, that “a lot of the money that was paid was because she was owed it,” and her defense was detailed in its direct refutation of the state’s evidence. That her goal was different at trial does not alter the fact that the evidence she presented at trial as her defense is exactly what the statute affords her the right to present to the district court when it determines restitution: “such evidence as may be relevant to the issue of restitution.” I.C. § 19-5304 (6).

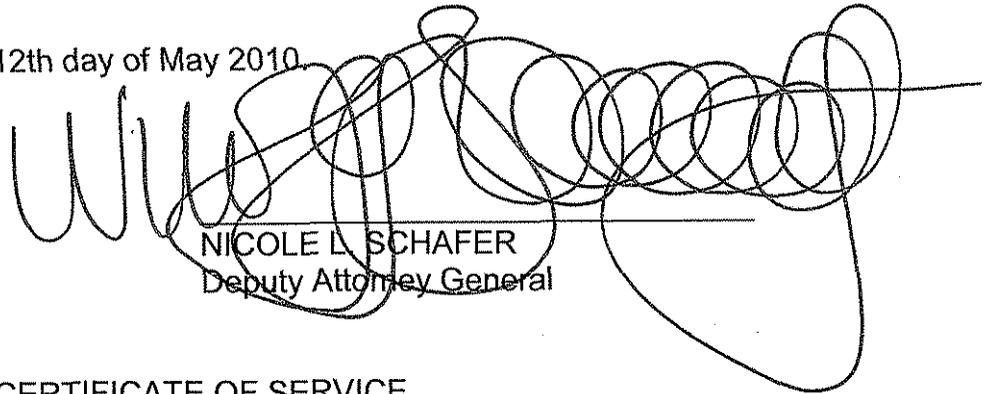
Blair was found guilty by a jury verdict of stealing in excess of one thousand dollars from her employer. That verdict was made upon instructions requiring the jury to find Blair guilty beyond reasonable doubt. (R., p. 127.) Restitution amounts are determined on evidence of “economic loss ... based upon the preponderance of evidence submitted to the court.” I.C. § 19-5304 (6). The court, who presided over the three-day jury trial and heard all of the evidence in support of and in opposition to the state’s presentation of the amount of money Blair stole, made a finding that the \$5,831.43 requested was supported by the trial testimony. As Blair has not identified what other evidence relevant to

the issue of restitution she would have presented if afforded another opportunity.
She has therefore failed to establish any violation of her right to due process.

CONCLUSION

The state respectfully requests this Court uphold the restitution as ordered.

DATED this 12th day of May 2010



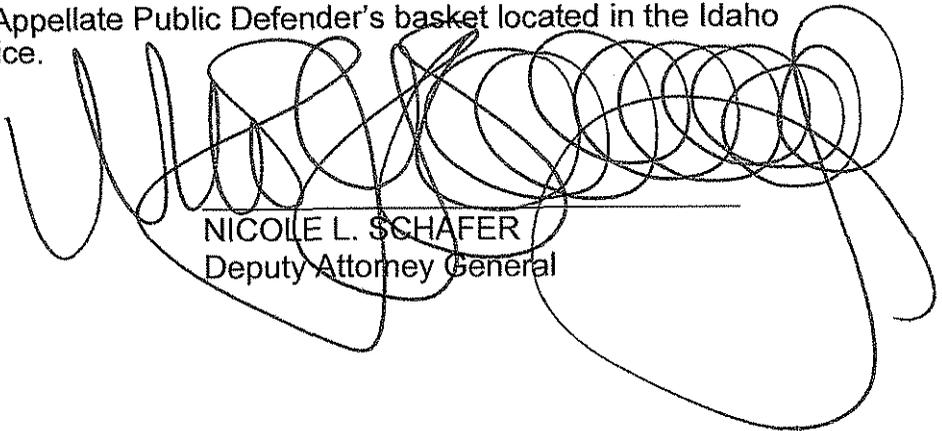
NICOLE L. SCHAFER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 12th day of May 2010, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

ELIZABETH ANN ALLRED
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



NICOLE L. SCHAFER
Deputy Attorney General

NLS/pm