

6-30-2008

# State v. Schultz Appellant's Reply Brief Dckt. 32111

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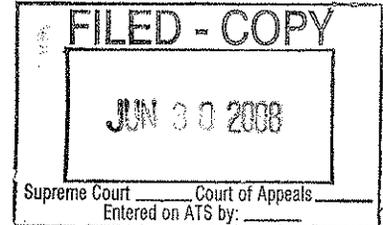
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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, )  
 )  
 Plaintiff-Respondent, ) NO. 32111  
 )  
 v. )  
 )  
 DAWN LENORE SCHULTZ, ) REPLY BRIEF  
 )  
 Defendant-Appellant. )

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**REPLY BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

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**HONORABLE CHERI C. COPSEY  
District Judge**

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## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE CASE.....	1
Nature of the Case .....	1
Statement of the Facts and Course of Proceedings .....	1
ISSUE PRESENTED ON APPEAL .....	2
ARGUMENT.....	3
I. The District Court Erred By Imposing Restitution In The Amount Of \$21,985.28 .....	3
A. Introduction .....	3
B. The District Court Erred By Imposing Restitution In The Amount Of \$21,985.28.....	3
1. Correct Conceded Restitution Amount .....	3
2. Only \$19,421 Of The Ordered Restitution Was Resulting From Ms. Schultz' Adjudicated Criminal Conduct Or Was Consented To By Ms. Schultz .....	5
CONCLUSION .....	8
CERTIFICATE OF MAILING .....	9

## TABLE OF AUTHORITIES

### Cases

<i>State v. Bybee</i> , 115 Idaho 541, 768 P.2d 804 (Ct. App. 1989).....	3
<i>State v. Bybee</i> , 115 Idaho 541, 768 P.2d 804 (Ct. App. 1989), .....	3
<i>State v. Hamilton</i> , 129 Idaho 938, 935 P.2d 201 (Ct. App. 1997) .....	3
<i>State v. Shafer</i> , 144 Idaho 370, 161 P.3d 689 (Ct. App. 2007) .....	6

### Statutes

I.C. § 19-5304(7) .....	3
I.C. § 19-5304(9) .....	6

## STATEMENT OF THE CASE

### Nature of the Case

The instant reply brief is necessary to provide this Court with the corrected restitution amount that Ms. Schultz either consented to or was required to pay as a result of her criminal convictions and to address the State's assertions that under the plain language of I.C. § 19-5304, Ms. Schultz is required to pay certain restitution even if the jury could not have convicted her of criminal conduct from which that restitution was derived. As is set forth below, Ms. Schultz is liable for \$19,421 of the restitution ordered, as only that amount is derived from the offenses and evidence upon which she was found guilty by a jury and was resulting from her criminal offenses. Additionally, the State's argument that Ms. Schultz is required to pay restitution for amounts stemming from alleged conduct not presented to the jury is without merit. *See State v. Shafer*, 144 Idaho 370, 161 P.3d 689 (Ct. App. 2007) (holding that a criminal defendant that pled guilty to leaving the scene of an accident is not responsible for damages derived from the accident as those damages were not resulting from the adjudicated criminal conduct).

### Statement of the Facts and Course of Proceedings

The Statement of the Facts and Course of Proceedings were previously articulated in Mr. Schultz's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Did the district court err by imposing restitution in the amount of \$21,985.28?

## ARGUMENT

### I.

#### The District Court Erred By Imposing Restitution In The Amount Of \$21,985.28

##### A. Introduction

Ms. Schultz contends that only \$19,421 of the restitution order was derived from her criminal convictions at trial. Therefore, because Ms. Schultz did not consent to pay restitution beyond that stemming from her criminal convictions, the district court erred in imposing restitution in excess of that amount.

##### B. The District Court Erred By Imposing Restitution In The Amount Of \$21,985.28

The decision whether to require restitution is within the trial court's sound discretion. *State v. Hamilton*, 129 Idaho 938, 942, 935 P.2d 201, 205 (Ct. App. 1997). The determination of the amount of restitution is a question of fact for the district court. *State v. Bybee*, 115 Idaho 541, 544, 768 P.2d 804, 807 (Ct. App. 1989). The exercise of discretion must encompass consideration of the amount of economic loss sustained by the victim as a result of the offense, the financial resources, needs and earning ability of the defendant, and other factors deemed appropriate by the court. *Id.*; I.C. § 19-5304(7). Findings on the amount of restitution, if supported by substantial evidence, will not be disturbed on appeal. *Bybee* at 544, 768 P.2d 804.

##### 1. Correct Conceded Restitution Amount

In her Appellant's brief, Ms. Schultz argued that at most, only \$18,345 of the ordered restitution amount was derived from her adjudicated criminal conduct. (Appellant's Brief, pp.1, 6-12.) The State countered, asserting that Ms. Schultz had

conceded \$19,435 of the ordered restitution. (See Respondent's Brief, p.5, footnote 3.)  
 However, upon recalculation, again, it appears as though both parties were incorrect.  
 Ms. Schultz concedes that \$19,421 of the \$21,985.28 ordered restitution was permitted  
 by I.C. § 19-5304 or consented to by Ms. Schultz in the district court. The conceded  
 amounts are as follows:

**U.S. Bank Account<sup>1</sup>**

<u>Category</u>	<u>Amount</u>
Forged Checks	\$2,721.45
Overdraft/Return Fees	\$673.00
MBNA Internet Payment	\$1,900.00
Mexico Trip	\$2,497.00
Anniversary Inn	\$601.50
<b>Total</b>	<b>\$8,392.95</b>

**Merrill Lynch Visa Card** **\$737.74**

**CitiBank Mastercard**

<u>Category</u>	<u>Amount</u>
Purchase from Figis	\$108.27
Late Fees/ Finance Charges	\$572.13
<b>Total</b>	<b>\$680.40</b>

**MBNA Platinum Mastercard** **\$9,609.91**

**GRAND TOTAL** **\$19,421**

(See Appellant's Brief, pp.1-12; R., pp.197-202.)

Accordingly, as is articulated herein and in Ms. Schultz' Appellant's Brief,  
 Ms. Schultz is only responsible for \$19,421.00 in restitution from her adjudicated  
 criminal conduct and acquiescence to certain amounts in the district court.

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<sup>1</sup> Part of the discrepancy in restitution by the parties appears to be based on the district court's calculation of its totals from this category. The district court found that total for this category to be \$9,493.36. However, adding up the amounts in this category, the total was \$9,479.36. (See R., p.198.)

2. Only \$19,421 Of The Ordered Restitution Was Resulting From Ms. Schultz' Adjudicated Criminal Conduct Or Was Consented To By Ms. Schultz

In its briefing, the State argues that the district court did not error in ordering Ms. Schultz to pay \$2,437.57 in restitution for alleged unauthorized purchases on the Ms. Shayne's U.S. Bank Account, Macy's Visa, and CitiBank Master Card. (Respondent's Brief, p.9.) The State does not argue that there was evidence produced at trial showing that she made unauthorized purchases in the contested amount such that the jury could have found her guilty of the alleged unauthorized purchases. Rather, the State argues that because she was charged and convicted of grand theft "by exercising unauthorized control of Ms. Shayne's 'credit card accounts and/or bank accounts' between October 2003 and May 2004," the contested amount falls under both the plain language and legislative intent of the restitution statute, even though there was no evidence offered regarding any improper use of Ms. Shayne's credit/bank cards in those amounts. (Respondent's Brief, pp.9-15.) Thus, the State theorizes that because Ms. Schultz was in possession of those cards, and *after the trial* Ms. Shayne alleged that certain purchases were not made by her, which the State did not introduce evidence of during that trial, Ms. Schultz is responsible for paying those restitution amounts. (Respondent's Brief, pp.9-15.)

The State's argument is not supported by the law, or a plain reading of the criminal restitution statutes.<sup>2</sup> Idaho Code § 19-5304 guides restitution that can be ordered in a criminal case. Under I.C. § 19-5304(1)(a):

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<sup>2</sup> The case law addressing the standards for statutory construction and interpretation are articulated in Ms. Schultz' Appellant's Brief, and thus, in the interest of brevity, are not rearticulated, but incorporated herein by reference thereto.

"[e]conomic loss" includes, but is not limited to, the value of property taken, destroyed, broken, or otherwise harmed, lost wages, and direct out-of-pocket losses or expenses, such as medical expenses **resulting from the criminal conduct**, but does not include less tangible damage such as pain and suffering, wrongful death or emotional distress.

*Id.* (emphasis added). Idaho Code § 19-5304(1)(e) defines a victim to mean "The directly injured victim which means a person or entity who suffers economic loss or injury **as a result of the defendant's criminal conduct....**" *Id.* (emphasis added). Idaho Code § 19-5304(2) cautions that "a defendant shall not be required to make restitution in an amount beyond that authorized by this chapter." *Id.* Further, "[t]he court may, with the consent of the parties, order restitution to victims, and/or any other person or entity, for economic loss or injury for crimes **which are not adjudicated** or are not before the court." I.C. § 19-5304(9) (emphasis added).

Admittedly, Ms. Schultz was convicted of grand theft by unauthorized control by "knowingly exercise[ing] unauthorized control and/or made unauthorized transfer of an interest over credit card accounts and/or bank accounts, the property of Audrey Shayne, with the intent to deprive the owner thereof and/or did the above taking in a value in excessive of One Thousand Dollars. . . ." (R., p.22.) Ms. Schultz is clearly responsible to pay restitution for amounts "resulting from [her] criminal conduct," but absent consent, the district court cannot order restitution for alleged "crimes which are not adjudicated." Logic dictates that if a jury is not offered evidence of alleged criminal conduct, then that conduct cannot be adjudicated, and is therefore prohibited by the statute.

Ms. Schultz' "strained interpretation" of Idaho's restitution statutes is consistent with Idaho Court of Appeals decision in *State v. Shafer*, 144 Idaho 370, 161 P.3d 689 (Ct. App. 2007), which was not cited by the State in its briefing. (See Respondent's

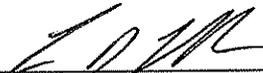
Brief, p.9 (In referencing Ms. Schultz' position, the State argued, "Such strained interpretation of the restitution statutes is inconsistent with and undermines the statute's plain meaning and public policy.") In *Shafer*, the defendant pleaded guilty to leaving the scene of an injury accident and the district court ordered restitution in injuries derived from the accident itself. *Id.* 144 Idaho at 371-372, 161 P.3d 690-691. On appeal, Shafer argued that the district court erred in ordering restitution for injuries resulting from the accident, not from the criminal conduct to which Shafer pleaded guilty. *Id.* Interpreting I.C. § 19-5304, the Court of Appeals agreed with Shafer and concluded that the district court did not have statutory authority to order restitution because "the victim's losses did not result from the criminal act to which [Shafer] pleaded guilty." *Id.*

Here, like *Shafer*, allegations that Ms. Schultz' improperly used the contested monies was not adjudicated because the jury was never offered evidence of any improper or illegal use with regard to those contested amounts. Because those restitution amounts were not adjudicated, absent consent, statutorily they cannot be ordered by the district court. Accordingly, the district court erred in ordering restitution in an amount exceeding \$19,421.

CONCLUSION

Ms. Schultz respectfully requests that this Court vacate the district court's order of restitution and enter an order of restitution in the amount of \$19,421.

DATED this 30<sup>th</sup> day of June, 2007.

  
\_\_\_\_\_  
ERIC D. FREDERICKSEN  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 30<sup>th</sup> day of June, 2008, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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EDF/eas