

IN THE COURT OF APPEALS OF IOWA

No. 7-695 / 06-2028
Filed October 12, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CARMA JO THOLA n/k/a CARMA JO HOVEY,
Defendant-Appellant.

Appeal from the Iowa District Court for Jackson County, C.H. Pelton,
Judge.

Carma Jo Hovey appeals from the restitution order entered following her
guilty plea to first-degree theft. **AFFIRMED.**

Christopher Soppe of Blair & Fitzsimmons, P.C., Dubuque, for appellant.

Thomas J. Miller, Attorney General, Martha Boesen, Assistant Attorney
General, Phil Tabor, County Attorney, and John Kies, former County Attorney, for
appellee.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

BAKER, J.

Carma Hovey was charged with first-degree theft based on her actions while employed at J.R.'s Wine and Spirits. The minutes of testimony indicated Hovey had taken over \$10,000 from her employers by fraudulently entering beer and pop can redemptions at work. On July 7, 2006, she entered a guilty plea to the charge and was sentenced to an indeterminate term of imprisonment not to exceed ten years, which was suspended, and ordered to pay restitution. Following a subsequent restitution hearing, the court ordered Hovey to pay the victims \$79,700. Hovey appeals from this order.

We review restitution orders for the correction of errors at law. *State v. Watts*, 587 N.W.2d 750, 751 (Iowa 1998). The court's findings of fact have the effect of a special verdict. Iowa R. App. P. 6.4. When reviewing the restitution order, we determine whether the court's findings lack substantial evidentiary support, or whether the court has not properly applied the law. *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 678 (Iowa 1998). "Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion." *Hasselmann v. Hasselmann*, 596 N.W.2d 541, 545 (Iowa 1999).

Hovey first argues the evidence was inadequate to support the \$79,700 restitution award. We disagree, and conclude substantial evidence supports the court's determination of the amount owed to the victims. Hovey was the manager of a liquor store and as part of her duties ran the cash register. In 2004, the store's owner, Jack Rosenberg, noticed a wide discrepancy between the amount of money the store paid out in can returns and the amount the store was reimbursed by its suppliers. After painstakingly reviewing every transaction

between June 10, 2001, and June 10, 2004, the date Hovey left the job, Rosenberg discovered that more than \$79,000 was paid out in can returns than the store had been reimbursed. He also discovered that all unusually large can returns, as shown by the receipts, happened at a time of day that Hovey was working. The handwritten totals of the missing money adequately support the court's order.

Hovey next maintains the court erred in admitting certain exhibits based on a lack of proper evidentiary foundation. In particular, she asserts the handwritten documentation of losses prepared by the victims were not properly shown to be authentic. See Iowa R. Evid. 5.901. Restitution is a phase of sentencing. See *State v. Alspach*, 554 N.W.2d 882, 883 (Iowa 1996). As the Iowa Rules of Evidence are inapplicable to criminal sentencing proceedings, see Iowa R. Evid. 5.1101(c)(4), the court did not abuse its discretion in considering the evidence over Hovey's objection. Hovey further complains that the admission of these summaries was an abuse of discretion because the State failed to introduce the records underlying the summaries. There is no abuse of discretion in allowing the introduction of summaries without the introduction of the underlying documents. See Iowa R. Evid. 5.1006.

AFFIRMED.