

**SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

Case No. 6D2025-1329
Lower Tribunal No. 2024-MM-405081-A-O

ROGELIO JOSE DACOSTA,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Appeal from the County Court for Orange County.
Amanda S. Bova, Judge.

October 16, 2026

BROWNLEE, J.

Appellant Rogelio Jose Dacosta pled no contest to one count of unlawful contracting arising from his failure to complete work under a home renovation contract, in violation of section 489.127(1)(f), Florida Statutes (2024). He now appeals the order of restitution, arguing that the \$11,911 amount was determined based on inadmissible hearsay, and that the amount wrongly included sums unrelated to the offense. We affirm on both issues.

First, as to the court’s reliance on the victim’s check stubs to show the amounts paid to other contractors to complete and repair Appellant’s deficient work, Appellant argues the stubs were inadmissible hearsay. He relies on *Walker v. State*, 83 So. 3d 840, 841 (Fla. 4th DCA 2011), in which the Fourth District explained that a check stub—a “note reflecting that a check was issued”—is properly excluded as hearsay unless qualified under an exception to the hearsay rule. But the hearsay discussion in *Walker* concerned trial proceedings, not a restitution hearing. *See id.* at 841.

Nevertheless, the State concedes Appellant’s argument is well-taken and that the use of hearsay to determine the amount of restitution was error. In doing so, the State relies on *Bianchini v. State*, 77 So. 3d 247, 248 (Fla. 4th DCA 2012), which held that “[h]earsay evidence may not be used to determine the amount of restitution when there is a proper objection by the defense to such evidence.” (citations omitted). The State, however, overlooks that *Bianchini* was decided under an out-of-date version of section 775.089(7)(c), Florida Statutes. In 2021, the Legislature amended section 775.089(7) to expressly allow trial courts to consider hearsay evidence at restitution hearings, provided the court “finds that the hearsay evidence has a minimal indicia of reliability.” Ch. 21-172, § 1, Laws of Fla. (eff. July 1, 2021).

Our review of the record in this case reveals that the trial court expressly found the check stubs had the requisite indicia of reliability when it overruled Appellant’s

hearsay objection below. And Appellant has not challenged that finding on appeal. Consequently, he has waived the point. *See Rogers v. State*, 51 Fla. L. Weekly D1313, D1313 (Fla. 6th DCA June 29, 2026) (“Issues not raised in the initial brief are waived or abandoned.” (citations omitted)). We, therefore, find no error in the court’s reliance on the check stubs to determine the amount of restitution and reject the State’s concession of error. *See Brannon v. State*, 396 So. 3d 420, 422 n.1 (Fla. 6th DCA 2024) (noting the appellate court is not bound by a party’s concession of error).

Second, as to Appellant’s argument that the \$11,911 restitution award includes sums from check stubs unrelated to the offense, Appellant fails to provide the Court with sufficient information to meet his burden on appeal. He identifies five check stubs to support his point, but it is not clear from the record whether those particular check stubs were even included in the total amount awarded. *See Lynn v. City of Fort Lauderdale*, 81 So. 2d 511, 513 (Fla. 1955) (“[T]he duty rests upon the appealing party to make error clearly appear.”). We therefore affirm on that issue as well, without further comment.

AFFIRMED.

WOZNIAK and MIZE, JJ., concur.

Blair Allen, Public Defender, and Clark E. Green, Assistant Public Defender, Bartow, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and Deborah Chance, Assistant Attorney General, Daytona Beach, for Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING
AND DISPOSITION THEREOF IF TIMELY FILED