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Commonwealth v. Brookens

Commonwealth of Pennsylvania v. Lacey A. Brookens, Defendant

Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Criminal Action
No. 1337-2013

HEADNOTES

Criminal Law – Retail Theft; Restitution; Effect of Civil Settlement on Defendant’s obligation for Criminal Restitution

Retail Theft – Employer’s Remedies Generally

1. Pennsylvania law provides both a civil and criminal remedy to the merchant of a retail establishment for theft, regardless of size or organizational structure.
2. The Pennsylvania legislature implicitly recognizes the value of property rights of the merchant who sells goods generated by the producers in society. “The right to property means that a man has a right to take the economic actions necessary to earn property, to use it and to dispose of it; it does not mean that others must provide him with property.” Ayn Rand, “Man’s Rights” VOS. (1964).

Retail Theft – Statute Providing for a Civil Settlement

3. Where the Defendant, an employee of a retail establishment, committed theft at that establishment, and was thereafter confronted by her employer and chose to enter into a civil settlement, pursuant to 42 Pa.C.S.A. § 8308, that settlement is only civil in nature.
4. The civil remedy for a retail establishment under 42 Pa.C.S.A. § 8308 is exclusively civil in construction and implementation. Resolution under that statute of the employer’s loss due to Defendant’s retail theft only insured that her former employer would not pursue her for additional civil actions or damages, nothing more.

Retail Theft – Statute Providing for Criminal Restitution

5. Under 18 Pa.C.S.A § 1106, upon conviction for any crime wherein property is stolen, converted or otherwise unlawfully obtained . . . the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor. Whenever restitution has been ordered pursuant to subsection (a) and the offender has been placed on probation or parole, his compliance with such order may be made a condition of such probation and parole.
6. No judgment or order of restitution shall debar the owner of the property . . . by appropriate action, to recover from the offender as otherwise provided by law, provided that any civil award shall be reduced by the amount paid under the criminal judgment. 18 Pa.C.S.A. § 1106.

Case Law Showing a Distinction between a Civil Settlement and Criminal Restitution

7. The Pennsylvania case law is clear in its delineation between civil settlements and criminal restitution.
8. The Pennsylvania Superior Court has declared it legal error for the sentencing court to refuse to order criminal restitution on the theory that, because the victim signed a general civil release upon obtaining a civil settlement, that release precluded consideration of restitution.

Amount of Restitution

9. The District Attorney is responsible for soliciting information from the victim and must make a recommendation to the sentencing court as to the correct amount of restitution to be ordered. The Commonwealth must prove by a sufficiency of the evidence that the victim suffered the loss indicated.
10. The plea colloquy contains the amount of \$2,050.00 as restitution. That is the amount that the court ordered to be paid to the victim. To the extent a victim incurs a loss as a result of retail theft, they should be reimbursed for their actual loss, but no more.

Appearances:

Gerard Mangieri, Esq., *Franklin County District Attorney’s Office*

Anthony Miley, Esq., *Franklin County Public Defenders’ Office*

OPINION

Before Meyers, J.

A. BACKGROUND

On November 13, 2013, the Defendant, Lacey Brookens, entered a guilty plea to Count 1, Retail Theft, a misdemeanor of the 1st degree for taking clothing and other goods while employed as a cashier at Kohl's department store in Chambersburg. She was sentenced to 60 months of intermediate punishment with the first 6 months on electronic monitoring per a plea agreement made with the Commonwealth. As part of the sentencing order the Court ordered her to pay \$2,050.00 in restitution to Kohl's. The sentencing order specifically provided that she was entitled to request a restitution hearing. Ms. Brookens filed a motion to modify restitution on November 21, 2013, asserting that Kohl's had struck a civil settlement with her for her retail theft pursuant to 42 Pa.C.S.A. § 8308. Upon satisfaction of the settlement agreement in the amount of \$225.00, Ms. Brookens argues that she can only be compelled to pay that amount and no more as restitution under 18 Pa. C.S.A § 1106. The Commonwealth filed an answer to the motion in which it asserted that recent Pennsylvania Superior Court rulings have provided no such relief to criminal defendants as a matter of law. The Court heard the arguments of counsel on December 12, 2013. The matter is now ripe for decision.

B. DISCUSSION

The issue before the Court is whether Defendant's satisfaction of a claim under a civil statute bars this court from awarding a greater amount of restitution as part of sentencing order for the same conduct.

The basic facts are that the Defendant was employed as a cashier with Kohl's department store. Rather than be satisfied with gainful employment, wages, and presumably employee discounts, Ms. Brookens decided to steal clothing and other items from her employer. She got caught. When it comes to the issue of theft from retail establishments, the Pennsylvania legislature has seen fit to provide both a civil and criminal remedy to the merchant, regardless of size or organizational structure. This is an implicit recognition by the legislature of the value of property rights of the merchant who sells the goods that are generated by the producers in society. "The right to property means that a man has a right to take the economic actions necessary to earn property, to use it and to dispose of it; it does not mean that others must provide him with property." Ayn Rand, "Man's Rights" VOS. (1964). In this instance when confronted with her theft, Ms. Brookens elected to enter into a civil settlement with her employer as permitted under 42 Pa.C.S.A. § 8308. By Ms. Brookens' own evidence, her employer's law firm sought restitution under the above reference statute which is part of Title 42 Judiciary and Judicial Procedure, Part VII. Civil Actions and Proceedings, Chapter 83. Particular Rights and Immunities, Subchapter A. Rights of Action, Section 8308. Damages in actions on retail theft. The court takes the time to fully recite the titles to the statutory sections, chapter and subchapter to clearly illustrate the fact that the settlement that Ms. Brookens reached with her employer is exclusively civil in construction and implementation. Her resolution under 42 Pa.C.S.A. § 8308 of Kohl's losses due to her retail theft only insured that her former employer would not pursue her for additional civil actions or damages, nothing more.

Turning to 18 Pa.C.S.A § 1106. Restitution for injuries to person or property. Under subparagraph "(a) General rule.- Upon conviction for any crime wherein property is stolen, converted or otherwise unlawfully obtained, . . . the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor." 18 Pa.C.S.A. § 1106. Moreover, the statute provides that "Whenever restitution has been ordered pursuant to subsection (a) and the offender has been placed on probation or parole, his compliance with such order may be made a condition of such probation and parole." *Id.* Finally, under subparagraph (g) Preservation of private remedies.- "No judgment or order of restitution shall debar the owner of the property . . . by appropriate action, to recover from the offender as otherwise provided by law, provided that any civil award shall be reduced by the amount paid under the criminal judgment." *Id.* Moreover the Court agrees with the Commonwealth's citation to case law that supports the clear delineation between civil settlements and criminal restitution. In Commonwealth v. Pleger, 934 A.2d 715, 720 (Pa. Super. 2007), the trial court "refused to order restitution on the theory that because the victim had signed a general civil release, having obtained a settlement from Appellee which was paid by his insurer." The trial court's reasoning was that "the release precluded its consideration of restitution." *Id.* at 720. The Pennsylvania Superior Court flatly declared the trial court's reasoning to be legal error.

This court points out that under subparagraph (c) (4) of 18 Pa.C.S.A. § 1106 the District Attorney is responsible

for soliciting information from the victim and must make a recommendation to the sentencing court as to the correct amount of restitution at sentencing. In this instance, the plea colloquy contains the amount of \$2,050.00 as restitution. That is what the court ordered to be paid to the victim. To the extent a victim incurs a loss, they should be reimbursed for their actual loss, but no more. See Commonwealth v. Fuqua, 407 A.2d 24, 26 (Pa. Super. 1979). If in fact the Commonwealth cannot prove by a sufficiency of the evidence that Kohl's suffered losses totaling \$2,050.00 due to Ms. Brookens' actions, the court will consider such evidence at another hearing.¹ For the reasons stated above, the Court will deny the Defendant's requested relief.

An order is attached.

ORDER OF COURT

AND NOW this 31st day of December, 2013, the court considered the argument of the Defendant that the restitution in the November 13, 2013 criminal sentencing order of \$2,050.00 payable to the victim, Kohl's department store, should be modified and limited to the amount of \$225.00 per the civil settlement agreement reached pursuant to 42 Pa.C.S.A. § 8308, is DENIED.

Pursuant to the requirements of Pa.R.Crim.P. 114 (B)(1), (2) and (C)(1), (2), the Clerk shall promptly serve this Order or court notice on each party's attorney, or the party if unrepresented; and shall promptly make docket entries containing the date of receipt in the Clerk's office of the Order or court notice; the date appearing on the Order or court notice; and the date and manner of service of the Order or court notice.

¹ The Court notes that the amount ordered at sentencing was not disputed by either the Commonwealth or the Defendant during the argument on this issue.