

SUPREME COURT OF WYOMING

Solis v. State

245 P.3d 323 (Wyo. 2010) · No. S-10-0092 · Decided December 16, 2010

SUMMARY

The Supreme Court of Wyoming held that restitution for stolen merchandise must be based on the property's fair market value at the time of loss, rather than its full retail price. The court concluded that the sale price reflected on the cash register receipts represented the recoverable actual pecuniary damage. It reversed the restitution award and remanded for entry of an amended judgment and sentence.

CASE DETAILS

COURT	Supreme Court of Wyoming
WRITING FOR THE COURT	Golden, Justice; Kite, C.J.; Golden, J.; Hill, J.; Voigt, J.; Burke, J.
JURISDICTION	Wyoming
DECIDED	December 16, 2010
DOCKET	S-10-0092
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	After pleading guilty to felony larceny, Solis appealed the district court's restitution order, arguing that the amount exceeded the actual pecuniary damages authorized by Wyoming law.
STANDARD OF REVIEW	Challenges to the amount of restitution are reviewed for abuse of discretion; challenges to the trial court's authority to order restitution are reviewed de novo. Statutory interpretation is reviewed under principles of legislative intent, ordinary meaning, and construction of the statute as a whole.
PRECEDENTIAL VALUE	Published, precedential Wyoming Supreme Court opinion
PARTIES	Germinia Ortencia Solis v. State of Wyoming

TOPICS

- restitution criminal
- remedies
- criminal procedure
- statutory interpretation
- conversion

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether restitution for stolen merchandise may be based on the merchandise's full regular retail price rather than its fair market value or sale price at the time of the loss.
2. Whether Wyoming's shoplifting civil-liability statute permits recovery of punitive damages as restitution.

HOLDINGS

1. Restitution for the stolen merchandise must be based on its actual pecuniary damage measured by fair market value at the time of the loss. Because JCPenney was selling the merchandise for \$1,011.95 when it was stolen, the sale price, not the full retail price of \$1,968.31, was the proper measure.
2. The additional damages authorized by Wyo. Stat. Ann. § 1-1-127(a)(ii) are punitive and therefore cannot be included in criminal restitution because punitive damages are excluded from statutory pecuniary damages.

KEY QUOTATIONS

“In a general conversion action involving personal property, the measure of damages is the fair market value of the property at the time of the loss.” (245 P.3d at 326)

“We therefore conclude that the actual damages incurred by JCPenney which could be recoverable in a conversion action, as measured by fair market value at the time of the loss, is the sale price of \$1,011.95, and not the items' full retail price of \$1,968.31.” (245 P.3d at 327)

“We find § 1-1-127(a)(ii) to be a penalty provision. Damages awarded pursuant to its authority are punitive in nature.” (245 P.3d at 327)

FACTUAL BACKGROUND

Solis and a co-defendant stole clothing from a JCPenney store after the merchandise had been placed on sale. The sale price shown on the cash-register receipts was \$1,011.95, while the merchandise's full retail price was \$1,968.31. The district court also included \$360 for hiring and training a replacement sales associate, producing a total restitution order of \$2,328.31. Solis challenged only the valuation of the merchandise and argued that restitution should be based on the sale price.

PROCEDURAL HISTORY

The State initially charged Solis with aiding and abetting aggravated robbery and felony larceny. The aggravated-robbery charge was dismissed, and Solis pleaded guilty to larceny under a plea agreement providing for a suspended sentence, supervised probation, and joint and several liability for restitution. The district court ordered \$2,328.31 in restitution, consisting of the merchandise's full retail price and the cost of hiring and training a replacement sales associate. The Wyoming Supreme Court reversed the restitution award and remanded for an amended judgment and sentence.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must enter an amended Judgment and Sentence consistent with the opinion, including restitution based on the proper measure of actual pecuniary damages.

CASES CITED

- Brown v. State, 2003 WY 72, ¶ 9, 70 P.3d 238, 241
- Frederick v. State, 2007 WY 27, ¶ 14, 151 P.3d 1136, 1141
- Alcaraz v. State, 2002 WY 57, ¶¶ 5, 8, 44 P.3d 68, 70-71
- Penner v. State, 2003 WY 143, ¶ 7, 78 P.3d 1045, 1048
- State Department of Revenue and Taxation v. Pacificorp, 872 P.2d 1163, 1166 (Wyo. 1994)
- Parker Land and Cattle Company v. Wyoming Game and Fish Commission, 845 P.2d 1040, 1042 (Wyo. 1993)
- Rasmussen v. Baker, 7 Wyo. 117, 133, 50 P. 819, 823 (1897)
- Rivera v. State, 846 P.2d 1, 6 (Wyo. 1993)
- Smith v. State, 902 P.2d 1271, 1284 (Wyo. 1995)
- ALJ v. State, 836 P.2d 307, 310 (Wyo. 1992)
- Hampton v. State, 2006 WY 103, ¶¶ 7-8, 141 P.3d 101, 104
- Meerscheidt v. State, 931 P.2d 220, 223-24 (Wyo. 1997)
- Lieberman v. Mossbrook, 2009 WY 65, ¶ 49, 208 P.3d 1296, 1311
- Broyles v. Broyles, 711 P.2d 1119, 1124 (Wyo. 1985)
- Grommet v. Newman, 2009 WY 150, ¶ 52, 220 P.3d 795, 815