

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-1023-2018
vs. :
: CRIMINAL DIVISION
:
:
CATHY BURROWS, :
Appellant : 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this court's Order entered January 17, 2019 granting Appellee's motion to dismiss the charges against her as *de minimis*.

For centuries courts have applied the *de minimis* doctrine in a wide variety of cases including criminal matters. Nemerofsky, *What Is a "Trifle" Anyway?* 37 GONZ. L. REV. 315, 324 (2001/2002). The function of this doctrine is to place outside the scope of legal relief the nominally small injuries that must be accepted as the price of living in society. *Id.* at 323 (citing 27A AM.JUR. 2D Equity §118, at 559 (1996)(citations omitted)). This maxim signifies that mere trifles and technicalities must yield to practical common sense and substantial justice. *Id.* (citing *Goulding v. Ferrell*, 117 N.W. 1046, 1046 (Minn. 1908)).

Pennsylvania has enacted a statute aimed to identify situations where the judiciary may invoke the *de minimis* doctrine. Indeed, the legislature has mandated that the courts dismiss prosecutions if having regard to the nature of the conduct charged to constitute the offense, and the nature of the attendant circumstances, it finds that the conduct of the

Appellee presents such other extenuations that it cannot reasonably regard it as envisaged by the General Assembly in forbidding the offense. 18 Pa. C.S.A. §312(a)(3).

This court incorporates its Opinion and Order filed on January 17, 2019 as fully as if it were restated at length herein. This Opinion shall supplement the prior Opinion and clarify the court's reasoning in dismissing the charges against Appellee as de minimis.

The court will first address the nature of the conduct charged. Appellee was charged with retail theft, conspiracy to commit retail theft and corruption of minors. On June 21, 2018, at the Weis grocery market in Loyalsock Township, Appellee placed in her purse two Tide laundry packs valued at \$24.98, two packs CAB beef stew meat valued at \$12.05 and one small toy doll valued at \$6.99. Appellee's intent was not to pay for the items. At the time she committed these acts, a seven year old female, eventually determined as her granddaughter, was with her.

As to the attendant circumstances, Appellee spent one day in jail from June 21, 2018 to June 22, 2018. She waived her preliminary hearing and applied for the Lycoming County Mental Health Court. The application was denied, because the Commonwealth objected to such.

Further, and according to Appellee's motion to dismiss and the credible testimony of Appellee and Vanessa Street, a caseworker for the Lycoming/Clinton Joinder Board (Transcript, 1/11/2019, at 10), Appellee suffers from significant physical, mental, emotional and financial deficits or limitations.

In the early part of 2010 or 2011, Appellee was residing with a Mr. Walker. During the four years that they were together he physically, emotionally and sexually abused her. (Transcript, at 31). This abuse was described as horrible. (Transcript, at 10). On March

22, 2014, he intended on killing both himself and Appellee by crashing the car that he was driving with her as a passenger. (Transcript, at 10, 31).

As a result of the crash, he died but Appellee did not. (Transcript, at 10, 31). Appellee was, however, seriously injured. (Transcript, at 31). She spent four to five months in the hospital and then time in a nursing home. (Transcript, at 31).

Her physical injuries were substantial. She suffered from broken sinus cavities, a broken jaw and a shattered leg requiring seven pins and a fixator. (Transcript, at 32). It took her a significant amount of time to learn to walk but she still has a very difficult time ambulating because her one foot is not getting better. (Transcript, at 31, 32). Most days she is restricted to lying in bed. (Transcript at 10-11, 32-33). She is facing further surgeries including the possible amputation of her leg. (Transcript, at 11, 20, 32).

She is completely disabled. (Transcript, at 10). Her mobility is very limited. She cannot take care of herself, cannot feed herself, doesn't go out and doesn't socialize. (Transcript, at 16-17).

Appellee is 51 years old. (Transcript, at 30). She suffers from a host of mental health problems as well, including agoraphobia, trouble making decisions, post-traumatic stress disorder, depression, anxiety, and substance abuse disorder. (Transcript, at 10, 30, 31, 36). She also suffers from a traumatic brain injury, which causes difficulty with focus and memory. (Transcript, at 11, 12, 15). Her mental health issues are disabling her on a daily basis. (Transcript, at 16).

She treats with physicians, psychiatrists, psychologists, counselors and therapists. (Transcript, at 15, 30, 36). She takes a plethora of medications. (Transcript, at 16). She also remains on a methadone maintenance program. (Transcript, at 17).

She is unable to meet her financial needs, requiring assistance from others, including the Joinder Board and her husband. (Transcript, at 13). She lives in “poverty.” (Transcript, at 15).

Prior to the retail theft incident, Appellee had obtained physical custody of her two grandchildren, along with their father, due to her daughter not being able to care for them. (Transcript, at 4). In March of 2018, however, custody remained with the father, with Appellee having no further involvement. (Transcript, at 6). In June of 2018, three days prior to the retail theft, primary custody was retained with the father, partial custody was placed with the mother, and Appellee no longer had any legal or physical custody. (Transcript, at 6-7).

On the date of the incident, however, the mother called Appellee and asked if Appellee could pick up “the kids.” (Transcript, at 33). Appellee agreed to pick up her grandchildren because she had planned on going to the grocery store anyway and the grandchildren were planning on coming over later that day. (Transcript, at 34-35). She was planning on getting laundry detergent and some meat to make some soup. (Transcript, at 35).

While she had money, she didn’t realize “how much the meat was going to be.” (Transcript, at 35). She went up and down the aisle trying to find meat she could afford but couldn’t make her money “stretch.” (Transcript, at 35). Because she no longer had custody of the children, she was no longer getting help from welfare and their mother wasn’t contributing any money. (Transcript, at 25). Everything was just “piling up.” (Transcript, at 25).

While the one grandchild was with her husband, she wasn’t thinking and made a rash decision in taking the items. (Transcript, at 35). She knew she had to get milk

for the kids but could not drive all around so instead of going to the Food Bank, she went to the store. (Transcript, at 37). She didn't want to say no to anyone, fearing the kids might end up in foster care and be taken completely from the family. (Transcript, at 25).

As set forth in 18 Pa. C.S.A. § 312, the court shall dismiss a prosecution if having regard to the nature of the conduct charged and the nature of the attendant circumstances, it finds that the conduct of the Appellee presents such other extenuations that it cannot reasonable be regarded as envisioned by the General Assembly in forbidding the offense.

In reviewing the court's decision, the Superior Court must utilize an abuse of discretion standard. *Commonwealth v. Przybyla*, 722 A.2d 183, 184 (Pa. Super. 1998). The term "discretion" imports the exercise of judgment, wisdom and skill so as to reach a dispassionate conclusion, within the framework of the law, and is not exercised for the purpose of giving effect to the will of the trial judge. *Commonwealth v. Gill*, 65 WAP 2017, 2019 WL 1348188 (Pa. Mar. 26, 2019). When a trial judge comes to a conclusion through the exercise of its discretion, there is a heavy burden to show that this discretion was abused. *Id.* at *6 (citing *Commonwealth v. Eichinger*, 591 Pa. 1, 915 A.2d 1122, 1140 (2007)). An abuse of discretion cannot be based on a mere error of judgment, but rather occurs only where the trial court has reached a conclusion that misapplies the law, or where the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will. *Id.*

The discretionary decision to dismiss the charges against Appellee was a dispassionate conclusion based within the framework of the law and not manifestly unreasonable.

Appellee is a physically, emotionally and mentally broken woman. She is

reliant on her husband for all of her daily needs. She is reliant on medical and mental health providers as well as prescription medication to not only ease her constant physical and mental pains and turmoil but to simply get through the day. She struggles with depression, anxiety, agoraphobia, focus, memory, making decisions and PTSD. She lives in abject poverty unable to meet any of her financial needs.

On the date in question, her grandchildren were suddenly placed in her temporary care. Once in the grocery store, realizing that she did not nearly have enough money to purchase what she needed for the grandchildren and in a state of panic about possibly not meeting their needs and then “losing them” to foster care, she made a rash decision to take a handful of negligible items: detergent for the children’s clothes, meat for soup for the children and a doll for the one child. She was immediately apprehended and the items were recovered.

Given these “extenuations” this court cannot envisage the legislature intending to pursue criminal charges against Appellee. In the milieu of grocery store pilferage, this court cannot envision a case more trivial under all of the circumstances.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (DA)
Gerald Lynch, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)