

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FELICIA LENETTE HILL,

Defendant-Appellant.

UNPUBLISHED

July 8, 2008

No. 273910

Macomb Circuit Court

LC No. 2006-000015-FH

Before: Saad, C.J., and Borrello and Gleicher, JJ.

PER CURIAM.

A jury convicted defendant of larceny by false pretenses, MCL 750.218, and two counts of failure to pay wages, MCL 408.485. Defendant appeals and, for the reasons set forth below, we affirm, but remand for reconsideration of defendant's ability to pay attorney fees and correction of the presentence investigation report.

I. Double Jeopardy

Defendant claims that her convictions for larceny by false pretenses and failure to pay wages constitute multiple punishments for the same offense and violate her constitutional rights.¹ In *People v Smith*, 478 Mich 292, 316; 733 NW2d 351 (2007), our Supreme Court ruled that, to determine when multiple punishments are barred on double jeopardy grounds, our Courts must apply the test set forth in *Blockburger v United States*, 284 US 299; 52 S Ct 180; 76 L Ed 306 (1932). As our Supreme Court opined in *People v Nutt*, 469 Mich 565, 576; 677 NW2d 1 (2004), quoting *Iannelli v United States*, 420 US 770, 785 n 17; 95 S Ct 1284; 43 L Ed 2d 616 (1975), the *Blockburger* test “ ‘focuses on the statutory elements of the offense. If each requires

¹ Generally, a double jeopardy claim presents a question of law, which is reviewed de novo on appeal. *People v Pena*, 224 Mich App 650, 657; 569 NW2d 871 (1997), mod in part on other grounds 457 Mich 885 (1998). However, this Court reviews defendant's unpreserved claim for plain error affecting defendant's substantial rights. *People v Meshell*, 265 Mich App 616, 628; 696 NW2d 754 (2005). Reversal is appropriate only if the plain error resulted in the conviction of an innocent defendant or seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *Id.*

proof of a fact that the other does not, the *Blockburger* test is satisfied, notwithstanding a substantial overlap in the proof offered to establish the crimes.’ ”

“ ‘The crime of larceny by false pretenses requires (1) a false representation as to an existing fact, (2) knowledge by the defendant of the falsity of the representation, (3) use of the false representation with an intent to deceive, and (4) detrimental reliance by the victim on the false representation.’ ” *People v Webbs*, 263 Mich App 531, 532; 689 NW2d 163 (2004), quoting *People v Flaherty*, 165 Mich App 113, 119; 418 NW2d 695 (1987). Here, the prosecution also had to prove that the larceny involved \$1,000 or more, but less than \$20,000. MCL 750.218(4)(a). Failure to pay wages is a misdemeanor and requires proof that the employer failed to make payment of wages due an employee and did so with the intent to defraud. MCL 408.485.

Applying the *Blockburger* test, the offenses each contain an element not contained in the other. The failure to pay wages statute requires an employer to fail to pay an employee with intent to defraud, whereas the false pretenses statute does not require an employment relationship. The false pretenses statute requires the defendant to make a false representation to the victim and it requires that the larceny involve an amount between \$1,000 and \$20,000. In contrast, the failure to pay wages statute has no such requirements. Therefore, we hold that the two crimes contain differing elements and double jeopardy does not bar punishment for both the failure to pay wages and the larceny by false pretenses convictions.

II. Restitution

Defendant complains that, although the jury did not find her guilty of failure to pay wages to complainant Raul Parmo-Leon, the trial court ordered defendant to pay restitution to him. However, the court’s restitution award was contingent upon a settlement between defendant and complainants at the court’s Resolution Center. The record does not indicate that the parties have undergone settlement discussions pursuant to the court’s referral to the Resolution Center. Accordingly, this issue is not ripe for review. *People v Conat*, 238 Mich App 134, 145; 605 NW2d 49 (1999).

III. Attorney Fees

The trial court ordered defendant to pay \$1,075 in attorney fees for her appointed counsel, but defendant argues that the case should be remanded for an evidentiary hearing to assess her ability to pay the fees. Defendant did not object when the trial court ordered the payment and, therefore, the court was not required to make formal findings regarding defendant’s financial situation. *People v Dunbar*, 264 Mich App 240, 254-255; 690 NW2d 476 (2004). However, the trial court was nonetheless obligated to indicate that it considered defendant’s ability to pay. *Id.* Here, the trial court failed to indicate that it considered, for example, the financial or employment sections of defendant’s presentence investigation report, and the court merely stated that the amount ordered was “reasonable.” Because the trial court’s statements were insufficient, we vacate the order and remand to the trial court for reconsideration of this issue.

IV. Presentence Investigation Report

Defendant further claims that the trial court erred because it failed to remove an error from her presentence investigation report (PSIR). Specifically, defendant maintains that she was misquoted as saying that she “hired” three people to work for her for compensation. The trial court acknowledged the error, but failed to strike it from the report as required by our case law. *People v Spanke*, 254 Mich App 642, 649; 658 NW2d 504 (2003). Therefore, on remand, the court shall make the correction in the PSIR.

We affirm defendant’s convictions, but remand for reconsideration of defendant’s ability to pay attorney fees and correction of the PSIR. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Stephen L. Borrello