

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| COMMONWEALTH OF PENNSYLVANIA | : No. 00-11,466 |
| | : |
| | : |
| vs. | : CRIMINAL |
| | : |
| JERRELL OAKS, | : |
| Defendant | : |

ORDER

AND NOW, this 18th day of September, 2000, upon consideration of the defendant's Petition for Writ of Habeas Corpus, it is ORDERED and DIRECTED as follows: The Court will consider the Petition for Writ of Habeas Corpus as a motion to quash the private criminal complaint as orally requested by defense counsel because the defendant is not in custody. The Court agrees with the defense that the affidavit does not state sufficient facts to establish probable cause that the defendant intended to permanently deprive the complainant of the inventory or its value at the time the defendant took possession of it. Therefore, the Court QUASHES the criminal complaint without prejudice.¹ This means the complainant may refile his complaint if he can allege additional facts to show that the defendant intended to commit a theft by deception.

By The Court,

Kenneth D. Brown, J.

¹ Although the Court would prefer that an issue such as this be raised in the first instance before the District Justice, see Pa.R.Cr.P. 26, 150, the Court finds judicial economy is best served by ruling on the issue. Additionally, the Court notes the defendant is a resident of Alabama and it would be wasteful to require him to expend funds to travel to Pennsylvania only to have the complaint quashed for lack of probable cause.