

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 01-10,227

VS :

SAMUEL E. EASLEY :

OPINION AND ORDER

Before the court is Defendant's Petition for Habeas Corpus. The Defendant has Been charged with retail theft, conspiracy to commit retail theft, and criminal mischief as a result of an incident that occurred on May 13, 2000. A preliminary hearing was held on January 26, 2001 before District Magistrate, Allen P. Page after which, all charges were bound over. Defendant now argues that the Commonwealth's evidence was insufficient, since it was circumstantial and based solely on conjecture. The parties agreed to submit the motion on the transcript of the preliminary hearing. The Court has reviewed the preliminary hearing transcript and finds the following facts relevant to the motion.

Robert Colley testified that he was working at Hoyer's Photo Supply on May 13, 2000. On that date, at approximately 12:00 p.m., a couple came into the store with a young child in a stroller. Colley testified that there were no other customers in the store. (N.T. 1/26/01, p. 4) The couple asked Colley about a camcorder that was on display. Colley showed the camcorder to the couple which he placed on the counter, and spoke with the couple for approximately fifteen minutes¹. Colley testified that while speaking with the couple, he received a phone call, but returned to the couple moments later. He

testified that the couple stated that they would think about the purchase. At that moment, the child started to cry, and the couple left the store. Approximately 30 seconds after the couple left, Colley discovered that the camera was missing. (Id., p. 3) Colley went outside the store to try and find the couple. Colley observed the couple walking caddy corner toward *The Consistory*. Colley stopped the couple, and talked with them for 10-15 minutes. He asked the Defendant if he could look in the stroller, and the Defendant agreed. Colley did not find the camcorder. Colley later found the camcorder lying on the street on the same route the Defendant traveled.

The issue before the Court is whether the Commonwealth established a prima facie case of retail theft, conspiracy, and criminal mischief. To successfully establish a prima facie case, the Commonwealth must present sufficient evidence that a crime was committed and the probability the Defendant could be connected with the crime. Commonwealth v. Wodjak, 502 Pa 359, 466 A.2d 991 (1983). Under 18 Pa.C.S.A. § 3929(a)(1), a person is guilty of retail theft if he takes possession of, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored, or offered for sale by any store or other retail merchantile establishment with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full value thereof. In the instant case, the Defendant argues that although there is evidence that the merchandise was taken, the evidence is circumstantial and insufficient to establish the probability that he is connected with the theft. The Court disagrees.

In the instant case there is more than the mere presence of the Defendant at the

¹ Colley testified that this was the only camera in the store that was not anchored down to the shelf. He testified that he had just received the camera the day before the incident, and had not had an opportunity

scene. The evidence established that the Defendant and his companion were the only customers in the store at the time of the incident. The Defendant and his companion asked to look at, and were examining the camera on the counter of the store. Moments after the Defendant and his companion left the store, the sales associate discovered that the camera was no longer on the counter where the couple had been looking at it. Additionally, the camera was found lying in the street in the area where the Defendant and his companion had walked. The Court finds this evidence sufficient to establish that the Defendant could be connected with the theft of the camera.

Under 18 Pa. C.S.A. § 901, a person is guilty of conspiracy with another person or persons to commit a crime if, with the intent of promoting or facilitating its commission he: (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime. In the instant case, the Court finds that the Commonwealth presented a prima facie case of conspiracy to commit retail theft. There was evidence that the Defendant and his accomplice entered store together and remained together throughout entire criminal episode, the Defendant and his accomplice examined the camera together with the sales associate, and the Defendant and his accomplice fled the store together. Although circumstantial, the Court finds this sufficient to establish an agreement between the two to aid each other in the commission of this crime. See Commonwealth v. Carter , 272 Pa. Super. 411, 416 A.2d 523 (1973), (by its very nature, the crime of conspiracy is frequently not susceptible of proof except by circumstantial evidence.)

ORDER

AND, NOW, THIS _____ day of June 2001, based on the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is DENIED.

By The Court,

Nancy L. Butts, Judge

cc. CA
Edward J. Rymsza, Esquire
Roan Confer, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire