

**IN THE COURT OF COMMON PLEAS FOR
LYCOMING COUNTY, PENNSYLVANIA
CRIMINAL DIVISION**

COMMONWEALTH	:	
	:	
v.	:	No.: 03-10,153
	:	
LEE NATHAN LOOKENHOUSE,	:	
Defendant	:	

OPINION AND ORDER

Before the Court is Defendant's petition for habeas corpus relief requesting that counts three, four, five and six of the above-captioned criminal information be dismissed. He contends that, as a passenger in a vehicle at the time the acts constituting the crimes alleged in those counts occurred, he cannot be criminally culpable for the acts of the driver of the vehicle. This Court is not persuaded by his arguments. However, for the reasons set forth below, the Court will grant in part and deny in part his petition.

At the time set for argument, the parties defined the single issue before the Court as whether Defendant can be liable for the offenses with which he has been charged under a theory of accomplice liability. The Commonwealth and the Defendant agreed that the facts of this case would be submitted on the transcript of the preliminary hearing held before District Justice C. Roger McRae on January 23, 2003.

The evidence elicited at preliminary hearing shows that the Defendant was at a convenience store on January 15, 2003 at approximately 4:00 a.m. when he allegedly stole a Marlboro cigarette display containing thirty (30) packs of cigarettes.

The clerk testified that she saw him take the display from the store and enter the passenger seat of a waiting vehicle, which then left the scene. The clerk was able to get a license plate number for the vehicle, which she supplied to the authorities. The vehicle, still containing the Defendant, was observed a few minutes later by officers in the neighboring jurisdiction of South Williamsport, Pennsylvania. After a brief stop, the vehicle, still with the Defendant in the passenger seat, sped from the officers and a pursuit began. After traveling some distance on icy, snow covered roads at speeds in excess of 95 miles per hour, the vehicle eventually crashed into a snow bank and a pursuing Pennsylvania State Police vehicle crashed in the car in which the Defendant had been riding. The Defendant and the driver then both fled the scene on foot. Pennsylvania State Police Troopers Toboz and Weindorf were injured during the foot pursuit. When the Defendant was apprehended, the officers were able to look into the vehicle in which he had been riding and observe a Marlboro cigarette display stand and multiple packs of cigarettes.

Criminal conduct involving multiple perpetrators often, but not always, involves theories of vicarious liability, i.e., conspiracy liability (which requires an agreement) or accomplice liability, (which does not). The theories serve different purposes and have different contours. Commonwealth v. Hannibal, 562 Pa. 132, 753 A.2d 1265, (2000). A person is legally accountable for the conduct of another person when he is an accomplice of such other person in the commission of the offense. [18 Pa.C.S.A. § 306\(b\)\(3\)](#). The term accomplice is defined in [18 Pa.C.S.A. §§ 306\(c\)\(1\)](#), which provides that a person is an accomplice of another person in the commission of an offense if, with the intent of promoting or

facilitating the commission of the offense, he aids or agrees or attempts to aid such other person in planning or committing it, 18 Pa.C.S.A. Section 306(1)(ii). Thus, the intent required for criminal conspiracy is identical to that required for accomplice liability. In both crimes, a defendant must act with the “intent of promoting or facilitating the commission of the offense.” Commonwealth v. Davenport, 452 A.2d 1058, 307 Pa.Super. 102 (1982). Proof of a conspiracy requires a showing that the defendant reached an agreement with a co-conspirator to commit a crime. No such showing is necessary to find accomplice liability, as mere rendition of aid is sufficient. Commonwealth v. Allen, 425 Pa. Super. 615, 625 A.2d 1266 (1993), citing Commonwealth v. Graves, 463 A.2d 467, 316 Pa.Super. 484 (1983).

Contrary to Defendant’s assertion that as the passenger he cannot be held criminally liable under an accomplice theory for the actions of the driver, this Court is certain that multiple scenarios exist wherein a passenger could be vicariously liable under an accomplice theory for the action of the driver. However, in this case, there is no evidence that the Defendant and the driver of the vehicle reached any particular agreement as to the conduct of the driver in leading the police on a pursuit. While the driver was clearly aiding and abetting the Defendant in the commission of his alleged offenses of Retail Theft and Receiving Stolen Property, there is no evidence elicited by the Commonwealth at the preliminary hearing which proves that the Defendant played any part in the decision of the driver to recklessly choose to place the pursuing officers in danger

of death or serious bodily injury by either the chase itself or by creating the condition wherein the pursuing police vehicle was involved in an accident.

However, once the vehicle chase ended and both the Defendant and the driver emerged from the vehicle forcing the officers to begin a foot pursuit, the Defendant is again clearly in control of the decision that he made to run from the officers. The evidence supports the Commonwealth assertion that, at the time of the foot pursuit, the Defendant recklessly endangered the pursuing officers, two of whom received actual injury.

ORDER

AND NOW, this ____ day of April, 2003, after hearing, it is ORDERED and DIRECTED that Defendant's Motion for Habeas Corpus as to Counts 3 and 6, Criminal Mischief and Recklessly Endangering Another Person (victim: two vehicle accident, Tprs Toboz and Weindorf) is GRANTED. It is ORDERED and DIRECTED that Count 3 of the criminal information, Criminal Mischief and Count 6 of the criminal information, Recklessly Endangering Another Person are DISMISSED. Defendant's habeas corpus motion as to Counts 4 and 5, Recklessly Endangering Another Person, is DENIED.

By the Court,

Nancy L. Butts, Judge J.

Xc: DA
PD (Poplaski)
Gary Weber, Esquire