

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

COMMONWEALTH	:	
	:	
v.	:	No.: 411-2005
	:	
MICHELLE REED,	:	
Defendant	:	

OPINION AND ORDER

Before the Court is Defendant’s petition for Habeas Corpus filed April 11, 2005. The petition alleges that the Commonwealth failed to present a prima facie case of Retail Theft and Conspiracy as charged under the above-captioned information. A preliminary hearing was held on March 4, 2005 before District Magistrate Allen P. Page pursuant to which all charges were bound over. 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.

Scott Warner (Warner), a loss prevention specialist at Wegmann’s Food Market in Williamsport testified that on December 24, 2004 he observed Defendant and another shopper via the store’s video surveillance system. Defendant and the second individual, identified as Mr. Floyd (Floyd), were observed shopping together, placing items into a shared cart. Warner testified that at one point Floyd began to conceal items on his person with Defendant situated two to three feet away, “to the immediate left and back right over his . . . left shoulder.” (Prelim. Trans. p. 11). After this activity, Warner testified that the pair went to:

the far end of the frozen food section, which is where the chest freezers come to a corner, and is for the frozen food department, the farthest point from the seventeen camera, which [Floyd] appeared to have just observed moments before. It was at that point that what I'm seeing is [Defendant] appears to be drinking her coffee, talking to him and looking over kinda the shelving system that I just explained and that's when he then, can be seen motioning concealment onto his person.

(Prelim. Trans. p. 13). Defendant and Floyd proceeded to a register where Warner testified that they apparently noticed the manager checking the receipts at the point of their checkout. Warner testified that Floyd began looking around and, following an exchange between him and Defendant, attempted to back out of the checkout line. Floyd found himself blocked in, and Defendant stepped to the side to allow him to proceed forward and out of the checkout line. Floyd returned to the aisles of the store and eventually attempted to checkout at a register on another side of the store where Defendant rejoined him and handed him a card, presumably to facilitate checkout. Defendant again left the immediate presence of Floyd. Floyd was apprehended near the store's exit.

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). A person is guilty of criminal conspiracy under 18 Pa.C.S. § 903(a)(1) if with the intent of promoting or facilitating the commission of a crime he agrees with another 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. "The essence of criminal conspiracy is a common understanding, no matter how it came into being, that a particular criminal objective be accomplished." *Commonwealth v. Carter*, 272 Pa. Super. 411, 416

A.2d 523 (1979). “By its very nature, the crime of conspiracy is frequently not susceptible of proof except by circumstantial evidence.” *Commonwealth v. Gibson*, 447 Pa. Super. 132, 137, 668 A.2d 552, 555 (1995). “Among the circumstances which are relevant, but not sufficient by themselves, to prove a corrupt confederation are: (1) an association between alleged conspirators; (2) knowledge of the commission of the crime; (3) presence at the scene of the crime; and (4) in some situations, participation in the object of the conspiracy.” *Id.*

The Court finds that the Commonwealth met its burden at the time of preliminary hearing to establish a prima facie case of criminal conspiracy to commit retail theft. According to the testimony, Defendant and Floyd entered the store together and were clearly in association with each other at the scene of the crime. Defendant was observed in close proximity to Floyd as he concealed items in the store. Defendant remained in close proximity while Floyd observed surveillance cameras, concealed items, and attempted to progress through the checkout station. According to Warner, when Floyd noticed activity concerning his receipts and checkout station by the store manager, Defendant facilitated Floyd’s removal from the checkout line by stepping aside and rejoined him at another checkout station across the store. This evidence is sufficient to establish a common understanding existed between Floyd and Defendant that a criminal objective be accomplished, in this case retail theft.

Based on her role in the criminal conspiracy, the Court finds that a prima facie case of the underlying crime of retail theft has also been established. Taken as true, the evidence establishes that Defendant caused to be carried away merchandise offered for sale

with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value in violation of 18 Pa.C.S. § 3929(a)(1).

ORDER

AND NOW, this _____ day of May 2005, based on the foregoing Opinion, Defendant's Petition for Habeas Corpus is hereby DENIED.

By the Court,

Nancy L. Butts, Judge

Xc: DA
J. Cleland, Esq.
G. Weber, Esq.
Law Clerk