

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

**COMMONWEALTH OF PENNSYLVANIA**

v.

**LANCE QUARTMAN,  
Defendant**

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**No. CR-242-2013  
CRIMINAL**

**OPINION AND ORDER**

The Defendant filed a Petition for Habeas Corpus on March 13, 2013. By agreement of both parties, the Court will decide the Petition based on the transcripts of the Preliminary Hearing held in this matter on February 7, 2013 before Magisterial District Judge Allen Page, III.

***Background***

At the Preliminary Hearing, Faydra Emmil (Emmil) testified and the following facts are based on her testimony. Emmil is the Assistant Manager at the Family Dollar located at 328 Memorial Avenue, Williamsport. On September 11, 2012, Emmil saw Lance Quartman (Defendant) counting change outside the store. The Defendant walked into the store with nothing in his hands. A customer informed a cashier that a black male was putting items in a bag. The cashier told Emmil, who located the Defendant in the store. Emmil observed the Defendant place a bag down on a shelf and walk elsewhere within the store. The bag was a white plastic Family Dollar grocery bag only used when someone has purchased items. Emmil grabbed the bag and took it to the front of the business and observed that it was filled with tee shirts and socks from the store. The Defendant then walked back down the aisle, where he had left the bag, and went straight outside the store. Emmil stated that she is “100% positive that he

would have walked out of the store with that bag.” N.T., February 7, 2013, p. 8. Emmil called 911 and determined that the value of the goods in the bag was sixty (60) dollars.

The Defendant was charged with Retail Theft, a misdemeanor of the second degree;<sup>1</sup> and Receiving Stolen Property, a misdemeanor of the second degree.<sup>2</sup> At argument, the Commonwealth withdrew the Receiving Stolen Property charge. For the remaining Retail Theft charge, the Defendant has argued that the Commonwealth did not establish a *prima facie* case because he did not take anything from the Family Dollar store without paying for it.

### ***Discussion***

In the Petition for Habeas Corpus, defense counsel contends that the Commonwealth failed to present a *prima facie* case for the charge of Retail Theft. The principal function of a preliminary hearing is to protect an individual’s right against an unlawful arrest and detention. Commonwealth v. Mullen, 333 A.2d 755 (Pa. 1975). A preliminary hearing is not a trial and the Commonwealth only bears the burden of establishing at least a *prima facie* case that a crime has been committed. Commonwealth v. Prado, 393 A.2d 8 (1979).

A *prima facie* case exists ‘when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused committed the offense. Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury.’

Commonwealth v. Weigle, 997 A.2d 306, 311 (Pa. 2010) (citing Commonwealth v. Karetny, 880 A.2d 505, 513 (Pa. 2005)). The Commonwealth need not establish guilt beyond a reasonable doubt.

A person is guilty of Retail Theft under 18 Pa.C.S. § 3929(a)(1) if he:

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<sup>1</sup> 18 Pa.C.S. 3929(a)(1).

<sup>2</sup> 18 Pa.C.S. 3925(a).

Takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof.

The statute also lists a presumption for when an individual conceals un-purchased property at a store.

Any person intentionally concealing unpurchased property of any store or other mercantile establishment, either on the premises or outside the premises of such store, shall be prima facie presumed to have so concealed such property with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof within the meaning of subsection (a), and the finding of such unpurchased property concealed, upon the person or among the belongings of such person, shall be prima facie evidence of intentional concealment, and, if such person conceals, or causes to be concealed, such unpurchased property, upon the person or among the belongings of another, such fact shall also be prima facie evidence of intentional concealment on the part of the person so concealing such property.

18 Pa.C.S. § 3929(c).

Here, the Defendant placed merchandise of the Family Dollar store into a plastic bag used when someone purchases items from that store. The Defendant then placed the bag on a shelf, walked away, and then returned while in the process of exiting the store. The Court finds that the Defendant's acts are consistent with taking possession of the merchandise. 18 Pa.C.S. § 3929(a)(1). Further, under 18 Pa.C.S. § 3929(c), the act of concealing unpurchased property among the belongings of an individual or within the premises of a store is *prima facie* evidence that they did so with "the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value." Pursuant to 18 Pa.C.S. § 3929(c), the Court finds that the Commonwealth has established a *prima facie* case for the charge of Retail Theft.

In addition, while it was not argued by the Defendant, renunciation is not a defense to Retail Theft. "[T]he Pennsylvania Crimes Codes establishes renunciation as a defense to only

three crimes, and each of these crimes, Criminal Attempt, Criminal Solicitation, and Criminal Conspiracy, is designed as an inchoate crime.” See Commonwealth v. Hubert, 440 A.2d 630, 632 (Pa. Super. 1982) (finding that Retail Theft precludes the defense of renunciation).

**ORDER**

AND NOW, this \_\_\_\_\_ day of June, 2013, based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant’s Petition for Habeas Corpus is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

cc. DA  
Jeana Longo, Esq.  
Eileen Dgien, DCA