

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-847-2014
:
vs. :
:
:
DACHAUN TURNER, :
Defendant :

OPINION AND ORDER

This matter came before the court on August 18, 2014 for an argument on the Commonwealth’s motion in limine, which seeks to bar Defendant from presenting renunciation as a defense. The facts as set forth in the affidavit of probable cause¹ by the arresting police officer are as follows:

On Wednesday May 7th at 11:37 hours WBP² was sent to the Family Dollar for a shoplifting. Upon my arrival I was told that the suspect was walking away from the store then came back. A description was given for the [black female] subject. As I pulled into the parking lot I observed several store employees following and pointing toward a black female walking away from the parking lot. She fit the description given to me and walking with a loaf of bread and jar of mayonnaise.

I pulled up in front of the female and told her to stop. She refused so I had to grab her sweatshirt to keep her from leaving. She told me that she paid for her bread and mayonnaise. I told her that the store employees called police and were accusing her of retail theft. I told her we would figure out what was going on.

We went back into the store where I spoke to Assistant Store Manager

¹ The parties agreed that the court could consider the affidavit of probable cause in this case.

² Williamsport Bureau of Police

Cassandra Garcia. I was told that the suspect did pay for a loaf of bread and mayonnaise. She then went back into the food area with her bag. Garcia suspected she was adding more food to her bag that she didn't pay for. When the female attempted to leave Garcia confronted her and wanted to look into her bag. A confrontation then started and Garcia could see more items in the bag than she knew were paid for. At that point the female threw the bag toward the cash register and left the store through the front door.

The items thrown back into the store were ham lunch meat, bologna lunch meat, Kraft cheese and a Hershey chocolate bar. The total value of the items was \$10.09. The female was identified as Dachaun Turner.

During argument at the preliminary hearing, defense counsel argued a renunciation defense. On August 7, 2014, the Commonwealth filed a motion in limine, which seeks to bar Defendant from presenting a renunciation defense, because she is not charged with an inchoate offense and she did not return the property until after she was informed by the store clerk that the police would be called.

Defense counsel confirmed that he intended to present a renunciation defense. He argued that the retail theft charge and the jury instruction include an attempt to commit retail theft. When the court asked whether there were even sufficient facts to argue renunciation to the jury, defense counsel argued that it would be premature to rule on the Commonwealth's motion before the court heard the evidence. Furthermore, it was his understanding that Defendant was unaware that the police were called and she only walked about a block and a half away before she walked back to the store, returned the items, then left the store again.

The Crimes Code only provides for the defense of renunciation in the provisions for the inchoate crimes of attempt, solicitation and criminal conspiracy. 18 Pa.C.S.A. §§901(c), 902(b), and 903(f). Defendant is not charged with any of those inchoate offenses; she is charged with retail theft. Renunciation is not a defense to retail theft. Commonwealth v. Hubert, 294 Pa. Super. 606, 440 A.2d 630 (1982).

Defense counsel argued that the retail theft charge and the jury instruction for that charge include an attempt to commit a retail theft. The court has examined both the statutory definition of retail theft and the jury instructions. Neither says anything about an attempt to commit retail theft. The court acknowledges that to commit the offense of retail theft a person does not actually have to deprive the merchant of the merchandise or its value; instead, a person only needs to take possession of or carry away merchandise with the **intention** of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof. This, however, does not render retail theft an attempt offense for which renunciation would be an available defense.

Even if renunciation were available as a defense to retail theft, the court questions whether the facts of this case support such a defense. To establish a renunciation defense, the evidence must show that, “under circumstances manifesting a voluntary and complete renunciation, the defendant avoided the commission of the crime attempted by abandoning his criminal effort....” 18 Pa.C.S.A. §901(c)(1). A renunciation, though, is not “voluntary and complete” if it is motivated in whole or in part by a belief that circumstances exist which increase the probability of detection or apprehension of the defendant. 18 Pa.C.S.A. §901(c)(2)(i). Here, it may be irrelevant whether Defendant knew that the police

were called. Certainly, if the assistant manager confronted Defendant about having unpaid items in her bag before she ever left the store, Defendant's crime was already detected and her purported renunciation could not be considered "voluntary and complete."

Accordingly, the following order is entered.

ORDER

AND NOW, this ___ day of August 2014, the court grants the Commonwealth's motion in limine. Defense counsel is precluded from presenting or arguing a renunciation defense. This ruling, however, does not preclude defense counsel from presenting his understanding of the facts in this case and arguing that Defendant did not have the intention to deprive the merchant of possession, use or benefit of the merchandise or any other potential defense that would be supported by the facts in this case.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Robert Cronin, Esquire (APD)
Work file