

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

vs.

TRAMANE MOORE,  
Defendant

: No. CR-396-2018

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: **Opinion and Order regarding**

: **Defendant's Omnibus Pretrial Motion**

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**OPINION AND ORDER**

Defendant is charged by Information filed on March 23, 2018 with one count each of retail theft, receiving stolen property and theft by deception. The Commonwealth alleges that on February 12, 2018, Defendant, along with an accomplice, entered the Game Stop store in Montoursville, stole merchandise, returned the stolen merchandise for a gift card and then subsequently used the gift card to purchase additional merchandise.

Defendant filed an Omnibus Pretrial Motion on May 21, 2018. The hearing and argument was held on July 13, 2018. Defendant first argues that the retail theft and receiving stolen property charges should be dismissed. Regarding the retail theft, Defendant argues that there was no deprivation of merchandise from the store. Regarding the receiving stolen property, Defendant argues that the items were not stolen, but even if they were, they were restored to the owner. Defendant argues in the alternative that the grading of the retail theft and receiving stolen property charges should be misdemeanors of the second degree and not third degree felonies because Defendant has only one prior retail theft on his rap sheet. Defendant further argues that Defendant's statements to police must be suppressed because his "confession" was coerced. Finally, Defendant requests further discovery. Specifically, Defendant requests that he be provided with the surveillance tapes from Game Stop.

Defendant's motions to dismiss attacks the sufficiency of the prima facie case presented by the Commonwealth. The court will deny Defendant's motions to dismiss counts 1 and 2. Defendant appeared for his preliminary hearing with counsel on March 5, 2018 and waived such preliminary hearing. He signed a waiver form acknowledging that he was precluded from raising challenges to "the sufficiency of the prima facie case." As well, Pa. R. Crim. P. 541(A)(1) precludes a defendant from raising the sufficiency of the Commonwealth's prima facie case if the defendant waived the preliminary hearing and the parties did not agree otherwise. Defendant waived his preliminary hearing and there was no agreement that the defendant could raise a sufficiency claim at a later date.

The court will also dismiss Defendant's motion to suppress. There was no evidence whatsoever that Defendant's confession was coerced. The evidence supports the conclusion that Defendant provided a voluntary written statement. At the hearing in this matter, Defendant conceded such.

The Commonwealth agreed with Defendant's discovery motion and the court entered a separate order compelling the discovery of the surveillance tapes from Game Stop.

The more difficult issue concerns the grading of the retail theft charge. The court took judicial notice of Defendant's prior criminal offenses and more specifically Defendant's "retail theft" offenses.

On May 25, 2005, under JV-87-2005, Defendant was adjudicated delinquent of, among other offenses, a summary retail theft. He was placed on a consent decree. On September 14, 2009, under CR-1398-2009 and 1402-2009, Defendant pled guilty and was sentenced on one count of criminal attempt to commit retail theft and one count of retail

theft, respectively.

On June 30, 2011, under CR-270-2011, Defendant was sentenced on a conspiracy to commit retail theft offense. The court notes that the sentencing order reflects a retail theft offense when in fact Defendant pled to conspiracy to commit retail theft.

Accordingly, Defendant has prior adult convictions for one retail theft offense and two inchoate offenses. He also has a consent decree on a summary retail theft offense which arose out of the same episode or transaction as felony and misdemeanor delinquent acts.

With respect to the juvenile offense, the Commonwealth does not assert that the adjudication should count as a de facto conviction. Indeed, the issue would appear to be unclear. See 42 Pa. C.S. § 6354 (a) (an adjudication is not a conviction); 42 Pa. C.S. § 6303 (a) (5) (compulsory joinder of summary offenses in juvenile proceedings arising from the same episode or transaction); but see 42 Pa. C.S. § 6301 (summary offenses are excluded from delinquent acts); *Commonwealth v. Thomas*, 510 Pa. 106, 507 A.2d 57 (1986) (juvenile conviction for summary retail theft counts as a prior offense).

What is clear, however, is that prior inchoate offenses do not count toward the grading of a subsequent retail theft conviction. The definition of prior offense requires an offense under section 3929 (relating to retail theft) and does not include inchoate offenses like attempt and conspiracy which are offenses under section 901 and 903, respectively. 18 Pa. C.S. § 3929 (b.1)(regarding calculation of prior offenses).

Accordingly, the court agrees with Defendant. For grading purposes, the defendant has one prior offense. The grading of his retail theft offense shall be amended from

a felony of the third degree to a misdemeanor of the second degree.

Defendant's argument relating to the receiving stolen property has merit as well but for a different reason. Because it is alleged that the value involved was \$148.34, which is more than \$50 but less than \$200, the grading is a misdemeanor of the second degree and not a felony of the third degree. 18 Pa. C.S. §3903(b)(1).

**ORDER**

**AND NOW**, this \_\_\_ day of July 2018, following a hearing, argument and submission by the Commonwealth of a written brief, the court DENIES Defendant's motion to dismiss and motion to suppress. The court GRANTS Defendant's motion to amend the grading of the offenses. Count 1 retail theft and Count 2 receiving stolen property are AMENDED to misdemeanors of the second degree.

By The Court,

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Marc F. Lovecchio, Judge

cc: Scott Werner, Esquire (ADA)  
Susan Roinick, Esquire (APD)  
Gary Weber, Esquire (Lycoming Reporter)  
Kevin Williams, Deputy Clerk of Court  
Work file