

March 26, 2007

Timothy Terranova, Esquire  
Vinings Associates  
P.O. Box 2363  
Wilmington, DE 19899  
*Attorney for Defendant Michael A. Lee*

Susan Dwyer, Deputy Attorney General  
c/o Department of Justice  
820 N. French Street, 7<sup>th</sup> floor  
Wilmington, DE 19801  
*Deputy Attorney General for the State of Delaware*

Ms. Shemika Speight  
27-A Deen Street  
New Castle, DE 19720  
*Pro-Se Defendant*

**Re:    *State of Delaware v. Michael A. Lee, Case No.: 0606004075***  
***State of Delaware v. Shemika Speight, Case No.: 0606004077***

**Date Submitted: March 15, 2007**

**Date Decided: March 26, 2007**

**LETTER OPINION**

Dear Counsel and Ms. Speight;

Trial in the above captioned matter took place on Thursday, March 15, 2007 at 8:30 a.m. in the Court of Common Pleas, New Castle County, State of Delaware. The two trials were consolidated with the parties' consent. Following the receipt of evidence and testimony the Court reserved decision. This is the Court's Final Decision and Order in the above matters.

**THE FACTS**

Ms. Shemika Speight ("Speight") and Mr. Michael A. Lee ("Lee") were charged each with a Count of Shoplifting, Misdemeanor, 11 *Del. C.* §840(a)(3) and Conspiracy in the Third Degree, 11 *Del. C.* §511(1) of the Delaware Code by Information filed with the Clerk of the

Court by the Attorney General. Prior to trial the Attorney General entered a *nolle prosequi* on the Driving While Suspended Traffic Count against Lee.

The facts in this proceeding are fairly straightforward. Mr. Jesse McCray (“McCray”), a Loss Prevention Investigator for the Mercantile establishment in question, testified the co-defendants were at 4601 N. Market Street in New Castle County on June 6, 2006 at Forman Mills. Both individuals, Speight and Lee apparently walked into the kid’s department at Forman Mills and picked up various clothing items. Several of the unidentified individual females accompanying the co-defendants allegedly stuffed clothes into their purses. One unknown individual tried to leave the premises without paying for the merchandise. All of the individuals, including both co-defendants, were stopped at the cash register counter near the front door and were asked to drop the merchandise and depart the premises immediately by McCray. McCray also ordered them to not return to the premises. McCray testified he saw Lee defendant leave the kid’s department with clothing draped over his arm and that the Mercantile goods were not concealed.<sup>1</sup> Lee apparently did not take any goods when he left the store.

On cross-examination McCray testified the clothing and/or goods were pulled over the arms of co-defendant Lee and unknown females not charged with these crimes, as they walked by the cash register toward the front entrance way.

Bryan Michael Griffin (“Griffin”) also presented testimony at trial. He was driving his motor vehicle on Philadelphia Pike in front of Forman Mills. Griffin observed a motor vehicle exit the parking lot in a “speedy fashion”. Griffin wrote down the license plate and returned to Forman Mills later that afternoon and gave the investigating police officer co-defendant Lee’s license plate, who was stopped in the afternoon later that day.

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<sup>1</sup> The Court notes this fact because the Information alleges a specific violation of 11 *Del.C.* §840(a)(3) of the Delaware Code and that the defendants, while in Forman Mills allegedly “did conceal certain merchandise consisting of miscellaneous items which were valued at \$1,000.00 from the immediate use of display intending to appropriate the merchandise without paying to the owner the value thereof.”

Corporal Steven T. Rizzo (“Rizzo”) presented testimony. Rizzo is an eight and a half year veteran with the Delaware State Police and was charged with investigating these incidents of alleged shoplifting on June 6, 2006. Rizzo spoke with individuals at the Forman Mills who noted the three individuals left the store in a “rapid fashion” after they were stopped near the front cash register. Rizzo was also provided information that there were two females with braided hair with white shirts, whom he identified as Michael Lee and Shemika Speight.

Later that day, as noted, Rizzo stopped Lee driving his motor vehicle with Speight inside as a passenger, Rizzo observed additional miscellaneous clothing with tags on them. Rizzo testified, however, that none of the observed clothing in his motor vehicle with the tags belonged to Forman Mills. Rizzo’s best recollection is that it “was possible” that there were Forman Mills clothing in Lee’s car when he was stopped later on that afternoon, but that he was not sure, or certain.

The defense presented its case-in-chief. Ms. Quatterra L. Jones (“Jones”) testified. Jones was with co-defendants at Forman Mills on June 6, 2006. Jones was with Michael Lee plus another unidentified woman. Jones testified Speight was not in the Mercantile establishment when she was with Lee on the date charged in the Information. Jones agrees that she went through the kid’s department and looked at various clothes but she was not the individual who stole any of the clothes.

Speight presented testimony presented testimony as her case-in-chief from the defense. Speight testified that she was never physically in the Mercantile establishment Forman Mills although she was picked up later in the day by Rizzo with Lee and Jones and was in the motor vehicle stopped later the afternoon on June 6, 2006. She was with another individual named Kay, who Speight believes left the Mercantile establishment with goods from Forman Mills. When Lee observed her he drove away and left her running down the street.

Co-defendant Lee took the stand. He testified that he did not steal any merchandise from Forman Mills. He was with an individual named Kay who had previously entered the Mercantile establishment known as Forman Mills with him was. He observed her with merchandise and that was the reason he would not let her enter his car and why he subsequently drove away from Forman Mills without her.

### **THE LAW**

The State has a burden of proving each and every element of these offenses beyond a reasonable doubt. 11 *Del. C.* § 301. *State v. Matushefske*, Del. Supr., 215 A.2d 443 (1965).

As established case law indicates, a reasonable doubt is not a vague, whimsical or merely possible doubt “but such a doubt as intelligent, reasonable and impartial men may honestly entertain after a conscience consideration of the case. *Matushefske*.

A reasonable doubt “means a substantial well-founded doubt arising from a candid and impartial consideration of all the evidence or want of evidence.” *State v. Wright*, Del. Gen. Sess., 79 A. 399 (1911).

The State also has a burden of proof beyond a reasonable doubt that jurisdiction and venue has been proven as elements of the offense. 11 *Del. C.* § 232. *James v. State*, Del. Supr., 377 A.2d 15 (1977). *Thornton v. State*, Del. Supr., 405 A.2d 126 (1979).

In determining whether the State has met its burden of proving each and every element of these offenses beyond a reasonable doubt as required by 11 *Del. C.* § 301, the Court may consider all direct and circumstantial evidence.

The Court as trier of fact is the sole judge of the credibility of each fact witness and any other information provided.

If the Court finds the evidence presented to be in conflict, it is the Court’s duty to reconcile these conflicts, if reasonably possible, as to make one harmonious story of it all.

If the Court cannot reconcile the differences, the Court must give credit to that portion of the testimony, which, in the Court's judgment is the most worthy of credit and disregard any portion of the testimony which the Court's judgment is unworthy of credit.

In doing so, the Court takes into consideration the demeanor of the witness, their apparent fairness in giving their testimony, their opportunities in hearing and knowing the facts about which they testified, and any bias or interest they may have concerning the nature of the case.

### **OPINION AND ORDER**

The Court finds co-defendant Shemika Speight **NOT GUILTY** as the Court finds she was not in the Mercantile establishment Forman Mills on the date charged in the Information. As to co-defendant Lee, the Court finds reasonable doubt, 11 *Del. C.* §301 as to whether he committed the shoplifting offense or the umbrella conspiracy charged beyond a reasonable doubt. The State's fact witnesses both testified that none of the goods were concealed as charged by Information on June 6, 2006 with the Clerk of the Court. Nor was any Forman Mills merchandise found in Lee's motor vehicle later that afternoon when Corporal Rizzo stopped Lee's motor vehicle. As such, the Court rejects the State's accomplice liability theory as none of the merchandise from Forman Mills was concealed while in the Mercantile establishment, nor where any goods found in Lee's automobile after it was stopped later in the day by Corporal Rizzo. For these reasons the Court adjudicates both defendants **NOT GUILTY** as both charges were not proven beyond a reasonable doubt. 11 *Del. C.* §301.

**IT IS SO ORDERED** this 26<sup>th</sup> day of March, 2007.

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John K. Welch  
Judge

/jb  
cc: Theresa Bleakly, Scheduling Supervisor  
CCP, Criminal Division