NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. HARVEY DUNCAN, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 169 WDA 2011

Appeal from the Judgment of Sentence January 3, 2011
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0003907-2010

BEFORE: STEVENS, P.J., FORD ELLIOTT, P.J.E., and MUNDY, J.

MEMORANDUM BY STEVENS, P.J. Filed: February 26, 2013

This is an appeal from the judgment of sentence entered in the Court of Common Pleas of Allegheny County after a jury convicted Appellant of Retail Theft,[1] Simple Assault, and False Identification to Law Enforcement Officer. Sentenced to 11 ½ months to 23 months incarceration to be followed by 24 months' probation, Appellant challenges the sufficiency of evidence supporting his Retail Theft and False Identification verdicts. We affirm.

The trial court provides an apt recitation of facts underlying this case as follows:

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[1] 18 Pa.C.S. § 3921(a)(1) and (b)(1)(iv).

On the afternoon of February 23, 2010, Corey Grier (Grier) was working as a produce manager at the Save-A-Lot grocery store in the Lawrenceville section of the City of Pittsburgh, Allegheny County. N.T. 6/24/10 at 24, 77, 85. At approximately 2:30 p.m., from his position in Aisle 1 of the store, Grier observed Appellant in Aisle 2 taking multiple packs of candy bars and concealing them under his coat. N.T. at 28-29, 37-39. Appellant then walked toward the front entrance of the store, passing the check-out registers as he did so. N.T. at 36, 38. Grier however was able to catch up to Appellant before he could exit the store. N.T. at 38. Grier confronte Appellant and asked him to take out the items he had concealed. Appellant responded that he did not want to go to jail. N.T. at 38-40. Grier also advised the store manager, Napolean Lightning (Lightning) of the incident and Lightning responded to the area. N.T. at 30, 38, 52. Store security officer, Brian Williams (Williams), was with Lightning at that time and also responded to the area. N.T. at 56-58. Appellant began emptying 12 multi-bar packs of candy bars. N.T. at 31, 41, 47-48. As he emptied the concealed items, Appellant kept repeating that he did not want to go to jail. N.T. at 33, 49, 58-59.

Appellant was instructed to stand against the wall and wait for the police. N.T. at 59. Confronted with this prospect, Appellant became somewhat agitated and restless, repeating that he did not want to go to jail. N.T. at 59. When it became apparent that the police had been called, Appellant pulled a knife from a pocket of his clothing and waved and gestured with it toward the men. N.T. at 50-55, 59-63, 75-76. This caused the men to back up and Appellant fled from the store with Grier and Williams in pursuit. N.T. at 34-35, 62.

Grier and Williams caught up with Appellant 2-3 blocks from the store and another confrontation occurred where Appellant again brandished the knife. However, the police arrived, and upon seeing them Appellant tossed the knife to the side and submitted to the officers. N.T. at 65-78.

Detective Brian Daley asked Appellant for identification, including his name and date of birth. Appellant told the officer that he did not have any identification on him but that his name was "William Martin." Appellant similarly provided an incorrect date of birth. N.T. at 78-80. Police tried to confirm the name and date of birth through their station and the computer resources

> available there but without success. However, Detective [William] Hanlon found a Pennsylvania driver's license in Appellant's pocket which provided them with Appellant's correct name and date of birth. Appellant nonetheless maintained that it was not him on the driver's license. N.T. at 80. Appellant was formally arrested and charged as noted hereinabove.

Pa.R.A.P. 1925(a) Opinion, dated 5/31/12 at 4-5.

As noted above, Appellant challenges his guilty verdicts on the charges of Retail Theft and False Identification to Law Enforcement Officers. Our standard of review for sufficiency of the evidence claims is well-established:

> The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying [the above] test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Palo, 24 A.3d 1050, 1054 -1055 (Pa. Super. 2011).

Appellant's challenge to his Retail Theft conviction first consists of calling into question Mr. Grier's eyewitness account of Appellant smuggling

the candy in his clothing and attempting to leave the store without paying. Essentially, Appellant contends Grier was not to be believed because he stated that, as Appellant was leaving the store, he (Grier) could not see the candy. However, it is patently obvious that Grier's account taken in its entirety was that he observed Appellant hiding the candy in his clothing before Appellant attempted to leave the store with the candy concealed. As such, Appellant's argument strains all credulity of this Court and is utterly devoid of merit.

Appellant then argues that, even if Grier did give competent testimony on these points, it was still conceded at trial that Appellant did not actually exit the store when he was stopped. Without having made a complete exit without paying, Appellant contends, his criminal intent could not have been demonstrated beyond a reasonable doubt. To this bare conclusion, unsupported by any citation to authority, we may simply rely on the trial court's opinion and its reference to Commonwealth v Jones, 528 A.2d 1360, 1362 (Pa. Super. 1987), which held that evidence of defendant's attempt to leave a store with meat under his coat and his subsequent use of a knife to resist detainment sufficed to establish retail theft. Accordingly, we dismiss Appellant's Retail Theft sufficiency challenge as wholly unsupported by law and frivolously pursued.

Appellant's sufficiency challenge as to his conviction for providing police with false identification fairs no better. Section 4914 of the Crimes Code, entitled "False identification to law enforcement authorities," provides:

> A person commits an offense if he furnishes law enforcement authorities with false information about his identity after being informed by a law enforcement officer who is in uniform or who has identified himself as a law enforcement officer that the person is the subject of an official investigation of a violation of law.

18 Pa.C.S.A. § 4914. ***See In re D.S.***, --- Pa ---, 39 A.3d 968, 973 (2012) (holding conviction under Section 4914 stands if plain clothes police officer identifies himself as officer, informs suspect he is under official investigation for violation of law, and received false information afterward).

Here, the unrebutted evidence at trial established that Appellant gave a false name and date of birth to two officers responding to a reported retail theft and armed suspect still in progress. The officers arrived in an unmarked car but with overhead lights and sirens activated. Moreover, the officers presented their badges to Appellant, identified themselves as police officers, openly conversed with Grier and Williams about the incident in Appellant's presence prior to cuffing him, and asked Appellant for his identification, which Appellant falsified. As noted *supra*, when the officers then discovered Appellant's actual identification at the scene, Appellant maintained it was not his. We find such evidence met the standard enunciated in ***In re D.S.***, *supra*, and consequently sufficed to convict Appellant of a Section 4914 violation.

For the foregoing reasons, we affirm judgment of sentence.

FORD ELLIOTT, PJE FILES A CONCURRING AND DISSENTING MEMORANDUM.