J-S72008-13

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
RANDY JARED RATLIFF,	:	
	:	
Appellant	:	No. 941 MDA 2013

Appeal from the Judgment of Sentence May 1, 2013,
Court of Common Pleas, Schuylkill County,
Criminal Division at No. CP-54-CR-0001711-2012

BEFORE: DONOHUE, SHOGAN and MUSMANNO, JJ.

MEMORANDUM BY DONOHUE, J.: **FILED DECEMBER 24, 2013**

Randy Jared Ratliff ("Ratliff") appeals from the judgment of sentence entered following his conviction of retail theft, 18 Pa.C.S.A. § 3929(a)(1). We affirm.

Ratliff's conviction arises from an incident that occurred on July 20, 2012 at Redner's store in Shenandoah, Pennsylvania. On that date, a supervisor for loss prevention for Redner's observed Ratliff place a block of cheese in the waistband of his shorts. He then observed Ratliff pick up a few other food items and approach the cash register before the block of cheese fell out of his shorts. Ratliff then left from the store with multiple items totaling $15.51 in cost. He was subsequently charged with retail theft. Pertinent to this appeal, we note that the Criminal Information indicates that

Ratliff was charged with retail theft as a third-degree felony.[1] Following a jury trial, he was convicted thereof. The trial court sentenced Ratliff to seven to 24 months of imprisonment. This timely appeal follows.

The relevant portions of the retail theft statute provide as follows:

> **(a) Offense defined.**--A person is guilty of a retail theft if he:
>
> (1) 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;
>
> ***
>
> **(b) Grading.**—
>
> (1) Retail theft constitutes a:
>
> (i) Summary offense when the offense is a first offense and the value of the merchandise is less than $150.
>
> ***
>
> (iv) Felony of the third degree when the offense is a third or subsequent offense, regardless of the value of the merchandise.

18 Pa.C.S.A. § 3929(a)(1),(b)(1)(i),(iv).

Ratliff argues that the his sentence is illegal because he was not informed that he was charged with retail theft as a third-degree felony and therefore that he would be subject to the penalties that accompany a felony

[1] The Information states, "COUNT 1: RETAIL THEFT – TAKING MERCHANDISE/DEPRIVE MERCHANT—(FELONY 3)." Criminal Information, 12/31/12, at 1.

if convicted. Appellant's Brief at 8. He contends that the Information was required to contain averments of prior theft convictions for there to be sufficient notice that he was being charged with the crime graded as a third-degree felony. ***Id.*** at 7-8.

We considered this challenge in ***Commonwealth v. Orrs***, 640 A.2d 914 (Pa. Super. 1994) where the defendant was also convicted of retail theft as a third-degree felony. The defendant argued on appeal that because the Information did not contain averments of prior retail theft offenses, the offense should have been charged as a summary offense. He further argued that the failure to include averments of prior retail theft offenses divested the Court of Common Pleas of jurisdiction to hear the matter. ***Id.*** at 912. We rejected these arguments, reasoning as follows:

> An indictment charging retail theft 'must contain the information that there have been prior offenses, not only to put defendant on notice that he is being charged with a felony and, therefore, may be sentenced accordingly, but also to establish the jurisdiction of the Common Pleas Court.' ***Commonwealth v. Coleman***, [] 433 A.2d 36 ([Pa. Super.] 1981). Presently, the Commonwealth, in both the information and criminal complaint, cited the appropriate statute and appropriate grading-'Retail Theft, 18 P.S. 3929-F3.' 'The information should be read in a common sense manner, rather than being construed in an overly technical sense.' ***Commonwealth v. Badman***, [] 580 A.2d 1367 ([Pa. Super.] 1990). Clearly, the notation 'F3' put appellant on notice of the felony charge. Read in a 'common sense manner,' the information plainly 'inform[s] the accused of the crime with which he is being charged' while unquestionably establishing the

> jurisdiction of the court. ***Id.*** at 324, 580 A.2d at 1371.
>
> The failure to specify in the information the crimes previously committed, establishing the basis for charging a felony three, does not affect the jurisdiction of the court to hear the case and convict as a felony, third degree. Prior offenses need not be proven at the preliminary hearing or at trial in order to establish the appropriate grading of such offense for which the accused may be tried. The accused need only be placed on notice that the Commonwealth will seek a third degree felony sentence in the event of conviction. ***Commonwealth v. Harvin***, [] , 500 A.2d 98 ([Pa. Super.] 1985). Hence, the requisite notice and averment of a third[-]degree felony having been contained in the information and complaint, jurisdiction to hear the matter or to accept a guilty plea clearly was present.

Id. at 912-13.

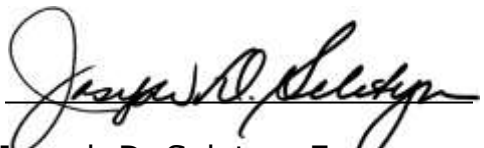
As stated above, the Information in the present case indicated that the offense was graded as a third-degree felony. Criminal Information, 12/31/12, at 1. In addition, the Criminal Complaint states that Ratliff was charged with one count of retail theft, graded as an "F3." Criminal Complaint, 7/27/12, at 3. Pursuant to ***Orrs***, this provided Ratliff with sufficient notice that he was charged with a third-degree felony.

Ratliff cites ***Commonwealth v. Harvin***, 500 A.2d 98 (Pa. Super. 1985), in support of his statement that that "the information must contain allegations of two or more prior convictions of retail theft to put [a] [d]efendant on notice that he may be sentenced to a felony of the third

degree." Appellant's Brief at 8. Ratliff is incorrect. In ***Harvin***, we stated, "***If*** the complaint and information contain allegations of two or more prior convictions for retail theft, the defendant is put on notice that, if convicted, he may be sentenced for a felony of the third degree." ***Id.*** at 101 (emphasis added). Like our decision in ***Orrs***, ***Harvin*** holds that "it is only necessary that the accused be put on notice that the Commonwealth … will seek to have him sentenced for a third[-]degree felony" and does not require that Complaint or Information contain allegations of prior retail theft offenses. ***Id.*** We therefore reject Ratliff's claim and affirm his judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/24/2013