

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
BRICE EDWARD BENNETT JR.,	:	
	:	
Appellant	:	No. 2231 MDA 2013

Appeal from the Judgment of Sentence October 30, 2013  
In the Court of Common Pleas of York County  
Criminal Division No(s).: CP-67-CR-0000822-2013

BEFORE: PANELLA, SHOGAN, and FITZGERALD,\* JJ.

MEMORANDUM BY FITZGERALD, J.: **FILED: SEPTEMBER 16, 2014**

Appellant, Brice Edward Bennett, Jr., appeals from the judgment of sentence entered in the York County Court of Common Pleas following his jury conviction for retail theft.<sup>1</sup> He challenges the sufficiency and weight of the evidence. We affirm.

Appellant was charged with leaving a Giant grocery store, with food items hidden in his jacket, without paying for them. The case proceeded to a jury trial on July 11 and 12, 2013, at which Appellant was *pro se* with

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\* Former Justice specially assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S. § 3929(a)(1).

appointed, stand-by counsel.<sup>2</sup> We incorporate the court's summary of the trial testimony of the Commonwealth's two witnesses, a cashier from the grocery store and the responding police officer.<sup>3</sup> **See** Trial Ct. Op. at 2-3. We add that Appellant did not testify or present evidence or witnesses.

The jury returned a guilty verdict for retail theft. Appellant filed a *pro se* motion for relief, which was denied. On October 30, 2013, the trial court held a sentencing hearing, at which Appellant was represented by the same attorney. The court imposed a sentence in the aggravated range of eighteen to thirty-six months.<sup>4</sup> Appellant filed a timely, counseled post-sentence motion, which was denied,<sup>5</sup> and then filed a timely notice of appeal.<sup>6</sup>

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<sup>2</sup> The same attorney now represents Appellant in this appeal.

<sup>3</sup> The retail value of the food items was \$45.07. Trial Ct. Op., 2/12/14, at 7. To stop Appellant from fleeing, the officer attempted to taser him as he ran away. N.T. Trial, 7/12/13, at 75. The taser probes penetrated Appellant's jacket but did not hit his body.

<sup>4</sup> Appellant raised a challenge to the discretionary aspects of his sentence in his Pa.R.A.P. 1925(b) statement. However, he abandons that claim on appeal. Appellant's Brief at 5.

<sup>5</sup> On December 2, 2013, after the court denied the post-sentence motion but before counsel filed the notice of appeal, Appellant filed a *pro se* Post Conviction Relief Act, 42 Pa.C.S. §§ 9541-9546, petition. While it is not clear whether the court forwarded a copy of the petition to counsel, the court did not rule on it. **See** Pa.R.Crim.P. 576(A)(4) (stating that when criminal defendant, who is represented by attorney, submits motion for filing that has not been signed by attorney, clerk of court shall accept it for filing and forward copy to counsel).

On appeal, Appellant first challenges the sufficiency of the evidence for retail theft. He asserts that the surveillance video played at trial did not show, and there was no testimony that he took anything from the store. Appellant then asserts that the police officer's trial testimony—that he saw a package of hot dogs fall out of Appellant's pocket as Appellant ran away from him in the parking lot—was inconsistent with the officer's affidavit of probable cause, which stated he saw hot dogs and other meat products. Appellant also contends that although other items were found on his person, he was not seen with these items in the store. Appellant concludes the evidence was speculative and thus not sufficient.

Appellant next challenges the weight of the evidence.<sup>7</sup> His argument, in sum, is that (1) he "was essentially watched from the moment he entered the Giant Food Store[;]" (2) "[n]o one saw him take anything and the store's surveillance cameras did not capture him taking anything[;]" and (3) "[t]here was no testimony about the cameras being defective." Appellant's Brief at 13. We find no relief is due.

We set forth the relevant standard of review:

The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted

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<sup>6</sup> Appellant complied with the court's order to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal, and the court issued a responsive opinion.

<sup>7</sup> This issue is preserved, as it was raised in Appellant's post-sentence motion. **See** Pa.R.Crim.P. 607(A)(1)-(3).

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.

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An allegation that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. A trial judge must do more than reassess the credibility of the witnesses and allege that he would not have assented to the verdict if he were a juror. Trial judges, in reviewing a claim that the verdict is against the weight of the evidence[,] do not sit as the thirteenth juror. Rather, the role of the trial judge is to determine that notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.

***Commonwealth v. Bruce***, 916 A.2d 657, 661, 665 (Pa. Super. 2007)

(citations omitted).

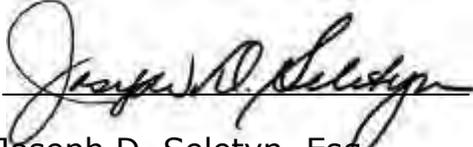
After review of the certified record, including the trial transcript, the

opinion of the Honorable Michael E. Bortner, both parties' appellate briefs, and relevant legal authority, we reject Appellant's sufficiency claim on the basis of the trial court's opinion. **See** Trial Ct. Op. at 2-3, 5-8 ((1) stating witnesses' lack of credibility is not appropriate sufficiency argument because credibility determinations are within sole province of jury; (2) noting: (a) store cashier testified Appellant entered store, later exited "with his jacket bulging," and upon leaving store, ignored store employees' repeated requests to stop, and (b) police officer testified he responded to "multiple Giant employees waving him down in distress," it was "very late" and store parking lot was empty, Appellant was only person in this area, officer tried to stop Appellant but Appellant fled, officer observed hot dogs fall from Appellant's jacket, officer found "pork loin and shrimp wheel tucked inside" Appellant's jacket after apprehending him, and cashier confirmed Appellant's identity; and (3) holding evidence was sufficient for jury to find Appellant took items that were offered for sale away from store, without paying full retail value for them, with intent to deprive store of items). We likewise find no abuse of discretion in the court's reasoning and adopt its analysis to decline relief on Appellant's weight of the evidence claim. **See id.** at 8 (stating jury found testimony of cashier and officer credible, any inconsistencies in testimony were for jury to weigh, and jury's verdict does not shock court's sense of justice).

J. A22043/14

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 9/16/2014