

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**City of Charleston,
Respondent Below, Respondent**

vs.) No. 101635 (Kanawha County 10-M-AP-10)

**Richard Lee Gravely,
Petitioner Below, Petitioner**

FILED

October 19, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Richard Lee Gravely appeals the December 20, 2010, order of the Circuit Court of Kanawha County convicting him, following a trial de novo, of misdemeanor shoplifting under § 78-101 of the Charleston, West Virginia, Municipal Code. Petitioner had appealed from the Charleston, West Virginia, Municipal Court which found him guilty of shoplifting chocolate bars from a local department store.

This Court has considered petitioner's brief and the circuit court's order upholding the conviction and sentence of the City of Charleston Municipal Court. The facts and legal arguments are adequately presented in petitioner's brief and the circuit court's order, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, petitioner's brief, and the circuit court's order presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioner was convicted by the Charleston, West Virginia, Municipal Court of shoplifting chocolate bars from a local department store. His defense was that the chocolate bars did not have a "stated price" on them, which he argues is a necessary prerequisite for a conviction under the City's shoplifting statute, § 78-101 of the Charleston, West Virginia, Municipal Code.

Petitioner was apprehended by store personnel who stopped him as he was exiting the store. In the trial de novo by the circuit court, the store's sales manager testified that while being detained in the store office, petitioner asked her whether the chocolate bars had any price tags on them. She further testified that she told petitioner that the chocolate bars had bar codes on them reflecting that they had a value of approximately \$24.89 each. Petitioner testified in his own defense and did not contest the fact that he placed the chocolate bars into his pants pockets.

Following the trial, the circuit court found petitioner guilty of shoplifting under § 78-101 of the Charleston, West Virginia, Municipal Code. The circuit court sentenced petitioner to a fine of

\$200 plus \$62 in court costs and \$50 in restitution for a total of \$312, as had originally been ordered by the municipal court.

On appeal, petitioner maintains that the chocolate bars he placed in his pants pockets did not have a “stated price” on them, which he argues is a necessary prerequisite for a conviction under the City of Charleston’s shoplifting statute, § 78-101 of its Municipal Code. Section 78-101 provides that a person commits the offense of shoplifting by, *inter alia*: (1) concealing merchandise upon his person; and/or (2) removing it from the store or beyond the last station for payment “with intent to appropriate [the] merchandise without paying the merchant’s *stated price* for the merchandise.” CHARLESTON, W. VA. MUNICIPAL CODE § 78-101(a) (emphasis added). Even assuming, *arguendo*, that merchandise bearing a “stated price” is a necessary prerequisite under § 78-101, the testimony at petitioner’s trial de novo established that the chocolate bars he took had bar codes on them. In the case *sub judice*, the sales manager on duty at the time testified that the bar codes on the chocolate bars reflected that they had a value of approximately \$24.89 each. Thus, the circuit court did not err in finding petitioner guilty of misdemeanor shoplifting under the City of Charleston’s shoplifting statute, § 78-101 of its Municipal Code. The circuit court also did not err in ordering \$50 in restitution along with \$62 in court costs and a fine of \$200, for a total of \$312, as had originally been ordered by the municipal court.

For the foregoing reasons, we find no error in the decision of the circuit court and its conviction of petitioner of misdemeanor shoplifting following a trial de novo is affirmed.

Affirmed.

ISSUED: October 19, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh