



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0423-23

DARYL JOE, APPELLANT

v.

THE STATE OF TEXAS

**ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW
FROM THE THIRTEENTH COURT OF APPEALS
NAVARRO COUNTY**

PARKER, J., filed a concurring opinion in which FINLEY, J., joined.

CONCURRING OPINION

I join the Court's opinion but write separately to respond to one claim made by Judge Yeary's dissent and strongly implied by Judge Keel's dissent. That claim is that *Lang*¹ held that the retail-theft statute does not apply to the lone shoplifter. I do not read *Lang*'s construction of the retail-theft statute to be that narrow. *Lang* said,

¹ *Lang v. State*, 561 S.W.3d 174, 181 (Tex. Crim. App. 2018).

“[T]his statute does not apply to the conduct of an *ordinary* shoplifter acting alone.”²

“Ordinary” is an important word. *Lang* does not preclude a retail-theft conviction for a lone shoplifter if the shoplifter engages in an activity in addition to the theft,³ such as advertising the stolen goods for sale on the internet.

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² *Id.* at 176 (emphasis added).

³ *Id.* at 183 (“As we have explained above, the statute requires proof of some activity undertaken with respect to stolen retail merchandise that goes beyond the conduct inherent in ordinary shoplifting.”).