

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

MICHAEL GUTY

Appellant

No. 1536 WDA 2012

Appeal from the Judgment of Sentence September 5, 2012
In the Court of Common Pleas of Fayette County
Criminal Division at No(s): CP-26-CR-0001137-2008

BEFORE: BENDER, J., LAZARUS, J., and STRASSBURGER, J.*

MEMORANDUM BY LAZARUS, J.

FILED: June 21, 2013

Michael Guty appeals from the judgment of sentence entered in the Court of Common Pleas of Fayette County following his conviction for theft by deception,¹ receiving stolen property,² and bad checks.³ Guty has filed a timely appeal challenging the sufficiency of the evidence used to support his conviction. Brief of Appellant, at 4. For the following reasons, we affirm.

Attorney Thomas Shaffer had previously represented Guty on a matter that entitled Guty to two settlement payouts from an insurance company.

* Retired Senior Judge assigned to the Superior Court.

¹ 18 Pa.C.S. § 3922.

² 18 Pa.C.S. § 3925.

³ 18 Pa.C.S. § 4105(a)(1).

N.T. Trial, 8/9/2012, at 14-15. Shaffer testified that he had mailed a check in the amount of \$2,215.00 to Guty on May 19, 2008, for the first settlement payout. **Id.** Shaffer and his secretary Donna Beercheck testified that, on May 23, 2008, Guty came into the office to collect a check for the second insurance settlement and claimed the first check never arrived in the mail. **Id.** at 14, 41. Both Shaffer and Beercheck testified that they told Guty they would place a stop payment on the mailed check, and that they then issued him two separate checks equal to the original amount of \$2,215.00 to replace the lost check. **Id.** at 15, 41. Later that day, Guty cashed the two replacement checks as well as the check for the second insurance settlement.

Pandoria Philliabaum, a bank teller, testified that on June 4, 2008, Guty deposited the original check Shaffer had intended to stop payment on, and withdrew \$100 from his personal account. The following day, Guty withdrew \$2,115.00 from his account. N.T. Trial, 8/9/2012, at 31-32. On June 6, 2008, Philliabaum was informed by the Federal Reserve of the stop payment placed on the check by Shaffer. **Id.** at 30.

Following a one-day trial, a jury convicted Guty of the above-referenced offenses. On September 5, 2012, the court sentenced him to two to four years' incarceration for theft by deception, and imposed no additional penalty for the remaining convictions.

Where an appellant challenges the sufficiency of the evidence, this

Court “must determine whether the evidence and all reasonable inferences deducible therefrom, when viewed in the light most favorable to the verdict-winner . . . are sufficient to establish all elements of the crime charged beyond a reasonable doubt.” **Commonwealth v. Rakowski**, 987 A.2d 1215, 1217 (Pa. Super. 2010) (quoting **Commonwealth v. Parker**, 957 A.2d 311, 317 (Pa. Super. 2008) (citations omitted)). Further, “the Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence.” **Commonwealth v. Abed**, 989 A.2d 23, 26 (Pa. Super. 2010) (citations omitted). “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.” **Id.** at 26-27.

Under 18 Pa.C.S. § 3922, theft by deception occurs when one “intentionally obtains or withholds property of another by deception.” The statute further provides, in relevant part, that one can intentionally deceive by creating or reinforcing a false impression. **See** 18 Pa.C.S. § 3922(a)(1). “The *mens rea* for theft by deception is intent to defraud.” **Commonwealth v. Grife**, 664 A.2d 116, 120 (Pa. Super. 1993). “Criminal intent may be established by direct or circumstantial evidence . . . [and] . . . [i]t may be inferred from acts or conduct or the attendant circumstances.” **Id.** at 122 (citations and quotation marks omitted). The Commonwealth must demonstrate the presence of a false impression and that the victim relied

upon that impression. ***Commonwealth v. Imes***, 623 A.2d 859, 862 (Pa. Super. 1993).

The crux of Guty's appeal is that there was no evidence he acted with criminal intent. **See** Brief of Appellant, at 9. However, despite some confusion on part of the Commonwealth's witnesses, the jury clearly inferred such intent based upon the facts adduced at trial, including Guty's conduct and the testimony of Shaffer and Beercheck. Beercheck and Shaffer told Guty that they would stop payment on the original mailed check; Guty had knowledge that depositing such a check and withdrawing the money would constitute theft. Because Guty later deposited not only the original check but the replacement checks as well, it was reasonable for the jury to infer that he intended to defraud Shaffer by saying that it was lost in the mail. Therefore, the evidence was sufficient to support a conviction for theft by deception.

Under 18 Pa.C.S. § 3925(a), one is guilty of receiving stolen property when "he intentionally receives retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner." Further, "'receiving' means acquiring possession, control or title[.]" 18 P.a.C.S. § 3925(b). "In order to convict a defendant for receiving stolen property, the Commonwealth must prove: (1) the property was stolen; (2) the defendant was in possession of the

property; and (3) the defendant knew or had reason to believe the property was stolen.” ***Commonwealth v. Parker***, 847 A.2d 745, 751 (Pa. Super. 2004) (quoting ***Commonwealth v. Foreman***, 797 A.2d 1005, 1011 (Pa. Super. 2002)) (quotation marks omitted).

Here, because Beercheck placed a stop payment on the check, the money withdrawn by Guty was clearly stolen property. Phillibaum identified Guty in open court as the man who deposited Shaffer’s stopped check, thus establishing his possession of the stolen money. Further, the jury inferred from the testimony of Beercheck and Shaffer that because they had told Guty they would place a stop payment on the check, he knew or should have known that depositing the check and withdrawing the money would constitute possessing stolen money.

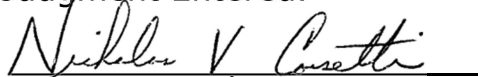
A person is guilty of writing bad checks when “he issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.” 18 Pa.C.S. § 4105(a)(1). Both Shaffer and Beercheck testified that they did not intend for the May 19 check to be honored and that they told Guty that they would place a stop payment order on the check. Therefore, the evidence supports Guty’s conviction because he deposited the check and withdrew the money knowing that Shaffer would not honor it.

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For these reasons, the evidence presented at trial was sufficient to support Gutty's conviction for theft by deception, receiving stolen property, and bad checks.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Casatti", is written over a horizontal line.

Deputy Prothonotary

Date: 6/21/2013