

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellant

v.

RICHARD HOLSTON,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 223 EDA 2016

Appeal from the Order December 21, 2015
In the Court of Common Pleas of Bucks County
Criminal Division at No(s): CP-09-CR-0005331-2015

BEFORE: SHOGAN, SOLANO, and PLATT,* JJ.

MEMORANDUM BY SHOGAN, J.:

FILED NOVEMBER 20, 2017

The Commonwealth appeals from the order dismissing all charges filed against Appellee, Richard Holston, the proprietor of a business known as Summerdale Mills, which is a drapery and upholstery sales and manufacturing business that performed work for the Risoldi family. We affirm.

We offer the following underlying history of this case. The Risoldi family experienced multiple fires in their residences, resulting in the filing of numerous claims to insurance companies. Specifically, there were three fires, one in June of 2009, another in August of 2010, and the third in October of 2013. Insurance claims were made for damages suffered in each

* Retired Senior Judge assigned to the Superior Court.

of the fires, including damage to window treatments from Summerdale Mills. Following the third fire, the insurer, AIG, refused to pay the claim for damage to the window treatments unless the Risoldis produced documentation that the window treatments had been replaced after the second fire and submitted the cost of that replacement. The Risoldi family alleged that receipts were lost in the fire and that Summerdale Mills did not have copies of the receipts.

Ultimately, a grand jury was convened to investigate whether the Risoldi family and their associates were involved in submitting fraudulent insurance claims. Appellee was subpoenaed to testify before the grand jury and to produce records of all business between Summerdale Mills and members of the Risoldi family including checks, invoices, and estimates for replacement of fabrics due to fires at the Risoldis' residences.¹

On September 16, 2014, Appellee testified before the grand jury. On October 8, 2014, a search warrant was executed at Summerdale Mills. At that time, numerous documents were recovered pertaining to work performed by Summerdale Mills for the Risoldi family.

¹ Appellee became the owner of Summerdale Mills, which has been in business for over thirty-five years, in January of 2014. The previous owner was Abraham Reichbach, Appellee's brother-in-law. Prior to assuming ownership of Summerdale Mills, Appellee supervised the business's fabrication shop.

Also in October of 2014, after the execution of the search warrant, Mark Goldman, a private investigator for the Risoldi family, delivered a binder of documents to AIG purporting to contain records from Summerdale Mills related to the window treatments. Some of the records misspelled the name of the company and reflected amounts paid to Summerdale Mills without description of the work or service provided.

On December 19, 2014, the Thirty-Fifth Statewide Investigating Grand Jury² issued a presentment recommending that charges be filed against Appellee, Claire Risoldi, Carl Risoldi, Carla Risoldi, Sheila Risoldi, Tom French, and Mark Goldman in connection with an alleged multi-million dollar insurance-fraud scheme. Appellee was charged with one count each of corrupt organizations, insurance fraud, criminal conspiracy, obstruction of the administration of law, and perjury.³

On February 4, 2015, the Commonwealth filed a petition seeking to file bills of information without a preliminary hearing, and on March 3, 2015, Judge Gavin denied the Commonwealth's petition. A preliminary hearing was ultimately held before Magisterial District Judge C. Robert Roth on

² We note that after the Bucks County District Attorney determined he had a conflict of interest, the matter was referred to the Office of Attorney General. We also observe that, due to the prominence of the Risoldi family in Bucks County politics, the entire Bucks County Court of Common Pleas recused itself from the matter, and Senior Judge Thomas G. Gavin of Chester County was appointed.

³ 18 Pa.C.S. §§ 911, 4117(a)(2), 903(c), 5101, and 4902(a), respectively.

August 19, 2015. At the conclusion of the preliminary hearing, the charges of insurance fraud, criminal conspiracy, obstruction of the administration of law, and perjury were held for court. The charge of corrupt organizations was dismissed.

On October 2, 2015, Appellee filed a petition for writ of *habeas corpus*. On October 15, 2015, a hearing on the petition was held before Judge Gavin, and on December 21, 2015, Judge Gavin granted *habeas* relief and dismissed all charges against Appellee. The Commonwealth filed this timely appeal. Both the Commonwealth and the trial court have complied with Pa.R.A.P. 1925.

The Commonwealth presents the following issue for our review:

I. WHETHER THE LOWER COURT'S DISMISSAL OF CHARGES WAS A MANIFEST ABUSE OF DISCRETION WHERE THE COMMONWEALTH ESTABLISHED A *PRIMA FACIE* CASE FOR ALL CHARGES AND THE COURT'S RESOLUTION WAS CONTRARY TO THE STANDARDS FOR ANALYZING SUFFICIENCY OF EVIDENCE TO SUPPORT A *PRIMA FACIE* CASE?

Commonwealth's Brief at 4.⁴ Thus, the Commonwealth contends that the trial court's order dismissing all charges was in error because the

⁴ We note that, excluding tables and appendices, the Commonwealth's brief is forty-seven pages long. Pursuant to Pa.R.A.P. 2135, a principal brief is limited to 14,000 words, and when the brief exceeds thirty pages, the appellant must certify with the appellate court that the brief complies with the word limitation. **See** Pa.R.A.P. 2135(d) (stating that "[a]ny brief in excess of the stated page limits shall include a certification that the brief complies with the word count limits"). The Commonwealth's brief includes a
(Footnote Continued Next Page)

Commonwealth allegedly presented sufficient evidence to establish a *prima facie* case for each of the offenses dismissed.

The evidentiary sufficiency, or lack thereof, of the Commonwealth's *prima facie* case for a charged crime is a question of law; this Court's review is plenary. ***Commonwealth v. Karetny***, 880 A.2d 505, 513 (Pa. 2005) (citing ***Commonwealth v. Huggins***, 836 A.2d 862 (Pa. 2003)). Indeed, the trial court is afforded no discretion in ascertaining whether, as a matter of law and in light of the facts presented to it, the Commonwealth has carried its pretrial, *prima facie* burden to establish the elements of a charged crime. ***Id.***

In ***Huggins***, our Supreme Court explained:

At the pre-trial stage of a criminal prosecution, it is not necessary for the Commonwealth to prove the defendant's guilt beyond a reasonable doubt, but rather, its burden is merely to put forth a *prima facie* case of the defendant's guilt. A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes sufficient probable cause to warrant the belief that the accused committed the offense. The evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to go to the jury. Moreover, "[i]nferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case."

Id. at 866 (citations omitted).

(Footnote Continued) —————

certification of compliance indicating that the word count for the entire document is 10,652 words.

However, we have also noted that “suspicion and conjecture are not evidence and are unacceptable as such.” ***Commonwealth v. Packard***, 767 A.2d 1068, 1071 (Pa. Super. 2001). “[W]here the Commonwealth’s case relies solely upon a **tenuous inference** to establish a material element of the charge, it has failed to meet its burden of showing that the crime charged was committed.” ***Commonwealth v. Wojdak***, 466 A.2d 991, 997 (Pa. 1983) (emphasis in original).

PERJURY

The Commonwealth first argues that the trial court erred in determining that the Commonwealth failed to present sufficient evidence to support a *prima facie* finding that Appellee committed the crime of perjury. Commonwealth’s Brief at 18-33. Specifically, the Commonwealth contends that it “charged [Appellee] with perjury under subsection (a) because he made false statements under oath during his grand jury testimony which were material to the [Risoldi family’s] insurance claim related to window treatments and the grand jury’s investigation of that claim.” ***Id.*** at 19-20.

The Commonwealth further contends:

The basis of the perjury charge was [Appellee’s] testimony that he could not provide documentation related to the Risoldi window treatments because Summerdale Mills had gone “paperless” in 2006 and his computer hard drive containing the electronic documents as well as the back-up system had failed. Specifically, [Appellee] testified before the grand jury on September 16, 2014, that he “looked through any of the boxes that had files that I could find to try to comply with the subpoena.[”] In this purportedly exhaustive search, [Appellee] produced only 68 pages of documents which consisted solely of

diagrams related to window treatment fabrication. He further acknowledged that he did not produce any canceled checks, invoices, estimates, or similar documents.

On October 9, 2014, members of the [Office of the Attorney General] executed a search warrant at Summerdale Mills. During the search, over 450 pages of documents related to transactions with the Risoldi's [sic] were recovered from Summerdale Mills including 189 pages of Risoldi documents recovered from an office with [Appellee's] own name on the door. These documents included, *inter alia*, invoices, work orders, estimates, shipping logs, payment logs, and installation logs for the Risoldi's [sic]. Significantly, among the documents provided to the [Office of the Attorney General] pursuant to the subpoena were copies of documents subsequently located *among the same files* as documents not produced.

Viewed in the light most favorable to the Commonwealth as required, it is reasonable to infer that [Appellee] selected a small portion of documents to produce while holding the majority of them, notably the most relevant documents, [sic] back. It unequivocally establishes that [Appellee] knowingly provided false testimony concerning the number of documents he was able to recover.

Id. at 20-21 (citations to reproduced record omitted) (emphasis in original).

The Crimes Code defines perjury, in relevant part, as follows:

§ 4902. Perjury.

(a) Offense defined. — A person is guilty of perjury, a felony of the third degree, if in any official proceeding he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true.

(b) Materiality. — Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

* * *

(e) Inconsistent statements. — Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(f) Corroboration. — In any prosecution under this section, except under subsection (e) of this section, falsity of a statement may not be established by the uncorroborated testimony of a single witness.

18 Pa.C.S. § 4902.

This Court has explained that perjury is more than false testimony:

The crime of perjury is not synonymous with “false testimony”. In order to constitute the crime of perjury several elements must be present, among which is the requirement that the false testimony must have been material to the proceeding at which it was made. The issue as to whether false testimony is material to the proceeding is a question of law.

A false statement, made under oath, is material “if it could have affected the course or outcome of the proceeding.” Materiality is to be determined as of the time that the false statement was made. Furthermore, the test of the materiality of a false statement is whether it can influence a fact-finder, not whether it does. The fact that the false testimony was unnecessary to accomplish the end in view will not render it immaterial.

Commonwealth v. Lafferty, 419 A.2d 518, 521-522 (Pa. Super. 1980)

(citations omitted). We have determined accordingly that the elements of perjury are established if: 1) in an official proceeding; 2) under oath or

affirmation to tell the truth; 3) the defendant made a false statement knowing it to be false; and 4) the statement was material to the matter then at issue. **Id.**

However, before we may review the Commonwealth's claim that it presented a *prima facie* case of perjury with regard to Appellee's testimony before the grand jury, we must observe that the fundamental tool for appellate review is the official record of the events that occurred in the trial court. **Commonwealth v. Preston**, 904 A.2d 1, 6 (Pa. Super. 2006) (citing **Commonwealth v. Williams**, 715 A.2d 1101, 1103 (Pa. 1998)). The law of Pennsylvania is well settled that matters which are not of record cannot be considered on appeal. **Id.** **See also Commonwealth v. Bracalielly**, 658 A.2d 755, 763 (Pa. 1995); **Commonwealth v. Baker**, 614 A.2d 663, 672 (Pa. 1992); **Commonwealth v. Quinlan**, 412 A.2d 494, 496 (Pa. 1980).

A certified record consists of the "original papers and exhibits filed in the lower court, paper copies of legal papers filed with the prothonotary by means of electronic filing, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the lower court[.]" Pa.R.A.P. 1921. "We can only repeat the well established principle that 'our review is limited to those facts which are contained in the certified record' and what is not contained in the certified record 'does not exist for purposes of our review.'" **Commonwealth v. Brown**, 161 A.3d 960, 968

(Pa. Super. 2017) (quoting **Commonwealth v. B.D.G.**, 959 A.2d 362, 372 (Pa. Super. 2008)).

Thus, an appellate court is limited to considering only the materials in the certified record when resolving an issue. **Commonwealth v. Walker**, 2005 PA Super 238, 878 A.2d 887, 888 (Pa. Super. 2005). In this regard, our law is the same in both the civil and criminal context because, under the Pennsylvania Rules of Appellate Procedure, any document which is not part of the **officially certified record** is deemed non-existent - a deficiency which cannot be remedied merely by including copies of the missing documents in a brief or in the reproduced record. **Commonwealth v. Kennedy**, 2005 PA Super 48, 868 A.2d 582, 593 (Pa. Super. 2005); **Lundy v. Manchel**, 2004 PA Super 378, 865 A.2d 850, 855 (Pa. Super. 2004). The emphasis on the certified record is necessary because, unless the trial court certifies a document as part of the official record, the appellate judiciary has no way of knowing whether that piece of evidence was duly presented to the trial court or whether it was produced for the first time on appeal and improperly inserted into the reproduced record. Simply put, if a document is not in the **certified record**, the Superior Court may not consider it. **Walker**, 878 A.2d at 888.

This Court cannot meaningfully review claims raised on appeal unless we are provided with a full and complete certified record. **Commonwealth v. O'Black**, 2006 PA Super 87, 9, 897 A.2d 1234 (filed April 13, 2006). This requirement is not a mere "technicality" nor is this a question of whether we are empowered to complain *sua sponte* of *lacunae* in the record. In the absence of an adequate certified record, there is no support for an appellant's arguments and, thus, there is no basis on which relief could be granted.

Preston, 904 A.2d at 6-7 (emphases in original).

Our law is unequivocal that the responsibility rests upon the appellant to ensure that the record certified on appeal is complete in the sense that it contains all of the materials necessary for the reviewing court to perform its duty. **Commonwealth v. Kleinicke**, 2006 PA Super 48, 895 A.2d 562, 575 (Pa. Super. 2006) (*en banc*). In [**Preston**], we explained that to facilitate an appellant's ability to comply with

this requirement, our Supreme Court adopted the following procedural rule effective June 1, 2004:

The clerk of the lower court shall, at the time of the transmittal of the record to the appellate court, mail a copy of the list of record documents to all counsel of record, or if unrepresented by counsel, to the parties at the address they have provided to the clerk. The clerk shall note on the docket the giving of such notice.

Pa.R.A.P. 1931(d). As the explanatory comment to Rule 1931 indicates, if counsel (or a party) discovers that anything material has been omitted from the certified record, the omission can be corrected pursuant to the provisions of Rule of Appellate Procedure 1926. Under Rule 1926, an appellate court may direct that an omission or misstatement shall be corrected through the filing of a supplemental certified record. However, this does not alter the fact that the ultimate responsibility of ensuring that the transmitted record is complete rests squarely upon the appellant and not upon the appellate courts. **Preston**, [904 A.2d] at 7.

Commonwealth v. Bongiorno, 905 A.2d 998, 1000-1001 (Pa. Super. 2006) (*en banc*).

Our review of the certified record reflects that the transcript of Appellee's testimony before the grand jury on September 16, 2014, was presented to the district magistrate as Commonwealth Exhibit 147. Likewise, the audio recording of Appellee's testimony before the grand jury was presented and marked as exhibit C-200. N.T., 8/9/15, at 101. The district magistrate accepted both exhibits. **Id.** at 120. The transcript of Appellee's testimony before the grand jury was also provided to the trial court. N.T., 10/5/15, at 6.

However, the transcript of Appellee's testimony before the grand jury was not included in the certified record for transmittal to this Court. Therefore, the Commonwealth, as the appellant, failed to ensure that the complete record is before this Court for review.⁵ Accordingly, because we cannot review the issue of whether the Commonwealth presented a *prima*

⁵ We observe that the certified record was received in this Court on April 28, 2016. Subsequently, on June 22, 2016, the Commonwealth filed with the trial court an "application to supplement the record pursuant to Pa.R.A.P. 1926," which bore captions for this case (Superior Court No. 223 EDA 2016) and the for the case of Appellee's co-defendant, Mark Goldman (Superior Court No. 3822 EDA 2015). In its application, the Commonwealth stated the following:

1. In order that the record may be complete in this matter, the Commonwealth requests that [the trial court] direct that the appellate record be supplemented with the following exhibits admitted during the preliminary hearing:

Exhibit 47: Carl Risoldi EUO;
Exhibit 48: Carla Risoldi EUO;
Exhibit 49: Claire Risoldi EUO;
Exhibit 50: Mark Goldman EUO;
Exhibit 72: Sheila Risoldi EUO;
Exhibit 93: EUO excerpt; and
Exhibit 94: EUO excerpt.

2. The Commonwealth requests that the [trial c]ourt grant this application and direct that the supplemental record be certified and transmitted pursuant to Pa.R.A.P. 1926(b)(1), (c).

Application, 6/22/16, at 1-2. On June 23, 2016, the trial court granted the Commonwealth's application to supplement the record and directed the clerk of courts to certify and transmit to this Court the requested exhibits. Order, 6/23/16, at 1. Thus, when presented with the opportunity to correct a deficiency in the certified record, the Commonwealth did so. However, the Commonwealth failed to take the appropriate measures to ensure that the certified record was complete for our review of this issue.

facie case that Appellee committed the crime of perjury without reference to the transcript of the proceeding before the grand jury, our review is hampered, and we are constrained to deem this issue to be waived on appeal.⁶

CRIMINAL CONSPIRACY

The Commonwealth next argues that the trial court erred in concluding that the Commonwealth failed to establish a *prima facie* case that Appellee committed the crime of criminal conspiracy to commit insurance fraud. Commonwealth's Brief at 33-40. The Commonwealth essentially asserts that, because Appellee's attorney received documents that had been delivered to AIG, Appellee was somehow involved in the alleged effort of the Risoldi family to defraud AIG. ***Id.***

The crime of criminal conspiracy is set forth in Section 903 of the Crimes Code which provides, in relevant part, as follows:

§ 903. Criminal conspiracy.

⁶ We note that the Commonwealth has included in its reproduced record filed with this Court a purported copy of the transcript of Appellee's testimony before the grand jury. As previously stated, in Pennsylvania, an appellate court is limited to considering only the materials in the certified record when resolving an issue, and a deficient certified record cannot be remedied merely by including copies of the missing documents in a brief or in the reproduced record. ***Preston***, 904 A.2d at 6. Thus, the deficiency in the certified record has not been rectified by the Commonwealth's inclusion of the transcript in the reproduced record.

(a) Definition of conspiracy. — A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:

(1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

(b) Scope of conspiratorial relationship. — If a person guilty of conspiracy, as defined by subsection (a) of this section, knows that a person with whom he conspires to commit a crime has conspired with another person or persons to commit the same crime, he is guilty of conspiring with such other person or persons, to commit such crime whether or not he knows their identity.

(c) Conspiracy with multiple criminal objectives. — If a person conspires to commit a number of crimes, he is guilty of only one conspiracy so long as such multiple crimes are the object of the same agreement or continuous conspiratorial relationship.

* * *

(e) Overt act. — No person may be convicted of conspiracy to commit a crime unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

18 Pa.C.S. § 903.

Furthermore, we have explained the following:

A conviction for criminal conspiracy, 18 Pa.C.S.A. § 903, is sustained where the Commonwealth establishes that the defendant entered an agreement to commit or aid in an unlawful act with another person or persons with a shared criminal intent and an overt act was done in furtherance of the conspiracy.

The essence of a criminal conspiracy is the common understanding that a particular criminal objective is to be accomplished. Mere association with the perpetrators, mere presence at the scene, or mere knowledge of the crime is insufficient. Rather, the Commonwealth must prove that the defendant shared the criminal intent, *i.e.*, that the Appellant was "an active participant in the criminal enterprise and that he had knowledge of the conspiratorial agreement." The defendant does not need to commit the overt act; a co-conspirator may commit the overt act.

A conspiracy is almost always proven through circumstantial evidence. "The conduct of the parties and the circumstances surrounding their conduct may create 'a web of evidence' linking the accused to the alleged conspiracy beyond a reasonable doubt." The evidence must, however, "rise above mere suspicion or possibility of guilty collusion."

Among the circumstances which are relevant, but not sufficient by themselves, to prove a corrupt confederation are: (1) an association between alleged conspirators; (2) knowledge of the commission of the crime; (3) presence at the scene of the crime; and (4) in some situations, participation in the object of the conspiracy. The presence of such circumstances may furnish a web of evidence linking an accused to an alleged conspiracy beyond a reasonable doubt when viewed in conjunction with each other and in the context in which they occurred.

Commonwealth v. Lambert, 795 A.2d 1010, 1016 (Pa. Super. 2002) (*en banc*) (citations omitted).

Our review of the record reflects the trial court observed that "there was no evidence that would support [Appellee's] involvement in a conspiracy

to defraud.” Trial Court Opinion, 4/22/16, at 3.⁷ We are constrained to agree.

First, we note that Appellee had an association with the Risoldi family because he was the current owner of Summerdale Mills. Summerdale Mills was the company that provided certain window treatments for the Risoldi residence and the Risoldi family filed an insurance claim seeking proceeds to replace the window treatments.

Second, we observe that there is no evidence to establish that Appellee had knowledge of the commission of a crime. Specifically, with regard to the Commonwealth’s claim that Appellee’s “lies to the grand jury dovetail perfectly with Claire Risoldi’s lies to AIG,” and that “[t]he identical lies establish the agreement to defraud AIG,” Commonwealth’s Brief at 38, our review of the certified record reflects no evidence that Appellee was aware of any alleged lies made by Claire Risoldi to the insurance company.

Third, we consider Appellee’s presence at the scene. Again, we note that Appellee, as the current owner of Summerdale Mills, was called to

⁷ In doing so, the trial court corrected its initial determination in its opinion dated December 29, 2015, that the Commonwealth failed to prove a *prima facie* case of conspiracy to commit theft by deception. In recognizing its previous error, the trial court stated, “The AG asserts that I had the object of the conspiracy wrong in that I mentioned theft by deception when it was insurance fraud. I have no recall as to why I wrote that. However, I understood that the AG’s theory was insurance fraud and that all Defendants were acting toward that end.” Trial Court Opinion, 4/22/16, at 3 (footnote omitted).

testify before a grand jury in that capacity. However, there was not a specific scene of the crime as contemplated in the factors set forth in **Lambert**. Accordingly, we conclude that this factor is not relevant to our inquiry.

Fourth, we review Appellee's participation in the object of the conspiracy. As mentioned above, Appellee is the owner of Summerdale Mills, which provided window treatments to the Risoldi family, and the family sought insurance proceeds to replace the window treatments. In addition, Appellee testified before the grand jury investigating the alleged insurance-fraud scheme perpetrated by the Risoldi family. However, as discussed previously, Appellee's testimony before the grand jury is not a part of the certified record before us on appeal. Hence, it can only be alleged that Appellee's testimony to the grand jury, which supposedly mimicked the explanation Claire Risoldi offered to the insurance company regarding her inability to provide documentation for the window treatments, amounts to a participation in the conspiracy. Accordingly, we are left to conclude that this purported testimony was not sufficient to furnish a web of evidence linking Appellee to an alleged conspiracy. Consequently, we conclude that the trial court properly determined that the Commonwealth failed to set forth a *prima facie* case with regard to the charge of criminal conspiracy.

INSURANCE FRAUD

The Commonwealth next argues that the trial court erred in concluding that the Commonwealth failed to establish a *prima facie* case that Appellee committed the crime of insurance fraud. Commonwealth's Brief at 40-45. The Commonwealth asserts that, by providing testimony and only certain documents to the grand jury and failing to provide other documents to the grand jury, Appellee essentially corroborated and furthered the efforts of the Risoldi family to defraud AIG in relation to the insurance claim for replacement of the window treatments. *Id.* at 43-44.

The Crimes Code defines insurance fraud, in relevant part, as follows:

§ 4117. Insurance fraud.

(a) Offense defined. - A person commits an offense if the person does any of the following:

* * *

(2) **Knowingly and with the intent to defraud** any insurer or self-insured, **presents or causes to be presented to any insurer** or self-insured any statement forming a part of, or in support of, a claim that contains any false, incomplete or misleading information concerning any fact or thing material to the claim.

18 Pa.C.S. § 4117(a)(2) (emphases added). In addition, the statute defines the term "statement," in part, as "[a]ny oral or written presentation or other evidence of loss, injury or expense, including, but not limited to, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account,

estimate of property damages, bill for services, . . . or computer-generated documents.” 18 Pa.C.S. § 4117(l)

It is undisputed that, absent documentation that the window treatments had been replaced following the second fire at the Risoldi residence, AIG refused to pay the insurance claim related to the window treatments after the third fire. Moreover, it is undisputed that subsequent to Appellee testifying before the grand jury and a search warrant being executed at Summerdale Mills, Mark Goldman, a private investigator employed by the Risoldi family, delivered a binder to AIG that contained documents purportedly relating to the window treatments in question.

However, the Commonwealth presented no evidence that Appellee knew that the documents contained in the binder comprised any false, incomplete, or misleading information as required under the statute. Indeed, evidence of the requisite knowledge cannot be inferred from our thorough reading of the certified record. Rather, as the trial court stated, “The [Attorney General] did not present any evidence of a Summerdale quote that was provided to the insurer in the 2013 fire [claim]. Nor was any evidence presented that [Appellee] aided or abetted the submission of false information to the insurer in the 2013 fire [claim].” Trial Court Opinion, 12/29/15, at 8. Thus, while Appellee may have given statements to the grand jury relevant to the existence of various documents and Appellee’s ability to provide documents to the grand jury, there is no showing that

these statements were made with any intent by Appellee to defraud the insurer. Therefore, even if the alleged misstatements contained in the binder were found to be material to the insurance claim, there is no evidence that Appellee had any knowledge of what was contained within the binder. Moreover, there is nothing in the record indicating that Appellee was attempting to collect any money from the insurer. Hence, we are left to conclude, as did the trial court, that Appellee did not have the necessary *mens rea* to acquire anything from the insurer. Thus, the Commonwealth's claim fails.

OBSTRUCTION OF JUSTICE

The Commonwealth last argues that the trial court erred in concluding that the Commonwealth failed to establish a *prima facie* case that Appellee committed the crime of obstruction of justice. Commonwealth's Brief at 45-46. The Commonwealth states the following:

It is the Commonwealth's position that under the same reasoning that a *prima facie* case was established for perjury, this count of obstruction of justice was supported by sufficient evidence to establish a *prima facie* case. [Appellee's] failure to produce the subpoenaed records and his lies under oath demonstrated a clear intent to obstruct the grand jury's investigation. As argued above, the lower court's conclusion that [Appellee] had no duty to produce the subpoenaed records was contrary to all standards relevant to determining whether or not a *prima facie* case had been met.

Id.

The Crimes Code defines the crime of obstruction of justice as follows:

A person commits a misdemeanor of the second degree if he intentionally obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without affirmative interference with governmental functions.

18 Pa.C.S. § 5101. Our Supreme Court has explained that:

[i]n order to establish that [a defendant] obstructed the administration of law under section 5101, the Commonwealth must establish that: (1) the defendant had the intent to obstruct the administration of law; and (2) the defendant used force or violence, breached an official duty or committed an unlawful act.

Commonwealth v. Goodman, 676 A.2d 234, 235 (Pa. 1996). As we observed in ***Commonwealth v. Snyder***, 60 A.3d 165 (Pa. Super. 2013):

In evaluating § 5101 convictions, our courts have explained that § 5101 is substantially based upon the Model Penal Code section 242.1. As stated in the comment to section 242.1 of the Model Penal Code “[t]his provision is designed to cover a broad range of behavior that impedes or defeats the operation of government.”

Id. at 175 (case citations omitted).

As set forth in our review of the charge of perjury, the Commonwealth has failed to ensure that the certified record before this Court is complete in order that we may review the merits of its claim. As discussed previously in this memorandum, specifically missing from the certified record is the transcript of Appellee’s testimony on September 16, 2014, before the grand jury. In addition, the various documents sought through the grand jury’s

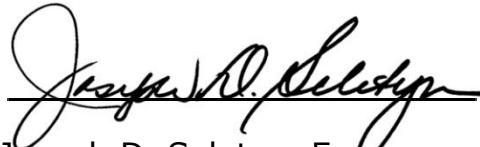
subpoena are not included in the certified record before this Court. These deficiencies were not rectified by the Commonwealth's effort to include purported copies of the transcript and of the various documents pertinent to the subpoena in the reproduced record filed with this Court. Moreover, the Commonwealth did not seek to supplement the record to correct these specific deficiencies pursuant to Pa.R.A.P. 1926. Accordingly, because our review of this claim is completely hampered, we are constrained to conclude that this issue is waived.

Order affirmed.

Judge Solano files a Concurring Memorandum.

Judge Platt files a Dissenting Memorandum.

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: 11/20/2017