NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	
v.	
CHRIS PLUNKETT,	
Appellant	No. 3490 EDA 2010

Appeal from the Judgment of Sentence entered November 30, 2010
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0004704-2009.

BEFORE: OLSON, WECHT and COLVILLE,* JJ.

MEMORANDUM BY OLSON, J.: Filed: March 7, 2013

Appellant, Chris Plunkett, appeals from the judgment of sentence entered on November 30, 2010 in the Criminal Division of the Court of Common Pleas of Philadelphia County. We affirm.

The trial court summarized the relevant facts as follows:

> At trial, the Commonwealth presented the testimony of the complainant, a City of Philadelphia Police Officer named William Hunter [(complainant)], City of Philadelphia Licenses & Inspection [(L&I)] Inspector Glen Guadalupe, and City of Philadelphia Detective James Brooks. []
>
> On March 21, 2007, [c]omplainant purchased [a Philadelphia property located on] Duncan Street, an end row home with three detached garages[,] with the intention of renovating its electrical and plumbing systems and reselling it. Planning to construct three additional garages but inexperienced in building and zoning requirements, [c]omplainant sought the assistance of [Appellant], an acquaintance of [c]omplainant's brother, who

*Retired Senior Judge assigned to the Superior Court.

owned a nearby business called "Mini City Hall." Although not a city employee, [Appellant] had chosen the [name] "Mini City Hall" deliberately, acknowledging that it was an established nickname for other municipal service centers in Philadelphia. [Appellant] advertised his "Mini City Hall" with a 12-by-3-foot sign outside his business[.]

On May 7, 2007, [c]omplainant met with [Appellant] to discuss hiring him to procure the necessary zoning permits, with which [c]omplainant openly admitted to being unfamiliar at the time. [Appellant] presented [c]omplainant no contract to sign but instead verbally offered to do the work for $2,500[.00], supposedly a bargain price, because of his relationship with [c]omplainant's brother. According to [Appellant], obtaining the permits would take eight to twelve weeks but he offered to do it in four weeks for an additional $1,000.[00.] On May 8, 2007, [c]omplainant returned to [Appellant's] office and wrote out a $2,500[.00] check, noting "zoning" in the memo line. [Appellant] cashed the check on May 14, 2007.

After the designated eight weeks had passed, [c]omplainant called [Appellant] for an update. [Appellant] assured [c]omplainant that the process was moving along and that the permits would be ready soon and, when [c]omplainant again reached out to [Appellant] several days later, [Appellant] told him that the permits were ready to be picked up and that [c]omplainant could start construction. On July 17, 2007, construction began at the property but on August 3, L&I Inspector Guadalupe informed the contractor at the site that no building permits were on file. At that time, [c]omplainant called [Appellant] who stated that there had been a mistake made that he would handle. After receiving a formal L&I notice of violation on August 20, [c]omplainant made an appointment with Inspector Guadalupe.

On August 21, 2007, [c]omplainant met with Inspector Guadalupe and showed him the check [c]omplainant had written to "Mini City Hall" for the permit to be filed. Inspector Guadalupe informed [c]omplainant that Mini City Hall had no affiliation with the City of Philadelphia and there was no application or permit on file to undertake construction at his property. After receiving no satisfaction from [Appellant], [c]omplainant filed a police report with Detective Brooks on September 18. Detective Brooks has known [c]omplainant for

over thirty years and sought to settle the issue amicably by telling [Appellant] to obtain the permits or refund [c]omplainant's $2,500.[00.] [Appellant] told Detective Brooks that he had made a mistake but he would obtain the documents. On September 25, a week after the police report had been filed, [Appellant] filed an incomplete application for zoning and permits.

In October 2007, construction stopped at the site, resulting in significant losses to [c]omplainant. In December, [Appellant] called [c]omplainant to tell him he had mailed the permits to the Duncan Street building despite [c]omplainant's living elsewhere. [Appellant] offered to mail the completed permits to [c]omplainant's home but, instead, [c]omplainant received another written complaint from L&I in April 2008. Complainant again arranged a meeting at L&I where Supervisor Joe Flanagan told him that the only things in his file were the violations and that he needed to provide building plans, which [c]omplainant personally completed and provided within two days.

On June 17, 2008, [c]omplainant received another fine and returned to L&I where Supervisor Joe Flanagan taught him how to make the floor plans necessary to obtain permits. After several months of effort and the discovery that the permit process usually takes at least seven months instead of the promised eight weeks, [c]omplainant returned to the East Detectives and [Appellant] was arrested on October 30, 2008.

In May 2008, [Appellant's] Mini City Hall [business] faced L&I [] compliance violations because [Appellant] was not licensed to act as an expeditor who could facilitate permits for other people. The Mini City Hall sign outside [Appellant's] business had to be turned backwards because [Appellant] had not obtained a license for the sign and, since then, [Appellant] has sold his property and moved out of the city.

After a bench trial on September 21, 2010, [the trial c]ourt found [Appellant] guilty of theft by deception.[1] On November 30, 2010, [the trial c]ourt sentenced [Appellant] to four years of reporting probation and repayment of fines and restitution.

---

[1] 18 Pa.C.S.A. §§ 3922(a)(1).

> [That same day, the trial court denied a motion for reconsideration of sentence.] On December 29, 2010, [Appellant] filed a timely appeal. On January 19, 2011, [the trial c]ourt instructed [Appellant] to file a Concise Statement of Errors by February 18, 2011. [Appellant's concise statement] was not received until May 2, 2011. [The trial court issued an opinion on July 7, 2011. Pursuant to a remand order entered by this Court on January 30, 2012, Appellant filed a supplemental concise statement on February 21, 2012; however, since Appellant's supplemental statement did not raise new issues, the trial court did not supplement its July 2011 opinion.]

Trial Court Opinion, 7/7/11, at 1-4.

In his brief, Appellant asks us to consider the following question:

> Is [Appellant] entitled to an arrest of judgment with regard to his conviction for theft by deception since the evidence is insufficient to sustain the verdict as the Commonwealth failed to prove [Appellant's] guilt of this crime beyond a reasonable doubt?

Appellant's Brief at 4.

In the sole issue he raises on appeal, Appellant claims that he is entitled to an arrest of judgment with respect to his conviction for theft by deception since the evidence introduced at trial was insufficient to prove his guilt beyond a reasonable doubt. Specifically, Appellant argues that the Commonwealth failed to establish that he intentionally deceived the complainant or that he knowingly created, reinforced, or failed to correct a false impression that caused the complainant to act in a certain manner. We disagree.

When reviewing a claim challenging the sufficiency of the evidence, we apply the following standard:

> [W]hether viewing all the evidence admitted 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.

Commonwealth v. Jannett, 58 A.3d 818, 819-820 (Pa. Super. 2012).

Theft by deception is statutorily defined as follows:

> **§ 3922. Theft by deception**
>
> **(a) Offense defined.**--A person is guilty of theft if he intentionally obtains or withholds property of another by deception. A person deceives if he intentionally:
>
> (1) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
>
> (2) prevents another from acquiring information which would affect his judgment of a transaction; or
>
> (3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

> **(b) Exception.**--The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed.

18 Pa.C.S.A. § 3922. To obtain a conviction for theft by deception, the Commonwealth must demonstrate that the defendant created a false impression and that the victim relied on that impression. ***Commonwealth v. Thomas***, 684 A.2d 1085, 1086 (Pa. Super. 1996). However, "[t]he mere failure to perform on a contract, or repay a loan, in and of itself does not constitute theft by deception." ***Commonwealth v. Griffe***, 664 A.2d 116, 121 (Pa. Super. 1995), *appeal denied*, 676 A.2d 1196 (Pa. 1996).

In its Rule 1925(a) opinion, the trial court explained that it found Appellant guilty based upon several findings of fact. Specifically, the trial court found that: 1) Appellant named his business "Mini City Hall" because a municipal service center in the community was referred to by that name; 2) Appellant accepted payment in exchange for his agreement to submit applications for construction permits while simultaneously misrepresenting his ability to apply for and secure construction permits, including the average length of time it takes for a permit to be issued; 3) Appellant, on several occasions, intentionally avoided contact with and made false representations to the complainant regarding the filing status of the applications for construction permits; and, 4) Appellant advised the complainant to commence construction at a time when he knew the permit

applications would not be on file with the department of licensing and inspections. ***See*** Trial Court Opinion, 7/7/11, at 4-5 (not paginated).

Appellant asserts in his brief that the Commonwealth introduced hearsay evidence to obtain a conviction and that the facts establish only that Appellant breached an agreement with the complainant. In the context of a sufficiency claim, however, these contentions are unavailing since we are required to consider all evidence actually received, we may not re-weigh the evidence, and we review the evidence in the light most favorable to the verdict winner. ***See Jannett***, 58 A.3d at 819-820. Therefore, because the trial court's findings support the conclusion that the Commonwealth proved each element of theft by deception beyond a reasonable doubt, Appellant's sufficiency challenge merits no relief.

Judgment of sentence affirmed.