

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

vs.

JESSE STAHL,  
Defendant

:  
: **No. CR-119-2012**  
:  
:  
: **Opinion and Order re**  
: **Defendant's Petition for Writ of Habeas**  
: **Corpus**

**OPINION AND ORDER**

Before the Court is Defendant's Petition for Writ of Habeas Corpus. The relevant facts follow.

On December 20, 2010, Defendant entered a written contract with Jason Bufford to do some construction and remodeling work, including installing siding, in exchange for a total contract price of \$14,650. The contract called for a payment schedule of \$7,800 at signing, \$3,000 due at the start of the job, \$2,000 when the job was halfway completed, and \$1850 due upon completion.

Bufford paid the \$7800 the day he signed the contract. Defendant told Bufford his would be one of the first jobs in the spring and he cashed the \$7800 check. In March 2011, Defendant contacted Bufford and told him he was ready to start the job, so the next installment of \$3000 was due. When Defendant came to pick up Bufford's \$3000 check, Defendant asked for an additional \$500, which Bufford provided in cash. Defendant told Bufford materials would be delivered and he would start the job in the next few days. Defendant, however, never showed up. Bufford attempted to contact Defendant and left messages for him, but Defendant would not return his phone calls, so Bufford contacted the Lycoming County District Attorney's office to file a private criminal complaint in April

2011.

On July 5, 2011, approximately \$3,000 in building materials were delivered to Bufford's house. Although the contract required Defendant to start the job before July 15, 2011, Defendant never started or performed any work on Bufford's house or garage.

The District Attorney approved the filing of the charge of theft by deception-false impression on August 18, 2011. In September, Defendant, through his attorney, sent a letter to Bufford acknowledging he owed him the difference between the amount Bufford paid to Defendant and the amount Defendant paid for the materials that were delivered on July 5 and offering to work out payment arrangements.

A preliminary hearing was held on January 18, 2012 and the Magisterial District Judge held the theft charge for court.

On February 18, 2012, Defendant filed a Petition for Writ of Habeas Corpus. The Court held a hearing and argument on this petition on March 12, 2012. At this hearing, the parties agreed to submit this case on the transcript of the preliminary hearing. Defendant argued that the Commonwealth failed to establish a prima facie of theft by deception because no evidence was presented that Defendant had a fraudulent intent. Defendant relies on the following statutory language: "A person deceives if he **intentionally**: (1) creates or reinforces a false impression, including false impression 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.**" 18 Pa.C.S.A. §3922(a)(1)(emphasis added). Defendant also relies on Commonwealth v. Gallo, 473 Pa. 186, 373 A.2d 1109 (1977) and Commonwealth v. Bentley, 302 Pa. Super. 264, 448 A.2d 628 (1982).

The Court finds the Gallo and Bentley cases are distinguishable. First, both cases involve the issue of whether the evidence was sufficient to establish the defendant's guilt beyond a reasonable doubt, not whether the evidence was sufficient to establish a prima facie case. Moreover, in both cases, although the defendant did not complete the contract, work had been started. In Gallo, the defendant had the printer set type for the brochures, but he did not complete the brochures because a dispute arose regarding a subcontractor. In Bentley, the defendant entered a contract to repair a porch and garage. Defendant came to the property with additional workers, tore down the old porch and garage, and installed footers, but did not complete the new porch and garage.

“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. Notably, the Commonwealth does not have to prove the defendant's guilt beyond a reasonable doubt.” Commonwealth v. Santos, 583 Pa. 96, 876 A.2d 360, 363 (Pa. 2005)(citation omitted). Although this case presents a close question of whether the Commonwealth presented sufficient evidence to establish a prima facie case, the Court finds that the inference that Defendant intentionally created a false impression is based on more than just Defendant's failure to perform his promise. In addition to never performing any of the work Defendant promised Bufford that he would perform, in March he assured Bufford he would start the job and obtained not only the next \$3000 installment, but an additional \$500. Despite Defendant's assurances he would start the job in the next several days, Defendant failed to appear to start the job and failed or refused to return any of Bufford's phone calls. While the Court believes this case would be better suited by proceeding as a civil law suit, at this stage of the proceedings, the

Court cannot say that the Commonwealth has failed to present any evidence on the element of fraudulent intent. The Court is not saying this evidence would be sufficient to establish Defendant's guilt beyond a reasonable doubt; that is a question for another day.

Nevertheless, the Court finds this evidence is sufficient to establish a prima facie case.

Accordingly, the following Order is entered:

**ORDER**

AND NOW, this \_\_\_\_ day of March 2012, the Court DENIES Defendant's Petition for Writ of Habeas Corpus.

By The Court,

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Marc F. Lovecchio, J.

cc: Aaron Biichle, Esquire (ADA)  
Christian Frey, Esquire  
Work file  
Gary Weber, Esquire (Lycoming Reporter)