

**COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO**

FILED
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TRISTEEN A. WINDENBEN
CLERK OF COURT
COURT OF COMMON PLEAS
CLERMONT COUNTY, OH

STATE OF OHIO :
Plaintiff : **CASE NO. 2017 CR 000234**
vs. : **Judge McBride**
JESSE J. JEFFERS : **DECISION/ENTRY**
Defendant :

Matthew E. Wiseman, assistant prosecuting attorney for the state of Ohio, 76 S. Riverside Drive, 2nd Floor, Batavia, Ohio 45103.

Schuh & Goldberg, LLP, Brian T. Goldberg, attorney for the defendant Jesse J. Jeffers, 2662 Madison Road, Cincinnati, Ohio 45208

The defendant Jesse J. Jeffers was indicted on April 13, 2017 on (1) one count of theft from an elderly person in violation of R.C. 2913.02(A)(3), a felony of the fourth degree, and (2) one count of theft from an elderly person in violation of R.C. 2913.02(A)(2), a felony of the fourth degree.

On May 9, 2017, the defendant waived in open court and in writing his right to a trial by jury. The court found that the defendant had knowingly, intelligently, and voluntarily waived his right to a jury trial.

This cause came before the court for trial on June 8, 2017. At the conclusion of the trial, the court took the issues raised in the case under advisement.

Upon consideration of the record of the proceeding, the evidence presented for the court's consideration, the oral arguments of counsel, and the applicable law, the court now renders this written decision.

FINDINGS OF FACT

The court makes the following findings of fact based upon a consideration of the testimony from the witnesses adduced at trial, as well as the exhibits admitted into evidence:

The present case stems from unfinished patio work that the defendant Jesse J. Jeffers had contracted to perform but in fact never completed and never refunded the unearned portion of the purchase price to his customers. The defendant Jesse J. Jeffers was acquainted with Sharon Goodwin and Michael Goodwin, a married couple aged 65 years and 68 years respectively, because he had previously sealed their driveway. The defendant, along with an associate Steve Madlener had completed the driveway work to the satisfaction of the Goodwins, and the Goodwins were pleased enough to offer the defendant extra money for his work on the driveway. After the driveway work was completed, the defendant asked if he could work on the Goodwins' patio because he needed the money in order to pay rent and child support.

The Goodwins agreed to have the defendant build a patio for them at their house, which is located in Clermont County.¹ On November 2, 2016, Mrs. Goodwin signed a contract with the defendant and with Mr. Madlener. The contract listed the business name for Jeffers and Madlener of SOS Construction, along with an address

¹ The Goodwins reside at 509 Harrison Lane, Cincinnati, Ohio 45244.

and phone number. The address listed on the contract was not, in fact, the current address of the business but was actually the address of another woman's home.

The contract provided that the defendant would (1) tear out and dispose of the Goodwins' existing concrete patio, (2) frame and lay concrete for the new patio, (3) finish the concrete to a smooth surface, (4) remove old boards, if any, and (5) grade and plant grass.² The Goodwins agreed to pay \$5,000 for the patio project, with \$2,500 to be paid before the start up of the project as a deposit and the remaining \$2,500 to be paid upon completion.³ The contract did not list any start or end date for the project or otherwise list any terms and conditions addressing the impact of weather conditions on the time for performance of the work or any other deadlines.

The same day that Mrs. Goodwin, the defendant, and Mr. Madlener signed the contract, Mrs. Goodwin signed a check made out to Mr. Madlener for \$2,500, which was cashed.⁴

The defendant agreed to begin work on the patio on a certain day, and Mr. Goodwin agreed to meet the defendant at the house on that day. The defendant never appeared for that meeting. After that day, there were weather conditions which were adverse to the performance of the work during the balance of the week.

At some point, the defendant came over to the Goodwins' property while the Goodwins were not at home and dug out the grass surrounding the patio⁵, installed

² State's Ex. 1. The contract is mostly handwritten, and the term "old boards" is somewhat illegible. It is unclear following the testimony regarding the contract if the word "boards" is, in fact, a different word.

³ State's Ex. 1.

⁴ State's Ex. 2.

⁵ State's Ex. 3A.

stakes, and removed the patio furniture. He also had a mound of gravel delivered to the Goodwins' property.⁶

When the Goodwins became unhappy with the pace of the project, Mr. Goodwin exchanged text messages with the defendant, and the defendant met Mr. Goodwin at his house again. Mr. Goodwin expressed his displeasure that the patio work had not been completed.

The defendant responded that the \$2,500 that the Goodwins already paid him had been garnished from his bank account to pay for child support. He stated that he wanted to continue with the project but that he needed more money to purchase concrete. The defendant asked Mr. Goodwin to pay the remaining \$2,500.

Mr. Goodwin refused to pay any additional amount and told the defendant that he would have until Friday to complete the project and that, if he failed to do so, Mr. Goodwin would report the incident to the police. Mr. Goodwin concluded the conversation by telling the defendant to "get the hell off" of his property.

The defendant did not complete the patio by Friday, and after waiting until Wednesday of the following week, Mr. Goodwin filed a police report on November 14, 2016.

After the police report was filed, the defendant contacted Mr. Goodwin expressing that it was unprofessional of Mr. Goodwin to have involved the police and that he wanted to complete the patio project. Mr. Goodwin told the defendant that he did not want to see him anymore. The police tried to make contact with the defendant to discuss the patio project, but the defendant never returned any of the police investigator's phone calls.

⁶ State's Exs. 3B and 3C.

BURDEN OF PROOF

In a criminal case, it is the state's burden to prove the defendant's guilt beyond a reasonable doubt.⁷ R.C. 2901.05(E) describes reasonable doubt as follows:

"Reasonable doubt' is present when the [trier of fact], after * * * carefully consider[ing] and compar[ing] all the evidence, cannot say they are firmly convinced of the truth of the charge. It is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. 'Proof beyond a reasonable doubt' is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of the person's own affairs."

LEGAL ANALYSIS

As it pertains to the charges in this case, the Ohio Revised Code criminalizes theft in R.C. 2913.02(A):

"No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

* * * (2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;

(3) By deception * * *."⁸

⁷ R.C. 2901.05(A).

⁸ R.C. 2913.02(A).

Theft is a fourth degree felony when the victim is elderly and the defendant steals between \$1,000 and \$7,500 worth of services or property.⁹ Accordingly, in order to convict the defendant of theft beyond the scope of the consent given, the state must prove beyond a reasonable doubt that the defendant (1) knowingly (2) obtained or exerted control over property (3) beyond the scope of the express or implied consent of the owners (4) with purpose to deprive the owners of the property, (5) that the value of the property is between \$1,000 and \$7,500, and (6) that the owners are sixty five years of age or older.¹⁰ The elements for theft by deception are the same except element three would read "by deception."¹¹

Multiple terms in R.C. 2913.02, the theft statute, are statutorily defined, including the terms purposely, deprive, knowingly, and deception. Pursuant to R.C. 2901.22(A), a "person acts purposely when it is the person's specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is the offender's specific intention to engage in conduct of that nature."¹²

The term "deprive" in the statute means to do any of the following:

- "(1) Withhold property of another permanently, or for a period that appropriates a substantial portion of its value or use, or with purpose to restore it only upon payment of a reward or other consideration;
- (2) Dispose of property so as to make it unlikely that the owner will recover it;
- (3) Accept, use, or appropriate money, property, or services, with purpose not to give proper consideration in return for

⁹ R.C. 2913.02(B)(3).

¹⁰ See *State v. Coleman*, Champaign 2d Dist. No. 2002 CA 17, 2003-Ohio-5724, ¶¶ 30-35.

¹¹ See *id.*

¹² R.C. 2901.22(A).

the money, property, or services, and without reasonable justification or excuse for not giving proper consideration."¹³

Additionally, a person acts "knowingly" when:

"* * * the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact."¹⁴

Finally, deception, as defined under R.C. 2913.02(A), means

"knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact."¹⁵

With respect to theft by deception, outlined in R.C. 2913.02(A)(3), the state must demonstrate that "at the time the defendant took the money, he had no intent to repay the money or perform under the contracts in exchange."¹⁶ As for theft beyond the scope of consent, contained in R.C. 2913.02(A)(2), the state "must prove that at the time the

¹³ R.C. 2913.02(C).

¹⁴ R.C. 2901.22(B).

¹⁵ R.C. 2913.01(A).

¹⁶ *State v. Smith*, 12th Dist. Butler No. CA2004-11-275, 2005-Ohio-6551, citing *State v. Bakies*, 71 Ohio App.3d 810, 813 (8th Dist. 1991). See *State v. Fasino*, 8th Dist. Cuyahoga No. 101788, 2015-Ohio-2265, ¶ 11, quoting *State v. Walters*, 8th Dist. Cuyahoga No. 91586, 2009-Ohio-1251, ¶ 17 ("When proving a violation of R.C. 2913.02(A)(3), the State must demonstrate that at the time the defendant took the money he had no intent to repay the money or perform under the contract in exchange.").

defendant exceeded the scope of the consent of the owner of the money, he had the intent to deprive the owner of the money.”¹⁷

“The mens rea of an intent to deprive another of property, ‘like most mental elements of crime, can rarely be proved by direct evidence: thieves who work by fraud and deception do not admit to their victims that they have no intention of fulfilling their contracts. * * *’¹⁸ As such, the fact finder looks to the surrounding facts and circumstances to determine the defendant’s criminal intent.¹⁹ Furthermore, people are “presumed to have intended the natural, reasonable and probable consequences of their voluntary acts.”²⁰

Typically, in cases where the defendant is found guilty of theft for failing to perform under a contract to build, repair, replace, or construct something for a homeowner, a considerable amount of time has passed, allowing the defendant ample opportunity to perform under the contract or to refund the deposit.²¹ Stated differently,

¹⁷ *State v. Chait*, 9th Dist. Medina No. 12CA0011-M, 2012-Ohio-6104, ¶ 7, quoting *Coleman*, 2003-Ohio-5724 at ¶ 29. See *State v. Wells*, 2d Dist. No. 2008 CA 6, 2008-Ohio-908, ¶ 38, citing *Coleman*, 2003-Ohio-5724 at ¶ 29 (explaining that to prove theft beyond the scope of consent, “the defendant must have had the intent to deprive the owner of the money at the time that he exceeded the scope of the owner’s consent.”).

¹⁸ *State v. Vertucci*, 9th Dist. Summit No. 29205, 2017-Ohio-2838, ¶ 13, quoting *Piesciuk v. Kelly*, S.D. Ohio No. 1:14-cv-185, 2015 WL 1637425, *9 (Apr. 13, 2015).

¹⁹ *Smith*, 2005-Ohio-6551 at ¶ 18, citing *State v. Garner*, 74 Ohio St.3d 49, 60, 656 N.E.2d 623 (1995).

²⁰ *State v. Piesciuk*, 12th Dist. Butler No. CA2004-03-055, 2005-Ohio-5767, citing *Garner*, 74 Ohio St.3d 49.

²¹ See *Smith*, 2005-Ohio-6551 at ¶¶ 10-14 (finding evidence sufficient to convict the defendant for theft by deception and grand theft by deception after he contracted and accepted money from a victim on May 3, 2001 to build a garage and had not completed the project by spring 2002, and where the defendant entered into another contract with and accepted money from a second victim on June 14, 2001 to build a garage and the victim waited until April 29, 2002 to terminate the contract since the project was never completed); *Vertucci*, 2017-Ohio-2838 at ¶¶ 12-14 (finding sufficient evidence to convict the defendant of theft from an elderly person after the defendant spent over two years on a contracted project to repair the victims’ roof and other various projects, most of which were uncompleted and left in a state of disrepair); *Fasino*, 2015-Ohio-2265 at ¶¶ 3-5 (upholding the defendant’s convictions for theft by deception where the

in cases in which sufficient evidence exists to convict a defendant of theft, the defendants have had lengthy opportunities to complete the projects they contracted and accepted money for.

The fact finder may consider whether a defendant commenced working on a contracted project or purchased necessary materials in determining whether the defendant had the requisite intent to commit theft.²² Although fact finders may consider whether a defendant commenced work on a given contracted project, whether the defendant performed work on a project is not dispositive of whether he had the requisite

defendant victimized three home owners after entering into contracts to replace the owners' roofs or gutters and accepting the owners' money, but not returning to complete any work after six months, eleven months, and four to six months, respectively); *State v. Lewis*, 9th Dist. Summit No. 21722, 2004-Ohio-1233, ¶ 26 (finding that the defendant had no intent to complete a remodel for an elderly homeowner after the defendant failed to contact the homeowner for over a year after taking her money). *Cf. Chait*, 2012-Ohio-6104 at ¶¶ 11, 14, 20-21 (finding that there was insufficient evidence that the defendant intended to deprive the victims of their money by deception or exceeding the scope of their consent after the defendant failed to complete a remodeling job after working on it for two months, beginning on September 2, 2009, when the victims wrote the defendant two checks, and continuing through approximately November 5, 2009, when the defendant was last at the house).

²² *See Chait*, 2012-Ohio-6104 at ¶ 21 (finding that there was insufficient evidence that the defendant intended to deprive the victims of their money by deception or exceeding the scope of their consent where the defendant put substantial time and labor into an uncompleted remodel project); *Fasino*, 2015-Ohio-2265 at ¶ 14 (finding that the defendant's three guilty verdicts for theft by deception were not against the manifest weight of the evidence where the defendant never returned to begin work on any of three roofing projects he contracted to perform, nor did he purchase or deliver the supplies and materials for which he received down payments from the victims); *Wells*, 2008-Ohio-908 at ¶ 45 (finding that the defendant's convictions for theft by deception and theft beyond the scope of consent were against the manifest weight of the evidence where the defendant worked on the victim's home for six months and used the money the homeowners provided to buy bricks to pay for other expenses in the project); *Lewis*, 2004-Ohio-1233 at ¶ 26 (finding that the defendant had no intent to complete a remodeling project for an elderly homeowner after the defendant failed to contact the homeowner for over a year after taking her money); *State v. Belt*, 3d Dist. Union No. 14-03-36, 2004-Ohio-1511, ¶ 22 (finding that the defendant's conviction for theft by deception was sufficiently supported by evidence where the defendant accepted and cashed a check from a victim to refurbish a barn, the defendant did not have contact with the victim after cashing the check, and the defendant did not perform any work on the victim's barn or deliver any materials to the victim's residence); *Coleman*, 2003-Ohio-5274 at ¶¶ 36-38 (finding that the state failed to prove that the defendant intended to deprive homeowners of their money where the defendant contracted to make home repairs, tried (although he ultimately failed) to order shingles, and the homeowners tried to cancel the contract less than a week after entering into it).

intent for theft.²³ In other words, “[t]here is no bright line rule that provides that the commencement of a project can negate the requisite intent to deprive * * *.”²⁴

Upon considering the witness testimony and admitted exhibits, the court finds that it is not convinced beyond a reasonable doubt that, at the time that the defendant took the Goodwins’ money, he had no intent to perform under the contract in exchange, or that, at the time the defendant exceeded the scope of the Goodwins’ consent, he had intent to deprive them of the money. As discussed, an essential element of either theft by deception or theft beyond the scope of consent is that the defendant had a purpose to deprive the owners of their property.²⁵

The court, as the fact finder, notes multiple, inexhaustible reasons as to why it cannot say that it is firmly convinced that the defendant intended to deprive the Goodwins of their \$2,500. First, the Goodwins allotted the defendant a considerably short window under which to perform under the contract before reporting him to the police. The contract itself contained no provision governing the deadline for the defendant to perform. The defendant had less than two weeks (12 days) from the time the contract was signed and the defendant accepted the Goodwins’ \$2,500 until the time Mr. Goodwin reported him to the police. And, according to Mr. Goodwin’s

²³ See *Piesciuk*, 2005-Ohio-5767 at ¶ 18 (finding that there was sufficient evidence for the jury to find that the defendant was guilty of theft by deception despite the fact that the defendant had commenced work on most of the renovation projects he contracted for, where victims testified that the defendant requested payments by falsely promising specific work would be completed or materials would be ordered, the victims were unsuccessful in repeated attempts to contact the defendant, and when victims did reach the defendant he would make additional unrealized promises to finish the work); *State v. Capone*, 8th Dist. Cuyahoga No. 86281, 2006-Ohio-1537, ¶ 35 (finding sufficient evidence of the defendant’s intent to commit theft by deception where he promised the homeowner that the total cost included labor and materials, he falsely told the homeowner that he purchased materials, and he repeatedly asked for additional money to make more purchases, but the defendant purchased nothing for the project and did no work on the project).

²⁴ *Vertucci*, 2017-Ohio-2838 at ¶ 14.

²⁵ R.C. 2913.02(A).

testimony, during a significant portion of that time the weather was bad. This case is distinguishable from the numerous cases cited above, where the defendants have been convicted of theft and they had, at the very least, multiple months to perform under their various contracts. This is not a case where the defendant took the Goodwins' money and, after several months or a year, still had not completed the patio project. If several months had passed and the defendant still had not built the patio, then that would tend to prove that the defendant had the requisite intent. A lack of performance after 12 days is, in the court's view as the fact finder, much less convincing.

Second, the reason that the defendant could not move forward on the project was due to plausible and unforeseeable delays, namely the poor weather and the fact that the deposit had been garnished from his bank account. When the defendant explained to Mr. Goodwin what had happened to the \$2,500 deposit, he relayed that the money was automatically taken out of his bank account to pay for child support. Mr. Goodwin's testimony on this point tends to show that the defendant did not purposely divert the money needed for the concrete, but rather, that an event beyond the defendant's immediate control diverted the deposit. Moreover, the poor weather tends to indicate that the defendant may have been delaying the patio project for a legitimate reason, as opposed to accepting the work and never intending to complete it.

Third, the defendant had begun to prepare the patio area for development, and he had ordered materials. Specifically, the defendant had removed some of the grass surrounding the current patio (which needed to be disposed of), installed stakes, removed the patio furniture, and had gravel delivered. As discussed above, a defendant's commencement of a project or ordering of materials may evidence an intent

to complete the project. Although the defendant did not make substantial progress on the patio, the court again notes that he had less than two weeks to work on it. His early progress on the patio tends to show that the defendant did not intend to deprive the Goodwins of their \$2,500 without performing under the contract.

Fourth, throughout the two weeks before the Goodwins filed the police report, the defendant expressed a willingness to complete the project and did not completely abandon contact with the Goodwins. The defendant did not, as he promised, perform in that time period, but he indicated he would perform if he had the means to purchase the concrete. Even after the Goodwins filed a police report, the defendant contacted Mr. Goodwin and stated that he wanted to finish the patio. However, Mr. Goodwin's response to the defendant was that he did not want to see him anymore.

After considering all of the witness testimony and admitted exhibits before it, the court, as the fact finder, is not convinced beyond a reasonable doubt that the defendant intended to deprive the Goodwins of their \$2,500 deposit.²⁶ Because one of the essential elements for the crimes of theft by deception and theft outside the scope of consent has not been proven beyond a reasonable doubt, the defendant cannot be found guilty of either theft charge.

CONCLUSION

The court finds that the state has not proven beyond a reasonable doubt the defendant's guilt as to the charges of (1) theft from an elderly person in violation of R.C.

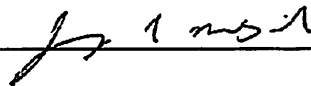
²⁶ Of note, the court is not commenting on whether the defendant may be civilly liable to the Goodwins for the lost \$2,500 deposit.

2913.02(A)(2), a felony of the fourth degree, and (2) theft from an elderly person in violation of R.C. 2913.02(A)(3), a felony of the fourth degree.

The court finds that the defendant is acquitted as to both charged offenses.

IT IS SO ORDERED

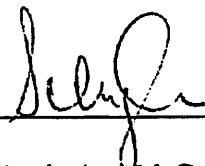
DATED: 7-2-17



Judge Jerry R. McBride

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Decision/Entry were sent on this 5th day of July 2017 by e-mail to Matthew E. Wiseman, Assistant Prosecuting Attorney, at mwiseman@clermontcountyohio.gov, and to Brian T. Goldberg, Attorney for the Defendant, at briantgoldberg@yahoo.com.



Bailiff to Judge McBride