IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 1467 Disciplinary Docket No. 3
v.	:	No. 27 DB 2009
H. ALLEN LITT, Respondent	:	Attorney Registration No. 21235 (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 1st day of June, 2011, there having been filed with this Court by H. Allen Litt his verified Statement of Resignation dated March 16, 2011, stating that he desires to resign from the Bar of the Commonwealth of Pennsylvania in accordance with the provisions of Rule 215, Pa.R.D.E., it is

ORDERED that the resignation of H. Allen Litt is accepted; he is disbarred on consent from the Bar of the Commonwealth of Pennsylvania retroactive to March 30, 2009; and he shall comply with the provisions of Rule 217, Pa.R.D.E. Respondent shall pay costs, if any, to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola
As Of 6/1/2011

Attest: _____
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1467 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 27 DB 2009
v.	:	
	:	Attorney Registration No. 21235
H. ALLEN LITT	:	
Respondent	:	(Philadelphia)

RESIGNATION BY RESPONDENT

Pursuant to Rule 215
of the Pennsylvania Rules of Disciplinary Enforcement

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	
Petitioner	:	No. 1467 Disc. Dkt. No. 3
v.	:	
	:	No. 27 DB 2009
	:	
	:	Atty. Reg. No. 21235
H. ALLEN LITT,	:	
Respondent	:	(Philadelphia)

RESIGNATION
UNDER Pa.R.D.E. 215

H. Allen Litt hereby tenders his unconditional resignation from the practice of law in the Commonwealth of Pennsylvania in conformity with Pa.R.D.E. 215 ("Enforcement Rules") and further states as follows:

1. He is an attorney admitted in the Commonwealth of Pennsylvania, having been admitted to the bar on October 8, 1975. His attorney registration number is 21235 and he is currently on suspended status as a result of a March 30, 2009 Order issued by the Supreme Court of Pennsylvania placing him on temporary suspension pursuant to Rule 208(f)(2), Pa.R.D.E.

2. He desires to submit his resignation as a member of said bar.

3. His resignation is freely and voluntarily rendered; he is not being subjected to coercion or duress; and he is fully aware of the implications of submitting this resignation.

4. He is aware that there is presently pending an investigation into allegations that he has been guilty of misconduct, based upon his convictions in the Court of Common Pleas of Philadelphia County, Docket No. CP-51-CR-0002280-2008, in a case captioned ***Commonwealth of Pennsylvania v. H. Allen A. Litt***.

5. He acknowledges that on February 6, 2009, a jury found him guilty of eighteen counts, as follows: one count of Dealing in Proceeds of Unlawful Activity/With Intent to Promote (Count 1 on the Bill of Information), a felony of the first degree, in violation of 18 Pa.C.S. §5111; six counts of Theft by Deception (Counts 11, 14, 15, 17, 18, and 76), each a felony of the third degree, in violation of 18 Pa.C.S. §3922; five counts of Attempted Theft by Deception (Counts 5, 34, 38, 39 and 40), each a felony of the third degree, in violation of 18 Pa.C.S. §3922; and six counts of Insurance Fraud (Counts 6, 48, 49, 68, 69, and 70), each a felony of the third degree, in violation of 18 Pa.C.S. §4117.

6. He acknowledges that on March 11, 2009, the Honorable Glenn B. Bronson imposed sentence and he received an aggregate sentence of five to ten years, as follows: on Count 1 of the Bill of Information, Judge Bronson sentenced him to a term of incarceration of one year to two years, to run concurrently with all other charges; on ten counts charging

either Theft by Deception or Attempted Theft by Deception, Judge Bronson imposed a term of incarceration of six months to twelve months on each count, to run consecutively to each other, for a total sentence of five to ten years; on each of the six counts charging Insurance Fraud, Judge Bronson sentenced him to a term of incarceration of three months to six months, each sentence to run concurrently with one of the sentences imposed on the theft counts; and on one count of Theft by Deception (Count 17), no penalty was imposed.

7. He acknowledges that on March 20, 2009, he filed a post-sentence motion, which Judge Bronson denied on August 10, 2009.

8. He acknowledges that on August 25, 2009, he filed a Notice of Appeal with the Superior Court of Pennsylvania, which was docketed at 2499 EDA 2009.

9. He acknowledges that on December 21, 2009, Judge Bronson issued an Opinion in support of his decision to deny the post-sentence motion and affirm the judgment of sentence. A true and correct copy of Judge Bronson's December 21, 2009 Opinion is attached hereto and made a part hereof as "Exhibit P-1."

10. He acknowledges that on November 17, 2010, the Superior Court of Pennsylvania issued a Memorandum Opinion in which it affirmed the judgment of sentence. A true and

correct copy of the Superior Court of Pennsylvania's November 17, 2010 Memorandum Opinion is attached hereto and made a part hereof as "Exhibit P-2."

11. He acknowledges that the material facts upon which the convictions are based as set forth in the attached exhibits are true.

12. He is aware that his convictions on the charges of Dealing in Proceeds of Unlawful Activity/With Intent to Promote (one count), Theft by Deception (six counts), Attempted Theft by Deception (five counts), and Insurance Fraud (six counts) constitute a *per se* ground for discipline under Rule 203(b)(1) of the Pennsylvania Rules of Disciplinary Enforcement.

13. He submits the within resignation because the said convictions stand as a *per se* ground for discipline under the Enforcement Rules.

14. He submits the within resignation because he knows that he could not successfully defend himself against charges of professional misconduct based upon the convictions.

15. He is fully aware that the submission of this Resignation Statement is irrevocable and that he can only apply for reinstatement to the practice of law pursuant to the provisions of Enforcement Rule 218(b).

16. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He [redacted]s/has not retained, consulted and acted upon the advice of counsel in connection with his decision to execute the within resignation.

17. By Order dated March 30, 2009, your Honorable Court temporarily suspended my law license pursuant to Rule 208(f)(2), Pa.R.D.E., and I have been on temporary suspension since that time. I acknowledge that the Court's grant of retroactivity is discretionary. I respectfully request that your Honorable Court make any Order directing my Disbarment on Consent retroactive to March 30, 2009. I am informed that the Office of Disciplinary Counsel does not oppose my request for retroactivity.

It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S., Section 4904 (relating to unsworn falsification to authorities).

Signed this 16TH day of MARCH, 2011.

H. Allen Litt

WITNESS: K.E. Manners
K.E. MANNERS

5576021/10

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CRIMINAL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	CP-51-CR-0002280-2008
v.	:	
H. ALLEN LITT	:	

FILED
DEC 2 1 2009
Criminal Appeals Unit
First Judicial District of PA

OPINION

BRONSON, J. December 21, 2009

On February 6, 2009, following a jury trial before this Court, defendant H. Allen Litt, an attorney, was convicted of various charges arising out of his representation of clients pursuing fraudulent personal injury claims. N.T. 02/06/2009 at 10-42. Specifically, defendant was convicted of one count of dealing in proceeds of unlawful activities (18 Pa.C.S. § 5111(a)(1)), five counts of attempted theft by deception (18 Pa.C.S. § 901(a)), six counts of theft by deception (18 Pa.C.S. § 3922(a)(1)), and six counts of insurance fraud (18 Pa.C.S. § 4117(a)(2)). N.T. 02/06/2009 at 10-42. On March 11, 2009, the Court imposed an aggregate sentence of five to ten years incarceration. N.T. 03/11/2009 at 64-67. Defendant filed a post-sentence motion, which the Court denied on August 10, 2009.

Defendant now appeals from the judgment of sentence on the following grounds: 1) the evidence was insufficient to support the verdicts; and 2) the verdicts were against the weight of the evidence. *See* Statement of the Matters Complained of on Appeal at ¶¶ 1-36 ("Statement of Matters"). For the reasons set forth below, defendant's claims are without merit and the judgment of sentence should be affirmed.

Exhibit P-1

I. Factual Background

At trial, the Commonwealth presented the testimony of two former members of defendant's administrative staff, Melissa Burns and Iris Kurtz; Philadelphia Police Detective Donald Murtha; insurance investigator Dennis Gahan; four of the alleged "runners" used by defendant, Nathaniel Shaw, James Guinn, Joshua Pitts, and Lewis Crump; and several individuals who were approached by runners to file false personal injury claims, including Kenneth Harrison, Brenda Alexander, Carolyn Cottman, Shirley Cottman, John Whitmore, Jason Sloan, Beverly Johnson, Lucille Hickman, Virginia King, John Hines, Jr., Catherine Phillips, Cecilia Koch, Deborah Siebert, John Cripps, Aquilla Alwan, Rasheed Alwan, and Kenneth White. N.T. 01/27/2009 at 50-127; 01/28/2009 at 4-221; 01/29/2009 at 4-219; 01/30/2009 at 5-243; 02/02/2009 at 5-299; 02/03/2009 at 7-264; 02/04/2009 at 5-38. Defendant presented the testimony of Omar Carey, Adrienne Antoine, Dr. Marc Surkin, Leanne Litwin, Andrew Kramer, Christina Miller-Marcus, Gary Schulman, and Ronald Fedora and testified in his own defense. N.T. 02/04/2009 at 67-203. Viewed in the light most favorable to the Commonwealth, the testimony of these witnesses established the following.

A. *Overall Scheme*

Defendant H. Allen Litt was a licensed attorney who operated a solo practice specializing in personal injury claims in Philadelphia. N.T. 01/27/2009 at 55, 67, 80, 110-111; 02/04/2009 at 12. To obtain business, defendant utilized the services of several "runners" to recruit clients. N.T. 01/27/2009 at 107; 02/04/2009 at 12-14. With defendant's knowledge and encouragement, the runners often manufactured cases for the prospective clients and coached the prospective clients to lie about their accidents and injuries.

Three of the runners used by defendant were Nathaniel Shaw and James Guinn, who specialized in slip-and-fall cases, and Joshua Pitts, who specialized in automobile accidents. 02/04/2009 at 13-14. For the slip-and-fall cases, defendant used a procedure whereby the

runners would find a plausible accident location, recruit a client to claim that he or she had been injured at that location, and then provide the recruit with a story about how the accident happened and the injuries that he or she sustained. N.T. 01/28/2009 at 173-176; 02/02/2009 at 14-16. Defendant taught the runners to select accident locations with visible defects, such as broken pavement or handrails, to avoid large department stores and locations with surveillance cameras, and to claim that the accidents occurred during daylight hours. N.T. 01/28/2009 at 171, 175, 178, 187; 02/02/2009 at 13. For the automobile accidents, Mr. Pitts used a police scanner to listen for reports of automobile accidents and then would go to the accident site and approach the individuals involved. N.T. 02/02/2009 at 244, 281-282. Mr. Pitts would suggest to the individuals involved in the accident that they should exaggerate the extent of the accident, claim to be injured, and then hire defendant to pursue claims with their insurance companies. N.T. 02/02/2009 at 281-287.

Defendant encouraged the runners to take prospective clients to an emergency room to make specific complaints about the location of fake accidents and the nature of fabricated injuries. N.T. 01/28/2009 at 170, 173, 175-176; 02/02/2009 at 276, 282-283, 289. The runners would then personally accompany the client to defendant's office for an interview. N.T. 01/27/2009 at 69; 02/02/2009 at 13-15, 277, 285. There, the prospective client was to recite the story of the accident and injuries as provided to them by the runners. N.T. 01/28/2009 at 176; 02/02/2009 at 15, 20, 277-278. In some cases, the runners would relay the false story of the accident themselves and defendant would merely ask the client a few basic questions. N.T. 02/02/2009 at 14-15, 20-21, 25, 27-28, 277-278, 287. Defendant would then recommend a doctor to the client to visit for treatment, and instruct the client that the more frequently he or she went to the doctor, the more money he or she could recover. N.T. 01/28/2009 at 177; 02/02/2009 at 21, 278-279, 289, 291.

At some point, defendant would speak to the runner privately and write out a check to the runner for his services. N.T. 01/27/2009 at 70; 01/28/2009 at 180; 01/29/2009 at 137, 215; 01/30/2009 at 40; 02/02/2009 at 21, 27, 277-278; 02/04/2009 at 124-125. Defendant instructed the runners that the clients were not to know that he was aware that the claims were fake. N.T. 01/28/2009 at 175, 179. If a client was required to give a sworn statement, defendant would represent them at that proceeding where the client would again recite the lies concocted by the runners about the accidents and injuries. N.T. 01/29/2009 at 142-145; 02/02/2009 at 262-266; 02/03/2009 at 64, 107-109; 02/04/2009 at 115-117. If a client's claim was successful, the insurance company would issue a settlement check to defendant. Defendant would then issue checks to pay for the client's medical bills, other costs associated with the claim, and his own services. The remaining funds would be paid by check to the client. N.T. 01/27/2009 at 86-89, 93-99; 01/29/2009 at 137.

B. *Specific Claims*

1. *Runner Nathaniel Shaw*

Brenda Alexander, Shirley Cottman, John Whitmore, and Virginia King were four of the 144 clients Mr. Shaw recruited for defendant. N.T. 01/28/2009 at 96; 185; 01/29/2009 at 127, 214; 01/30/2009 at 35, 194. Ms. Alexander and Mr. Whitmore were tenants of Mr. Shaw, while Ms. Cottman and Ms. King were the sister and cousin of Mr. Shaw's girlfriend, respectively. N.T. 01/29/2009 at 78, 127, 212-213; 01/30/2009 at 35, 183. In the cases of Ms. Alexander and Mr. Whitmore, upon learning that his tenants had recently hurt themselves, Mr. Shaw offered to take them to defendant to file fake claims about their injuries to make some money. N.T. 01/29/2009 at 80, 127-128, 134; 01/30/2009 at 35-36. Mr. Shaw provided Ms. Alexander with an entirely fake story about where and how she injured herself, while he instructed Mr. Whitmore to exaggerate the extent of his actual accident. N.T. 01/28/2009 at 186; 01/29/2009 at 133-134, 136-137; 01/30/2009 at 40-41, 46. In the cases of Ms. Cottman

and Ms. King, Mr. Shaw approached the women and offered to give them fake cases to take to defendant to make some money. N.T. 01/29/2009 at 214; 01/30/2009 at 185, 194-195. Mr. Shaw provided the women with the locations where they should claim to have fallen and told them to go to the hospital to complain that they had injured themselves. N.T. 01/29/2009 at 213-214; 01/30/2009 at 194-195, 197-198.

In all four of these cases, after establishing the circumstances of the fake claims with the clients, Mr. Shaw brought the clients to visit defendant. N.T. 01/29/2009 at 81, 134-135, 214-215; 01/30/2009 at 39-40, 197-199. At these interviews, with varying degrees of assistance from Mr. Shaw, the clients recited the stories of their fake claims to defendant and Mr. Shaw provided photographs of the locations where the clients had supposedly fallen. N.T. 01/29/2009 at 85, 128, 132-133, 135, 215, 217; 01/30/2009 at 40, 199. Defendant then agreed to take on each of these four cases and the clients signed agreements to hire defendant as their attorney. N.T. 01/29/2009 at 139; 01/30/2009 at 41-42, 200. Defendant made sure that the clients were seeing physicians for treatment of their injuries, sometimes recommending particular doctors to visit, and encouraged them to continue to seek treatment in order to increase the amount of their eventual financial recovery. N.T. 01/29/2009 at 94, 96; 01/30/2009 at 7, 42, 202-204. After the interviews, defendant paid Mr. Shaw by check for recruiting the clients. N.T. 01/27/2009 at 93; 01/28/2009 at 177, 180.

For Ms. Alexander, defendant filed a claim against Chubb Insurance Company, the insurer of Cash Connection where Ms. Alexander claimed to have fallen.[1] Defendant represented Ms. Alexander when she was deposed by Chubb, where she struggled to maintain the story Mr. Shaw had provided to her. N.T. 01/29/2009 at 142-144; 02/04/2009 at 128-129.

[1] The verdict sheet, to which the parties stipulated, stated that defendant filed a claim on behalf of Ms. Alexander with Chubb Insurance Company for an alleged slip and fall outside Cash Connection at 4715 North Broad Street in Philadelphia.

Chubb closed Ms. Alexander's claim without payment. N.T. 01/29/2009 at 146.[2] For Mr. Whitmore, defendant filed a claim against Church Mutual Insurance Company and represented Mr. Whitmore when they met with an investigator from Church Mutual. N.T. 01/30/2009 at 43. The claim was settled for $12,000 and defendant presented Mr. Whitmore with a recovery check. N.T. 01/30/2009 at 43-44.[3] For Ms. Cottman, defendant filed a claim against The Hartford Insurance Company, which settled for $1,000, after which defendant presented her with a recovery check. N.T. 01/29/2009 at 216, 218; 01/30/2009 at 8.[4] Finally, for Ms. King, defendant filed a claim against Zurich Insurance Company which settled for $15,000, after which defendant presented her with a recovery check. N.T. 01/30/2009 at 204.[5]

2. *Runner James Guinn*

Cecilia Koch was one of the thirty-six clients Mr. Guinn recruited for defendant. N.T. 01/28/2009 at 96; 02/02/2009 at 30, 154. Mr. Guinn, whom Ms. Koch knew as a family friend, told Ms. Koch that she could make some money if she fell into a hole. N.T. 02/02/2009 at 154. After Mr. Guinn showed Ms. Koch where she was supposed to fall, Ms. Koch returned the next day with her sister, pretended to trip and fall and began to cry. N.T. 02/02/2009 at 155-156. Before she fell, Ms. Koch struck her leg with her shoe several times to make it appear injured. N.T. 02/02/2009 at 156-157. Mr. Guinn called an ambulance to take Ms. Koch to the hospital and picked her up there after she was released. N.T. 02/02/2009 at 156-157.

Mr. Guinn then took Ms. Koch to see defendant, told her not to speak, and assured her that he would take care of everything. N.T. 02/02/2009 at 158. Mr. Guinn gave defendant pictures of where Ms. Koch pretended to fall. Defendant recommended a doctor to Ms. Koch

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[2] *See also* Verdict Sheet at p. 5.
[3] *See also* Verdict Sheet at p. 7.
[4] *See also* Verdict Sheet at p. 6.
[5] *See also* Verdict Sheet at p. 12.

and told her to keep all her doctors appointments. N.T. 02/02/2009 at 159. Defendant told Ms. Koch to make sure that if the doctors gave her a splint or a cane that she continue to use them in case anyone from the store where she fell saw her. N.T. 02/02/2009 at 159. Defendant then filed a claim against St. Paul Fire and Marine Insurance Company and represented her at an arbitration hearing, after which Ms. Koch's claim was settled for $2,500. N.T. 02/02/2009 at 161-162.[6] Defendant provided Ms. Koch with her recovery funds by check. N.T. 02/02/2009 at 162.

In addition to the thirty-six clients he recruited for defendant as a runner, Mr. Guinn also presented himself as a client to defendant on multiple occasions. N.T. 01/28/2009 at 96. In two of these cases, Mr. Guinn falsely claimed that he had slipped and fallen outside Colonial Eye Care Center and Wells Meats. N.T. 02/02/2009 at 38-40. Defendant filed claims against General Star Insurance Company and Fireman's Fund Insurance Company for these two claims, which settled for $8,500 and $8,260.90, respectively.[7]

3. *Runner Joshua Pitts*

In addition to the 217 cases he brought to defendant as a runner, like Mr. Guinn, Mr. Pitts also presented himself and his family members as clients to defendant on multiple occasions. N.T. 01/28/2009 at 96; 02/02/2009 at 248; 02/04/2009 at 120. One such case arose after Mr. Pitts accidentally backed his Isuzu Trooper into a concrete barrier in a parking lot. N.T. 02/02/2009 at 246-247, 251. Sensing an opportunity for a case, Mr. Pitts picked up three of his adult children, Rasheed, Aquilla, and Baheejah, and drove to the intersection of 11th Street and Wood Street. N.T. 02/02/2009 at 247-248. There, Mr. Pitts told his children to say that they were being driven home by Mr. Pitts when the Trooper was struck by a large truck, which then left the scene. N.T. 02/02/2009 at 248-249. Mr. Pitts then called the police and

[6] *See also* Verdict Sheet at p. 3.
[7] *See also* Verdict Sheet at p. 4.

reported the accident, and they were all taken to the hospital for treatment. N.T. 02/02/2009 at 249-252.

Shortly thereafter, Mr. Pitts presented the cases of himself and his children to defendant. N.T. 02/02/2009 at 255-257. Defendant filed claims on their behalf with The Hartford Insurance Company. Defendant represented Mr. Pitts and his children when representatives of The Hartford examined them under oath. N.T. 02/02/2009 at 262-265. Due to discrepancies among the statements given by Mr. Pitts and his children and the physical evidence, their claims were denied. N.T. 01/27/2009 at 104; 02/03/2009 at 163-165; 02/04/2009 at 129-130.[8]

II. Discussion

A. *Sufficiency of the Evidence*

In his Statement of Matters, defendant challenged the sufficiency of the evidence in support of the verdict on each charge for which defendant was convicted, as follows: "The evidence adduced at trial was legally insufficient to prove the Defendant guilty beyond a reasonable doubt...." *See* Statement of Matters at ¶¶ 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35. Where defendant makes such a boilerplate allegation of insufficiency, his claim is waived for purposes of appeal. *See Commonwealth v. Lemon*, 2002 PA Super. 234, 804 A.2d 34, 37 (Pa. Super. 2002). *But cf. Commonwealth v. Laboy*, 594 Pa. 411, 936 A.2d 1058, 1060 (Pa. 2007) (finding no waiver in a "relatively straightforward" case if the trial court is able to identify the issues). Even if defendant had adequately preserved his sufficiency argument, his claim would be without merit.

In considering a challenge to the sufficiency of the evidence, the Court must decide whether the evidence at trial, viewed in the light most favorable to the Commonwealth,

[8] *See also* Verdict Sheet at pp. 11-12.

together with all reasonable inferences therefrom, could enable the fact-finder to find every element of the crimes charged beyond a reasonable doubt. *Commonwealth v. Little*, 2005 PA Super. 251, 879 A.2d 293, 296-297 (Pa. Super.), *appeal denied*, 586 Pa. 724, 890 A.2d 1057 (Pa. 2005). In making this assessment, a reviewing court may not weigh the evidence and substitute its own judgment for that of the fact-finder, who is free to believe all, part, or none of the evidence. *Commonwealth v. Adams*, 2005 PA Super. 296, 882 A.2d 496, 498-99 (Pa. Super. 2005). The Commonwealth may satisfy its burden of proof entirely by circumstantial evidence, and "[i]f the record contains support for the verdict, it may not be disturbed." *Id.*, (quoting *Commonwealth v. Burns*, 2000 PA Super. 397, 765 A.2d 1144, 1148 (Pa. Super. 2000).

1. *Insurance fraud*

A person is guilty of insurance fraud if he knowingly presents a statement to an insurer as part of, or in support of, an insurance claim that contains false, incomplete, or misleading information concerning any fact or thing material to the claim, with the intent to defraud the insurer. *See* 18 Pa.C.S. § 4117(a)(2); *Commonwealth v. Pozza*, 2000 PA Super. 113, 750 A.2d 889, 891 (Pa. Super. 2000). Here, defendant was convicted of six counts of insurance fraud. Counts 68, 6, 69, and 70 refer to the claims defendant made on behalf of runner Joshua Pitts and three of his children against The Hartford Insurance Company following the alleged collision of Mr. Pitts' Isuzu Trooper with a truck. Counts 48 and 49 refer to the claims defendant made on behalf of runner James Guinn against General Star and Fireman's Fund, respectively, for injuries allegedly sustained in slip and falls outside commercial establishments insured by those two companies.

Here, there was ample evidence to support the jury's conclusion that defendant committed insurance fraud in pursuing these claims. Mr. Guinn, Mr. Pitts, and Mr. Pitts' three children all testified that their reports of both the accident and injuries, were false. N.T.

02/02/2009 at 38-40, 249; 02/03/2009 at 60, 102. Moreover, the evidence refuted defendant's contention that he lacked knowledge of the falsity of these claims.

In particular, several witnesses testified to conversations with defendant that demonstrated defendant's actual knowledge of the fraudulent nature of the claims he was pursuing on behalf of his clients. Mr. Sloan testified that when he approached defendant as a potential client, defendant suggested that Mr. Sloan create a slip-and-fall case outside of a business and seek treatment from a doctor. Defendant even recommended specific businesses to target and a doctor to visit. N.T. 01/30/2009 at 79-82. Similarly, runners Shaw and Guinn testified that defendant coached them on the type of accident locations to seek. Mr. Shaw testified that he pursued a practice of matching potential accident locations with fake victims at defendant's direction. N.T. 01/28/2009 at 173-176, 178, 186-187; 02/02/2009 at 13, 15-16. Mr. Shaw also testified that defendant told him that the clients must not know that defendant knew that their accidents were fake. N.T. 01/28/2009 at 175, 179-180. In addition, both Mr. Shaw and Mr. Crump, who was also a runner, testified that after the investigation began, defendant instructed them to lie to the police and the District Attorney about their business practices. N.T. 01/28/2009 at 196, 201-205; 01/29/2009 at 147-149; 02/03/2009 at 261. Mr. Shaw testified that when he refused to do so, defendant told him, "Well, it's going to get ugly." N.T. 01/28/2009 at 213.

Defendant's claim to be ignorant of any fraud was belied by other compelling evidence. In particular, the runners would often bring in the same individuals time and time again, and would even repeatedly claim to be in accidents themselves. N.T. 01/27/2009 at 68; 01/28/2009 at 13; 01/30/2009 at 193; 02/02/2009 at 38-40, 248, 298; 02/03/2009 at 111. There were also many obvious indicia of fraud in the cases the runners brought in to the defendant. Mr. Guinn's testimony that he almost always described the accidents and injuries on behalf of his recruits, Ms. Alexander's inability to get her story straight at her deposition,

and Mr. Pitts' blatantly fabricated accident with the Isuzu Trooper are some of the more egregious examples. N.T. 01/29/2009 at 142-146; 02/02/2009 at 13-15, 246-254. Under the totality of the circumstances, a reasonable juror could certainly infer that defendant knew that the claims he was filing were false, and that he filed them with the intent to recover funds from insurance companies, thereby defrauding them. *See* 18 Pa.C.S. § 4117(a)(2)); *Pozza*, 750 A.2d at 891.

2. *Theft by deception*

"A person is guilty of theft [by deception] if he intentionally obtains or withholds property of another by deception." 18 Pa.C.S. § 3922(a); *see Commonwealth v. Sanchez*, 2004 PA Super. 132, 848 A.2d 977, 983 (Pa. Super. 2004). Deception is defined as the intentional creation or reinforcement of a false impression. *See Sanchez*, 848 A.2d at 983 (citing 18 Pa.C.S. § 3922(a)(1)). "The Commonwealth must also show that the victim relied on the false impression created or reinforced by the defendant." *Id.*

Here, defendant was convicted of the following six counts of theft by deception: Count 11 regarding Ms. Koch's claim against St. Paul Fire and Marine; Counts 14 and 15 regarding Mr. Guinn's claims against General Star and Fireman's Fund, respectively; Count 17 regarding Shirley Cottman's claim against The Hartford; Count 18 regarding Mr. Whitmore's claim against Church Mutual; and Count 76 regarding Ms. King's claim against Zurich Insurance Company. While all of these claims resulted in settlements, each of the claimants testified that the accidents and injuries asserted in the claims were false. 01/29/2009 at 217; 01/30/2009 at 40-41, 198; 02/02/2009 at 38-40, 156, 160. Furthermore, the evidence reviewed above regarding the insurance fraud charges established that defendant knew that the claims were false. The jury could therefore properly infer that defendant obtained the settlement checks in each of these cases by creating the false impression that the claims were

premised upon legitimate accidents. That conduct would constitute theft by deception. *See Sanchez*, 848 A.2d at 983.

3. *Attempted theft by deception*

"A person is guilty of attempt if 'with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime.'" *Commonwealth v. Pappas*, 2004 PA Super. 32, 845 A.2d 829, 839 (Pa. Super. 2004) (quoting 18 Pa.C.S. § 901(a)). Here, defendant was convicted of five counts of attempted theft by deception premised upon five fraudulent claims that he filed against insurance companies, but for which he did not succeed in obtaining a settlement. In particular, counts 38, 5, 39, and 40 correspond to the unsuccessful claims defendant made on behalf of Mr. Pitts and his children against The Hartford Insurance Company following the alleged collision of Mr. Pitts' Isuzu Trooper with a truck; and count 34 refers to the claim defendant made on behalf of Ms. Alexander against Chubb Insurance Company for injuries allegedly sustained in a slip and fall.

Each of these claimants testified that the accidents and injuries asserted in the claims were false. N.T. 01/29/2009 at 133; 02/02/2009 at 249; 02/03/2009 at 60, 102. Furthermore, the evidence reviewed above regarding the insurance fraud charges established that defendant knew that the claims were false. The jury could therefore properly infer that defendant attempted to obtain a settlement check in each of these cases by creating the false impression that the claims were premised upon legitimate accidents. That would constitute an attempted theft by deception. *See Pappas*, 845 A.2d at 839.

4. Dealing in proceeds of unlawful activities

A person is guilty of dealing in the proceeds of unlawful activities if "the person conducts a financial transaction ... with knowledge that the property involved represents the proceeds of unlawful activity ... with the intent to promote the carrying on of the unlawful activity." 18 Pa.C.S. § 5111(a)(1). Here, the parties agreed that "a financial transaction would include depositing a check into a bank account or transferring funds out of a bank account by writing a check on that account," and that the unlawful activity at issue was insurance fraud. N.T. 02/05/2009 at 55-57.

It was not disputed that defendant, as a regular part of his business, received and deposited checks from insurance companies into a bank account, and distributed those funds to runners and clients by writing checks from that bank account. N.T. 01/27/2009 at 80-88; 01/28/2009 at 180; 02/02/2009 at 9, 11-12, 269-270278; 02/04/2009 at 121, 124-125. As detailed above, the evidence established that many of these financial transactions involved the proceeds of fraudulent insurance claims knowingly submitted by defendant. Therefore, the evidence was sufficient to permit a reasonable juror to conclude that defendant repeatedly conducted financial transactions with the proceeds of unlawful activity, that is, with money obtained by insurance fraud, and that he did so with the intent to promote the carrying on of his fraudulent personal injury practice. That evidence demonstrated that defendant was dealing in the proceeds of unlawful activity. *See* 18 Pa.C.S. § 5111(a)(1).

B. *Weight of the evidence*

Defendant contends that he is entitled to a new trial since the jury's verdict was against the weight of the evidence. This claim is without merit.

It is well established that a new trial may only be granted by the trial court where "the verdict was so contrary to the evidence as to shock one's sense of justice." *Commonwealth v. Hudson*, 2008 PA Super. 195, ¶ 13 (Pa. Super. 2008) (quoting *Commonwealth v. Rossetti*,

2004 PA Super. 465 863 A.2d 1135, 1191 (Pa. Super. 2004)). In considering a claim that the trial court erred in refusing to find that a verdict was against the weight of the evidence, "appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim." *In the Interest of R.N.*, 2008 PA Super. 117, ¶ 14 (Pa. Super. 2008) (quoting *Commonwealth v. Champney*, 574 Pa. 435, 832 A.2d 403, 408 (Pa. 2003), *cert. denied*, 542 U.S. 939 (2004)).

The evidence outlined above plainly established that defendant was guilty of all charges. Because the evidence fully supported the verdict, the Court did not abuse its discretion in denying defendant's motion for a new trial.

III. Conclusion

For all the foregoing reasons, the Court's judgment of sentence should be affirmed.

BY THE COURT:

GLENN B. BRONSON, J

Commonwealth v. H. Alan Litt Case Number: CP-51-CR-0002280-2008
Opinion

PROOF OF SERVICE

I hereby certify that I am this day serving the foregoing Court Order upon the person(s), and in the manner indicated below, which service satisfies the requirements of Pa.R.Crim.P.114:

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Dated: December 21, 2009

Grace Tirotti
Secretary to Judge Glenn B. Bronson

J. S56021/10

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

COMMONWEALTH OF PENNSYLVANIA, Appellee	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
H. ALLEN LITT, Appellant	:	No. 2499 EDA 2009

Appeal from the Judgment of Sentence entered on March 11, 2009
in the Court of Common Pleas of Philadelphia County,
Criminal Division, Nos. MC-51-0057915-2007;
CP-51-CR-0002280-2008

BEFORE: FORD ELLIOTT, P.J., MUSMANNO and COLVILLE*, JJ.

MEMORANDUM: Filed: November 17, 2010

H. Allen Litt ("Litt"), formerly a licensed attorney in Pennsylvania, appeals from the judgment of sentence imposed following his conviction of one count of dealing in proceeds of unlawful activities, five counts of attempted theft by deception, and six counts each of theft by deception and insurance fraud (collectively, "the challenged convictions").[1] We affirm.

The trial court has set forth the pertinent facts of this case in its Opinion. ***See*** Trial Court Opinion, 12/21/09, at 2-8. We adopt the court's recitation as if it were set forth in full herein. ***See id.***

Following Litt's arrest, the Commonwealth charged him with the above-mentioned counts, among several others. The matter proceeded to a jury trial in January 2009. At the close of trial, the jury found Litt guilty of

*Retired Senior Judge assigned to the Superior Court.

the challenged convictions, but acquitted him of numerous other charges. The trial court subsequently imposed an aggregate sentence of five to ten years in prison. Litt filed a post-sentence Motion challenging the weight and sufficiency of the evidence supporting the challenged convictions. The court denied this Motion. Litt then timely filed the instant appeal.

On appeal, Litt raises the following issues for our review:

> I. Was the evidence presented at trial legally insufficient to sustain a conviction for the [challenged convictions] when the Commonwealth failed to prove every element of the offenses beyond a reasonable doubt?
>
> II. Was the verdict of guilt on the [challenged convictions] against the weight of the evidence?

Brief for Appellant at 3.

Litt first argues that the Commonwealth failed to present sufficient evidence to sustain the challenged convictions. ***See id.*** at 13-15, 18-31. Litt contends that he lacked the requisite *mens rea* to be properly convicted of any of these offenses since he purportedly was unaware that the personal injury claims that he had submitted on behalf of his clients were fraudulent. ***Id.*** at 10, 12-14. According to Litt, "[e]very single fraudulent victim that came into [Litt's] office lied to [Litt] and never once divulged the fact that the accident did not occur or that the injuries were overstated." ***Id.*** at 13. Litt further alleges that he had "specifically questioned those individuals whose stories seemed inconsistent[,]" and that testimony from the "runners"

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[1] 18 Pa.C.S.A. §§ 5111(a)(1), 901(a), 3922(a)(1), 4117(a)(2).

whom Litt had employed established that "[Litt] would not take certain cases if they did not meet his standards." ***Id.*** at 12.

> The standard we apply in reviewing the sufficiency of the evidence is whether[,] 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 [that of] 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. ... 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. Schmohl, 975 A.2d 1144, 1147 (Pa. Super. 2009) (citation omitted). Moreover, "in instances where there is conflicting testimony, it is for the jury to determine the weight to be given the testimony." ***Commonwealth v. Hall***, 830 A.2d 537, 542 (Pa. 2003) (citation omitted).

Here, the trial court defined the crimes of which Litt was convicted, thoroughly addressed Litt's claims as to the challenged convictions, and concluded that the Commonwealth presented sufficient evidence to sustain these convictions beyond a reasonable doubt. ***See*** Trial Court Opinion, 12/21/09, at 9-13. After review of the record, we agree with the trial court that the evidence, when viewed in the light most favorable to the

Commonwealth as the verdict winner, amply supports the challenged convictions. Accordingly, we affirm on the basis of the trial court's cogent Opinion with regard to this claim. ***See id.***

Further, to the extent that Litt's testimony that he lacked knowledge of the falsity of the claimed personal injuries conflicted with that of the numerous witnesses presented by the Commonwealth, the jury weighed the testimony and ostensibly found the Commonwealth's witnesses to be more credible. ***See Hall***, 830 A.2d at 542 (holding that it is for the fact-finder to evaluate credibility and determine the weight to be given conflicting testimony.) We may not re-weigh the evidence or substitute our judgment for that of the fact-finder. ***Schmohl***, 975 A.2d at 1147.

Litt next asserts that the challenged convictions are against the weight of the evidence. ***See*** Brief for Appellant at 15-31. In support of this claim, Litt relies upon the same rationale advanced as to his challenge to the sufficiency of the evidence. ***See id.*** at 18-31. According to Litt, regarding his convictions for each charged offense, "the [jury's] finding of guilt clearly would shock the conscious [*sic*] of a reasonable fact finder as there was little[,] if any[,] direct correlation of the frauds to [Litt]." ***See id.*** at 19, 22, 24, 28-29, 31 (respectively).

> A motion for a new trial alleging that the verdict was against the weight of the evidence is addressed to the discretion of the trial court. An appellate court, therefore, reviews the exercise of discretion, not the underlying question whether the verdict is against the weight of the evidence. The factfinder is free to believe all, part, or none of the evidence and to

> determine the credibility of the witnesses. The trial court will award a new trial only when the jury's verdict is so contrary to the evidence as to shock one's sense of justice. In determining whether this standard has been met, appellate review is limited to whether the trial judge's discretion was properly exercised, and relief will only be granted where the facts and inferences of record disclose a palpable abuse of discretion.

Commonwealth v. Diggs, 949 A.2d 873, 879 (Pa. 2008).

Based upon our review of the record, we determine that the jury's verdict in this case was consistent with the above-cited evidence, as set forth in the trial court's Opinion. ***See*** Trial Court Opinion, 12/21/09, at 9-14. We discern no abuse of discretion by the trial court in concluding that the jury's verdict does not shock one's sense of justice. Accordingly, the court properly rejected Litt's weight of the evidence claim.

Judgment of sentence affirmed.