

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
JOSEPH BRISCOE	:	
	:	
Appellant	:	No. 3346 EDA 2024

Appeal from the Judgment of Sentence Entered November 14, 2024
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-CR-0009079-2022

BEFORE: OLSON, J., DUBOW, J., and FORD ELLIOTT, P.J.E.*

MEMORANDUM BY OLSON, J.:

FILED SEPTEMBER 17, 2026

Appellant, Joseph Briscoe, appeals from the judgment of sentence entered on November 14, 2024. We vacate Appellant's judgment of sentence and remand for a new trial.

As the trial court explained:

On November 10, 2022, at or around 9:45 a.m., Officer Robert Evans was standing at the corner of 16th and Sansom Streets when he observed Appellant walking northbound on 16th Street. Appellant was pushing a distinctive six-seat baby stroller. The stroller had the front two seats still attached, but the four rear seats were missing. Appellant was carrying what appeared to be his belongings on the stroller. Officer Evans recognized the stroller as the same one about which a friend of his had posted on Facebook[. The Facebook post was dated November 9, 2022, depicted a photograph of a stroller, and declared that the stroller had been "stolen overnight last night." Commonwealth's Exhibit 1]. Officer Evans saw the Facebook post on November 9,

* Retired Senior Judge assigned to the Superior Court.

2022, the day before the events in question. The size of the stroller, the fact that it was built to hold six seats, and the faded marks visible on the seats all contributed to Officer Evans' recognition of the stroller as the same one from the Facebook post.

Officer Evans stopped Appellant and contacted the individual who authored the Facebook post[. The complainant] was able to positively identify the stroller when she arrived on location. [The c]omplainant testified that the stroller went missing between the hours of 6:00 p.m. on November 8, 2022 and 8:00 a.m. on November 9, 2022. . . .

Appellant followed officers' instructions to remove his belongings from the stroller and, after questioning, advised the officers that the other four seats were in a dumpster at the corner of Chancellor and Camac Streets. When confronted by law enforcement, Appellant [told] the officers that he received the stroller from an unnamed friend of his who allegedly found it dumpster diving the night before.

Trial Court Opinion, 12/8/25, at 2 (citations omitted).

Following Appellant's arrest, the Commonwealth charged Appellant with theft by unlawful taking and receiving stolen property.¹ Commonwealth's Information, 1/5/23, at 1. Specifically, the Commonwealth's information declares:

The Attorney for the Commonwealth of Pennsylvania by this information charges that in the County of Philadelphia, Pennsylvania, [Appellant]:

COUNT 1: Theft By Unlaw Taking-Movable Prop – (F3)

On or about: 11/10/2022 18 § 3921 §§ A
Unlawfully took, or exercised unlawful control over, movable property of another with intent to deprive him or her thereof
Property: USC \$

¹ 18 Pa.C.S.A. §§ 3921(a) and 3925(a), respectively.

COUNT 2: Receiving Stolen Property – (F3)

On or about: 11/10/2022 18 § 3925 §§ A

Intentionally received, retained, or disposed of movable property of another knowing that it had been stolen, or believing that it had probably been stolen, without intent to restore such property to the owner

Property: USC \$

Id.

The case proceeded to a bench trial, where the trial court found Appellant guilty of receiving stolen property and, on November 14, 2024, the trial court sentenced Appellant to serve one year of probation. Appellant filed a timely notice of appeal. He raises the following claims to this Court:

[1.] Did the [trial] court err[] in convicting [Appellant] of receiving a stolen stroller where the information charged him with possessing stolen currency and the Commonwealth presented no evidence of that offense at trial?

[2.] In the alternative did the [trial] court err in convicting [Appellant] of receiving stolen property where there was insufficient evidence that he knew the stroller he possessed had been stolen?

[3.] Did the [trial] court err in refusing to permit [Appellant's] character witness to testify to his reputation for truthfulness where that reputation was directly relevant to whether he received stolen property, a *crimen falsi* offense?

Appellant's Brief at 2.

First, Appellant claims that the trial court did not have jurisdiction to try and convict him of receiving a stolen stroller, as the information specifically charged him with receiving stolen currency. ***See id.*** at 8-11.

As our Supreme Court has explained, to invoke the subject matter jurisdiction of our courts:

it is necessary that the Commonwealth confront the defendant with a formal and specific accusation of the crimes charged. This accusation enables the defendant to prepare any defenses available to him, and to protect himself against further prosecution for the same cause; it also enables the trial court to pass on the sufficiency of the facts alleged in the indictment or information to support a conviction. The right to formal notice of charges, guaranteed by the Sixth Amendment to the Federal Constitution and by Article I, Section 9 of the Pennsylvania Constitution, is so basic to the fairness of subsequent proceedings that it cannot be waived even if the defendant voluntarily submits to the jurisdiction of the court.

Commonwealth v. Jones, 929 A.2d 205, 211-212 (Pa. 2007) (quotation marks and citations omitted).

Nevertheless, “[t]he existence of a procedural mistake in and of itself . . . does not divest the trial court of subject matter jurisdiction.” ***Id.*** at 211. Instead, “[i]f there exists a variance between the allegations of an information and proof at trial, such variance is harmless error unless a defendant could be misled at trial, prejudicially surprised in efforts to prepare a defense, precluded from anticipating the prosecution’s proof, or otherwise impaired with respect to a substantial right.” ***Commonwealth v. Lohr***, 468 A.2d 1375, 1377 (Pa. 1983).

In the case at bar, there exists a technical variance between the information and the proof at trial, as the information declares that the stolen property at issue was United States currency. ***See*** Commonwealth’s

Information, 1/5/23, at 1 (declaring "Property: USC \$"). The variance is, however, harmless, as Appellant and his counsel were well aware of the fact the Commonwealth was charging him with receiving a stolen stroller – and not receiving stolen currency. To be sure, Appellant and his attorney were present for the December 27, 2022 preliminary hearing in this case and, during this preliminary hearing, the Commonwealth presented evidence demonstrating that Appellant was arrested, being detained, and being prosecuted for theft of a stroller. **See** N.T. Preliminary Hearing, 12/27/22, at 3-17. Officer Robert Evans testified during the preliminary hearing:

On [November 10, 2022, at approximately 9:45 a.m.], I was standing on the corner of 16th and Sansom when [Appellant] was walking northbound pushing a large baby stroller that had two front seats and the back of it was filled with his personal items.

As he approached, I realized that was the same description of a baby stroller that I [saw] on Facebook that went stolen.

. . .

So I went back through and pulled the post up, matched the picture on the post with the picture of the stroller [Appellant] had. It appeared to be the same.

At this time we contacted the complainant, who came to the scene and positively identified the stroller as hers.

During the course of our investigation, it was learned that the four seats that were missing were at another location.

[Another officer] went to Chancellor and Camac Street, and he did recover the four missing seats from that stroller and brought them back to the scene. At that time we transported the stroller, the complainant and [Appellant] up to police headquarters for further processing.

Id. at 4-6.

Further, the criminal complaint filed in this case specifically declared:

On [November 10, 2022] near 1600 Sansom St. in Philadelphia [Appellant] **unlawfully took a baby's stroller** valued \$3000 without the consent of the complainant/owner, K.W. and with intent to deprive [complainant] thereof.

Criminal Complaint, 11/11/22, at 2 and 3 (emphasis added).

Appellant was thus well aware of the fact that the Commonwealth was charging him with theft of a stroller, and not theft of United States currency. The variance between the allegations in the Commonwealth's information and the proof at trial is, therefore, harmless, as Appellant could not have been "misled at trial, prejudicially surprised in [his] efforts to prepare a defense, precluded from anticipating the prosecution's proof, or otherwise impaired with respect to a substantial right." ***See Lohr***, 468 A.2d at 1377. Appellant's claim to the contrary fails.

Next, Appellant claims that the evidence was insufficient to support his receiving stolen property conviction. We review Appellant's sufficiency challenge under the following standard:

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. 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. Callen, 198 A.3d 1149, 1167 (Pa. Super. 2018) (citations and quotation marks omitted).

Appellant was convicted of receiving stolen property under 18 Pa.C.S.A. § 3925(a). Section 3925(a) defines the crime of receiving stolen property in the following manner:

A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner.

18 Pa.C.S.A. § 3925(a).²

Regarding the mental state required to prove the crime of receiving stolen property, we have explained:

[In crafting Section 3925(a),] the Legislature expressly defined the required mental state as “knowing” or “believing.” Because the Legislature excluded mental states such as recklessness, negligence, or naïveté about the stolen status of the property, those mental states are insufficient. . .

² 18 Pa.C.S.A. § 3925(b) defines the word “receiving” as: “acquiring possession, control or title, or lending on the security of the property.” 18 Pa.C.S.A. § 3925(b).

Indeed, we note that when the Legislature adopted the current version of § 3925 in 1972, it changed the requisite mental state from “knowing, or having reasonable cause to know the same to have been stolen” to the current definition. 18 Pa.C.S.A. § 3925, official comment. We interpret this change as eliminating any suggestion that a person can be found guilty of receiving stolen property simply by retaining property that a reasonable person would conclude is probably stolen. Under the new formulation, the defendant must, at a minimum, harbor the personal belief that the item is probably stolen. . . .

Guilty knowledge (like all culpable mental states) may be proved by circumstantial evidence. Often, intent cannot be proven directly but must be inferred from examination of the facts and circumstances of the case. When examining the totality of the circumstances to determine if there is sufficient evidence from which a jury could infer the requisite *mens rea*, we must, as with any sufficiency analysis, examine all record evidence and all reasonable inferences therefrom. In conducting our assessment, we . . . must view the evidence in the light most favorable to the Commonwealth as the verdict winner. The trier of fact, while passing upon the credibility of witnesses and the weight of the proof, is free to believe all, part, or none of the evidence.

Commonwealth v. Newton, 994 A.2d 1127, 1131-1132 (Pa. Super. 2010) (footnotes and some quotation marks and citations omitted).

On appeal, Appellant claims that the evidence was insufficient to support his receiving stolen property conviction because there was no evidence that he was aware the stroller was stolen property. **See** Appellant’s Brief at 12. This claim fails. As the trial court ably explained:

Here, the recency of the theft, alteration to the property indicative of the theft, and false explanation for possession all support the conclusion that Appellant [knew the stroller had been stolen or believed that it had probably been stolen]. First, the theft occurred just the day before Appellant was

arrested on November 10, 2022, as the stroller was stolen between the hours of 6:00 p.m. November 8, 2022, and 8:00 a.m. November 9, 2022. [**See Commonwealth v. Williams**, 362 A.2d 244, 248-249 (Pa. 1976) (“a permissible inference of guilty knowledge may be drawn from the unexplained possession of recently stolen goods without infringing on an accused’s right of due process or his right against self-incrimination”) (footnotes omitted)]. Second, the alterations made to the stroller, specifically that Appellant removed four of the six seats and disposed of them, are indicative of theft. A fact-finder could reasonably conclude these modifications were made with the intention of making the stroller more difficult to identify and/or adapted to carry [Appellant’s] belongings. [**See Commonwealth v. Robinson**, 128 A.3d 261, 268 (Pa. Super. 2015) (*en banc*) (“[c]ircumstantial evidence of guilty knowledge may include, *inter alia*, . . . alterations to the property indicative of theft”)]. Finally, Appellant’s story explaining possession was determined to be incredible. [**See Robinson**, 128 A.3d at 269 (“[c]ircumstantial evidence of guilty knowledge may include, *inter alia*, . . . a false explanation for the possession”)].

Footage from [the officers’] body-worn camera at the time of arrest shows that Appellant told law enforcement that it was an unidentified friend who found the stroller while dumpster diving and simply gave the stroller to him. The story, while not completely impossible, [was determined by the] trial court [to not be] credible due to the totality of the circumstances. First, it seemed unlikely that someone would throw away an expensive and fully functional six-seat stroller still in reasonably good condition. This conclusion is supported by the Facebook-posted efforts to locate, the immediate identification made by the complaining witness, and the happenstance recognition by the police officer. [Further,] Appellant’s explanation regarding the circumstances of his acquisition was extremely convenient and vague.

Trial Court Opinion, 12/8/25, at 7-8 (citations omitted).

We agree with the above analysis and conclude that, when viewed in the light most favorable to the Commonwealth, the evidence is sufficient to

support Appellant's receiving stolen property conviction. Appellant's claim thus fails.

Finally, Appellant claims that he is entitled to a new trial, as the trial court erroneously refused to allow Appellant's character witness to testify at trial. Appellant's Brief at 21. The Commonwealth agrees that Appellant is entitled to relief on this claim.³ **See** Commonwealth's Brief at 20-24. We agree with Appellant and the Commonwealth and conclude that the trial court erred when it refused to allow the testimony of Appellant's character witness at trial.

Pennsylvania Rule of Evidence 404(a)(1) provides that, generally, "[e]vidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait." Pa.R.E. 404(a)(1). Nevertheless, in a criminal case, "a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it." Pa.R.E. 404(a)(2)(A). "When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation." Pa.R.E. 405(a). We have explained:

It has long been the law in Pennsylvania that an individual on trial for an offense against the criminal law is permitted to introduce evidence of his good reputation in any respect which has "proper relation to the subject matter" of the charge at issue. Such evidence has been allowed on a theory

³ We commend the Commonwealth for its candor in this case.

that general reputation reflects the character of the individual and a defendant in a criminal case is permitted to prove his good character in order to negate his participation in the offense charged. The rationale for the admission of character testimony is that an accused may not be able to produce any other evidence to exculpate himself from the charge he faces except his own oath and evidence of good character.

It is clearly established that evidence of good character is to be regarded as evidence of substantive fact just as any other evidence tending to establish innocence and may be considered by the jury in connection with all of the evidence presented in the case on the general issue of guilt or innocence. Evidence of good character is substantive and positive evidence, not a mere make weight to be considered in a doubtful case, and is an independent factor which may of itself engender reasonable doubt or produce a conclusion of innocence. Evidence of good character offered by a defendant in a criminal prosecution must be limited to his general reputation for the particular trait or traits of character involved in the commission of the crime charged. The cross-examination of such witnesses by the Commonwealth must be limited to the same traits. Such evidence must relate to a period at or about the time the offense was committed, and must be established by testimony of witnesses as to the community opinion of the individual in question, not through specific acts or mere rumor.

Commonwealth v. Goodmond, 190 A.3d 1197, 1201-1202 (Pa. Super. 2018) (emphasis, citations, corrections, and some quotation marks omitted).

At trial, Appellant's counsel proffered the testimony of Thomas Sexton. Appellant's counsel identified Mr. Sexton as a character witness and informed the trial court that Mr. Sexton would testify as to Appellant's reputation for being "law abiding" and Appellant's reputation for truthfulness. **See** N.T. Trial, 8/7/24, at 44-45. The trial court permitted Mr. Sexton to testify as to Appellant's reputation for being law abiding, but declared that it categorically would not allow Mr. Sexton to testify as to Appellant's reputation for

truthfulness. **See id.** Respectfully, we conclude the trial court erred when it refused to allow Mr. Sexton to testify as to Appellant's reputation for truthfulness.

As our Supreme Court has explained, "the accused may introduce evidence of his truthful character if the trait of truthfulness is relevant to the crime with which he has been charged." **Commonwealth v. Fulton**, 830 A.2d 567, 572 (Pa. 2003) (plurality). Here, Appellant was charged with and convicted of receiving stolen property. As we have held, "[t]heft by receiving is a *crimen falsi* [offense] which reflects upon the veracity of [the individual]." **Commonwealth v. Kaster**, 446 A.2d 286, 289 (Pa. Super. 1982); **see also Commonwealth v. Hoover**, 107 A.3d 723 (Pa. 2014) (holding: receiving stolen property is a *crimen falsi* conviction); **Commonwealth v. Laird**, 988 A.2d 618, 635 (Pa. 2010) (declaring that receiving stolen property is a *crimen falsi* offense); **Commonwealth v. LaMassa**, 532 A.2d 450, 452 (Pa. Super. 1987) ("[i]n Pennsylvania, a witness may be impeached by showing a prior conviction if the crime involved dishonesty or false statement. Burglary and theft are offenses which are *crimen falsi*"). "*Crimen falsi* crimes" are those "involving dishonesty and false statement." **Commonwealth v. Kearney**, 341 A.3d 774, 784 (Pa. Super. 2025).

Since Appellant was charged with a *crimen falsi* crime, evidence of his truthful character was highly relevant to his defense, as this character trait was pertinent to the crime charged and tended to show that, on the date in question, Appellant acted truthfully – and not dishonestly. **See**

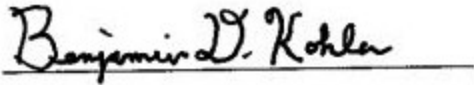
Commonwealth v. Pressel, 168 A.2d 779, 780 (Pa. Super. 1961) (“truth and veracity are traits which accompany an honest man and not a thief”); **see also Commonwealth v. Alceus**, 315 A.3d 853, 865 n.5 (Pa. Super. 2024) (declaring that a “theft conviction is pertinent to the trait of truthfulness”); **Commonwealth v. Agosto-Torres**, 303 A.3d 792 (Pa. Super. 2023) (non-precedential decision) (“evidence of a defendant’s truthful character is admissible only if he is charged with a *crimen falsi* or his character for truthfulness has been impugned”); **c.f. Michelson v. United States**, 335 U.S. 469, 483 (1948) (declaring that the traits of “honesty and truthfulness” seem to be “incompatible with offering a bribe to a revenue agent [and] receiving stolen goods”). Therefore, we conclude the trial court erred when it excluded evidence of this pertinent character trait.

Moreover, the trial court’s error in this case was not harmless. **See Commonwealth v. Story**, 383 A.2d 155, 162 (Pa. 1978) (“an error can be harmless only if the appellate court is convinced beyond a reasonable doubt that the error is harmless”). As noted above, “[e]vidence of good character is substantive and positive evidence, not a mere make weight to be considered in a doubtful case, and is an independent factor which may of itself engender reasonable doubt or produce a conclusion of innocence.” **Goodmond**, 190 A.3d at 1201-1202. Here, the excluded evidence of Appellant’s truthful character is highly relevant to a central question of this case: whether Appellant acted in conformity with his alleged truthful character and did not commit the crime or whether Appellant committed the crime and acted

dishonestly. Thus, we conclude that the trial court's error was not harmless and that we must vacate Appellant's judgment of sentence and remand for a new trial.

Judgment of sentence vacated. Case remanded. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 9/17/2026