

LARCENY BY FALSE PRETENSES

G.L. c. 266, § 30

The defendant is charged with larceny by false pretenses.

Obtaining property by false pretenses is a form of larceny which consists of knowingly making false representations of fact, with the intent that another person will rely on those false representations, and by means of which the personal property of another is obtained.

In order to prove the defendant guilty of this offense, the Commonwealth must prove the following five things beyond a reasonable doubt.

***First:* That the defendant made a false statement of fact;**

***Second:* That the defendant knew or believed that the statement was false when he (she) made it;**

***Third:* That the defendant made the statement with the intent that the person to whom it was made should rely on it as true;**

***Fourth:* That such person did in fact rely on the defendant's statement as true; and**

***Fifth:* That such person parted with personal property as a result.**

See also Instructions 3.140 (Knowledge) and 3.120 (Intent). For the definition of “property,” see supplemental instruction 2 to Instruction 8.520 (Larceny by Stealing). If the property may be worth more than \$1,200, see supplemental instruction 5 to Instruction 8.520. If the crime is charged as a single scheme, see supplemental instruction 6 to Instruction 8.520.

G.L. c. 277, § 39 (false pretenses means “[f]alse representations made by word or act of such a character, or made under such circumstances and in such a way, with the intention of influencing the action of another, as to be punishable”). *Commonwealth v. Schackenberg*, 356 Mass. 65, 73, 248 N.E.2d 273, 278 (1969) (definition of false pretenses); *Commonwealth v. Leonard*, 352 Mass. 636, 644-645, 227 N.E.2d 721, 727-728 (1967) (same); *Commonwealth v. Kenneally*, 10 Mass. App. Ct. 162, 164, 406 N.E.2d 714, 718 (1980), *aff’d*, 383 Mass. 269, 418 N.E.2d 1224, cert. denied, 454 U.S. 849 (1981) (same). See *Commonwealth v. Crocker*, 384 Mass. 353, 359-363, 424 N.E.2d 524, 527- 530 (1981) (uttering is not a lesser included offense in larceny by false pretenses); *Commonwealth v. Hamblen*, 352 Mass. 438, 443, 225 N.E.2d 911, 914 (1967) (intent to defraud a particular individual not required); *Commonwealth v. Lewis*, 48 Mass. App. Ct. 343, 350, 720 N.E.2d 818, 825 (1999) (repeating elements); *Commonwealth v. Camelio*, 1 Mass. App. Ct. 296, 299, 295 N.E.2d 902, 905 (1973) (misrepresentation can be communicated through agent); *Commonwealth v. Louis Constr. Co.*, 343 Mass. 600, 605, 180 N.E.2d 83, 86-87 (1962) (absurd, irrational or incredible misrepresentation may not suffice; submission of invoice is implied representation that charges are correct; scienter and fraudulent intent distinguish offense from civil deceit action); *Commonwealth v. Anthony*, 306 Mass. 470, 474-475, 28 N.E.2d 542, 544 (1940) (opinions and beliefs are not false representations unless speaker creates impression that he is asserting knowledge of fact rather than opinion or judgment); *Commonwealth v. Quinn*, 222 Mass. 504, 511-514, 111 N.E. 405, 407 (1916) (same); *Commonwealth v. Morrison*, 252 Mass. 116, 122, 147 N.E. 588, 590 (1925) (misrepresentation can be made by expressive acts as well as words; person entering sales contract impliedly represents that he intends to make a genuine contract); *Commonwealth v. Hildreth*, 30 Mass. App. Ct. 963, 965, 572 N.E.2d 18, 20-21 (1991) (intent to permanently deprive of property not an element of offense; intent to repay not a defense); *Commonwealth v. Stovall*, 22 Mass. App. Ct. 737, 741-745, 498 N.E.2d 126, 129-131 (1986) (charge can be based on obtaining of loan rather than transfer of ownership; false statement must be material, but need not be sole, cause of victim’s parting with property; intent to permanently deprive of property not an element of offense; intent to restore property not a defense); *Commonwealth v. True*, 16 Mass. App. Ct. 709, 711, 455 N.E.2d 453, 454 (1983) (misrepresentation as to present intent to perform a promise will support a conviction, but deceptive intent cannot be inferred solely from nonperformance); *Commonwealth v. Edgerly*, 6 Mass. App. Ct. 241, 261-264, 375 N.E.2d 1, 14-16 (1978) (deceptive intent can be inferred from evidence that nonperformance was intended, e.g. that defendant knew that performance was impossible); *Kenneally*, 10 Mass. App. Ct. at 176-177, 406 N.E.2d at 724-725 (deceptive intent must exist at time of statement); *Commonwealth v. Wright*, 5 Mass. App. Ct. 860, 861, 365 N.E.2d 836, 837 (1977) (same; entering contract with intent not to fulfill it constitutes false representation).

NOTES:

1. **Merger of offenses of stealing, false pretenses, and embezzlement.** See note to Instruction 8.520 (Larceny by Stealing).
2. **Obtaining signature on written instrument by false pretenses.** The separate offense of obtaining a signature on a written instrument by false pretenses (G.L. c. 266, § 31) has four elements: “(1) obtaining the signature of a person to a written instrument (2) the false making whereof would be a forgery (3) by a false pretense (4) with intent to defraud.” *Commonwealth v. Levin*, 11 Mass. App. Ct. 482, 495, 417 N.E.2d 440, 447 (1981).

3. **Venue.** Larceny by false pretenses may be prosecuted wherever “the false pretence was made, written or used, or in or through which any of the property obtained was carried, sent, transported or received by the defendant.” G.L. c. 277, § 59. There is no requirement that it be prosecuted where the false representation was relied on. *Commonwealth v. Abbott Eng’g, Inc.*, 351 Mass. 568, 579, 222 N.E.2d 862, 870 (1967). Where the defendant made phone calls from Suffolk County to the homes of Norfolk County residents, who then delivered money to the defendant in Suffolk County, the offense could properly be prosecuted in Norfolk County. *Commonwealth v. Price*, 72 Mass. App. Ct. 280, 891 N.E.2d 242 (2008).