

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CRIMINAL DIVISION</b>
<b>v.</b>	:	<b>CR-855-2024</b>
	:	
<b>DOMINIQUE JONES,</b>	:	<b>Petition for Writ of Habeas</b>
<b>Defendant</b>	:	<b>Corpus</b>

**OPINION**

This matter was before the Court on November 25, 2024, on Defendant’s Petition for Writ of Habeas Corpus filed on September 16, 2024, by and through her attorney, Alyssa Fenoy, Esquire. At the hearing on the Motion, Attorney Eric Birth, Esquire, appeared on behalf of the Commonwealth and Attorney Fenoy appeared, Esquire, appeared on behalf of the Defendant.

In her Petition, Defendant requests the dismissal of all counts asserting that the Commonwealth failed to meets its burden of establishing a *prima facie* case at the preliminary hearing.

The Defendant in this matter is charged with one count each of: (1) Access Device Issued to Another Who Did Not Authorize Use<sup>1</sup>, Felony of the third degree; (2) Financial Exploitation of Older Adult or Care Dependent Person<sup>2</sup>, a Misdemeanor of the first degree; (3) Theft by Unlawful Taking—Movable Property<sup>3</sup>, a Misdemeanor of the Second Degree; and (4) Receiving Stolen Property<sup>4</sup>, a Misdemeanor of the second degree.

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<sup>1</sup> 18 Pa.C.S.A. §4106(a)(1)(ii).

<sup>2</sup> 18 Pa.C.S.A. 3922.1.

<sup>3</sup> 18 Pa.C.S.A. §3921(a).

<sup>4</sup> 18 Pa.C.S.A. §3925(a).

At the hearing, the Commonwealth submitted the transcript for the preliminary hearing as Commonwealth Exhibit 1, and the Commonwealth presented Trooper Edward Gensel to provide testimony.

### ***Background***

The preliminary hearing in this matter occurred on June 14, 2024, before Magisterial District Judge Kirsten Gardner. At the preliminary hearing, the Commonwealth presented Jesus Calderon and Inez Mearhoff-Calderon. The Defendant in this matter is charged with the aforementioned offenses for allegations arising out of her employment as a caretaker hired to assist Inez Mearhoff-Calderon. More specifically, the alleged victims testified at the preliminary hearing that at some point during the Defendant's time with the alleged victims, Ms. Mearhoff-Calderon discovered cash missing from her purse, and Mr. Calderon received a notification from his bank that a withdrawal of funds from his bank account in the amount of \$792.44 was attempted.

At the preliminary hearing, Mr. Calderon testified that his wife, Ms. Mearhoff-Calderon, has declined health and she is a care-dependent individual due to her significant health concerns. (Preliminary Hearing Transcript, 06/14/24, 3:6-22). Mr. Calderon further stated that his wife receives in-home care at lower level through Complete Home Healthcare. (Id, 06/14/24, 4:20-25). The primary home-health aide, Cassandra Applegate, took time off for bereavement. (Id, 6/14/24, 5:6-18). The Calderons contacted the supervisor at the agency where Cassandra is employed, and requested a new caregiver to provide care for the time that Cassandra would be away from work. (Id, 6/14/24, 5:22-24). In or around April of 2024, the agency assigned Dominique Jones, the Defendant, to tend to Ms. Mearhoff-Calderon. (Id, 6/14/24, 5:24).

Some time after the Defendant's employment commenced, Mr. Calderon testified that he was reviewing the online transaction history for the couple's joint-account on May 20, 2025, and noticed that a pending transaction for "750.00 dollars."<sup>5</sup> (Id, 6/14/24, 7:24-25; 8:1). Upon discovering the pending transaction, Mr. Calderon asked his wife if she withdrew the amount or attempted to give anyone that amount of money, both of which she declined. (Id, 6/14/24, 8:2-4). Then, Mr. Calderon contacted his bank, Woodlands Bank, to dispute the pending amount, request further information, and ask that the charge be blocked. (Id, 6/14/24, 19:16-21). According to Mr. Calderon, after the bank's investigation, the representative reported that his account was accessed directly, not with a debit card. (Id, 6/14/24, 20:15). Through the course of the bank's investigation, Mr. Calderon testified that the representative asked him if he knew a "Dominque Jones." (Id, 6/14/24, 20:20-21). Mr. Calderon further testified that neither he nor his wife attempted the transaction or wrote a check to the Defendant or authorized the Defendant to access their account to withdraw any amount of money. (Id, 6/14/24, 21:2-9).

On cross examination, Mr. Calderon testified that the account is joint between he and his wife. (Id, 18:1-2). Mr. Calderon further testified that there were several occasions when he left the checkbook at home, trusting the caregiver, because his wife would need the checkbook to write checks for services. (Id, 18:6-9). Mr. Calderon stated that the checkbook would be left in the kitchen on a counter where it could be easily accessed and, located where the Defendant prepared meals for Ms. Mearhoff-Calderon. (Id, 18:11-14). Mr. Calderon also stated that the routing number was observable in the checkbook. (Id, 18:15-19). Mr. Calderon also stated that Ms. Mearhoff-Calderon keeps her debit card in her purse which also contains sensitive account information. (Id, 18:15-19).

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<sup>5</sup> The actual amount reported in the Criminal Complaint, and corroborated by Trooper Gensel's testimony is \$792.44.

Mr. Calderon further explained that he gives his wife \$40.00 in cash to spend each week. (Id, 6/14/24, 9:23-25; 10:1-6). Ms. Mearhoff-Calderon testified that she keeps this cash, and any extra leftover from the week before, rolled up in a rubber band in her purse. (Id, 6/14/24, 24:6-8). Ms. Mearhoff-Calderon testified that after Mr. Calderon noticed the pending transaction, she inventoried the cash that she keeps in her purse. (Id, 6/14/24, 25:16-21). At that time, Ms. Mearhoff-Calderon stated that the cash she keeps in her purse was missing and she was left with one dollar. (Id, 6/14/24, 25:21-22). Mr. Calderon testified that his wife typically has around \$140.00 to \$150.00 in cash in her purse, (Id, 11:10-11), and as far as he was aware, neither he nor his wife spent the cash up to noticing it missing. (Id, 11:25; 12:2). Moreover, Mr. Calderon testified that no caregiver or other individual, besides his wife, was authorized to spend the cash. (Id, 12:3-5).

Ms. Mearhoff-Calderon explained that, given her physical condition, she sits in a reclining chair that is next to a side table and a lamp. (Id, 23:22-25). She stated that she receives her meals while in her chair. (Id, 24:1-2). She also stated that she keeps her purse between the chair and the table. (Id, 24:2-3).

Ms. Mearhoff-Calderon also testified that, in addition to an in-home caregiver, she will sometimes have nurses and therapists that visit the home to conduct physical examinations and physical therapy. (Id, 26:15-18). However, she stated that the additional home-health aides are not left alone with her purse in this room because when they are in the house they remain with her. (Id, 26:24-25). Ms. Mearhoff-Calderon further testified that on at least one occasion, the Defendant went to a doctor's appointment with the Calderons. Ms. Mearhoff-Calderon stated that she gave her purse to Defendant to hold during the car ride and appointment. (Id, 28:10-12). Additionally, Mr. Calderon testified earlier in the hearing that the Defendant is the caregiver within in the home who would have had more

opportunities to be alone with Ms. Mearhoff-Calderon's purse within the home. (Id, 13:16-18).

At the hearing on the Petition, the Commonwealth presented Trooper Edward Gensel to provide testimony regarding his investigation into this matter. Trooper Gensel testified that on or around May 23, 2024, he met with Jesus Calderon and Inez Mearhoff-Calderon after an unauthorized individual gained access to their bank account and missing cash was reported. Mr. Calderon provided Trooper Gensel with the bank statement indicating the requested withdrawal amount and the name of the individual requesting the amount. Trooper Gensel testified that "Dominique Jones" is the name indicated on the report, and he then conducted a search of the name and provided a photo of the individual. The Calderons then identified the individual in the photograph as Ms. Mearhoff-Calderon's caregiver, Dominique Jones.

The Defendant asserts that the testimony at the preliminary hearing fails to establish that the Commonwealth provided sufficient evidence to establish a *prima facie* case. Defendant further argued that the added testimony from Trooper Gensel in combination with the Calderon's testimony does not provide sufficient evidence that the reported missing cash was stolen or lost. Regarding the bank statement, the Defendant asserted that the evidence is unfounded because no such statement was admitted to the record to substantiate the charges against the Defendant<sup>6</sup>. In regard to the attempted withdrawal from the couple's joint account, the Defendant further argued that the evidence is not sufficient to establish how the request to withdraw money was made. Thus, the Defendant requests that all counts be dismissed.

The Commonwealth argued that the testimony and evidence, when viewed in a light most favorable to the Commonwealth, provides sufficient support to establish a *prima facie*

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<sup>6</sup> The Commonwealth presented the transaction sheet to Mr. Calderon at the preliminary hearing as Commonwealth Exhibit 1. (Preliminary Hearing Transcript, 06/14/24, 8:13-25).

case against the Defendant for each element of each offense alleged in the Information. The Commonwealth further argued that the evidence presented meets the burden imposed, and the remaining questions are factual, and thus, for a jury to determine.

### ***Analysis***

The Commonwealth meets its burden that a *prima facie* case exists when the evidence produced meets every material element of the charged offenses and the defendant's complicity therein. *Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 (Pa. Super. 2016). This burden may be met by utilizing the evidence available at a preliminary hearing and also may produce additional proof. *Id.* It is well settled that the preliminary hearing is not a trial and the Commonwealth need not establish Defendant's guilt beyond a reasonable doubt at that stage. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). Rather, the Commonwealth bears the burden of establishing a *prima facie* case which requires the Commonwealth to present evidence of each element of every crime charged. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001); *see also* Pa.R.Crim.P. 141(d). In its consideration, a court does not factor in the weight and credibility of the evidence. *Id.*; *see also Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003) (holding that "[t]he evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to go to the jury"). "[T]he weight and credibility of the evidence are not factors at this stage, and the Commonwealth need only demonstrate sufficient probable cause to believe the person charged has committed the offense." *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001). "Inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case." *Commonwealth v. Owen*, 580 A.2d 412, 414 (Pa. Super. 1990).

*I. Count 1: Access Device Issued to Another Who Did Not Authorize Use, 18 Pa.C.S.A. §4106(a)(1)(ii)*

Under 18 Pa.C.S.A. 4106(a)(1)(ii), a person commits an offense if she “uses an access device to obtain or in an attempt to obtain property or services with knowledge that...the access device was issued to another person who has not authorized its use...” The statute further defines “access device” as “[a]ny card, including but not limited to, a credit card, debit card and automated teller machine card, plate, code, account number, personal identification number or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services or anything else of value or that can be used to transfer funds.” 18 Pa.C.S.A. 4106(d)—“access device.”

Defendant argued that the Criminal Information indicates that this offense is related to the unauthorized use of a credit card by the Defendant. The Defendant asserts that Mr. Calderon’s testimony at the preliminary hearing revealed that he does not have knowledge as to how the attempted withdrawal from the bank account occurred or by what means, card or check. Further, Defendant asserts that the only evidence provided linking the Defendant to the attempted withdrawal is Mr. Calderon’s testimony that the bank asked if he knew Dominique Jones. The Defendant argues that Ms. Mearhoff-Calderon’s testimony did not provide any information regarding the attempted withdrawal.

The testimony provided at the preliminary hearing exhibited that the Defendant is the most likely individual apart from the Calderons to have access to the information required to access the bank account to attempt a withdrawal. The evidence further indicated that someone did attempt to withdraw money from the couples’ account, and the bank specifically named the Defendant when investigating the unauthorized transaction. Accordingly, the Court finds that the Commonwealth has provided sufficient evidence to establish each

elements for Count 1. Thus, Defendant's request to dismiss Count 1 from the Information is **DENIED**.

*II. Count 2: Financial Exploitation of Older Adult or Care Dependent Persons,  
18 Pa. C.S.A. §3922.1*

Under 18 Pa.C.S.A. §3922.1, a person commits an offense when that "person [is] in a position of trust who commits the offense of financial exploitation of an older adult or care-dependent person." To establish a *prima facie* case, the Commonwealth must show that the Defendant in this matter was in a position of trust and financially exploited Ms. Mearhoff-Calderon, as she was the older adult and care-dependent individual.

Defendant asserts that the testimony provided at the preliminary hearing was too vague to establish that the Defendant was linked to the financial issues the Calderons experienced with their bank account and the missing cash. Additionally, the Defendant argued that Trooper Gensel's testimony did not establish that the missing cash was stolen and that the Defendant is the one who stole the cash. Regarding the attempted withdrawal, the Defendant argued that there the bank statement or report indicating an unauthorized withdrawal by the Defendant has not been presented to the Court.

Here, the testimony indicates that both Mr. Calderon and his wife are older adults, additionally, Ms. Mearhoff-Calderon is a care-dependent individual. Additionally, the evidence shows that someone attempted to withdraw money from the joint account, and the bank asked if the couple knew the Defendant by her name. At this stage, the evidence presented by the Commonwealth is sufficient to establish each element of Count 2, and thus, the Defendant's request to dismiss this charge is **DENIED**.



*III. Count 3: Theft by Unlawful Taking—Movable Property, 18 Pa.C.S.A.*

*§3921(a)*

Under 18 Pa.C.S.A. §3921, “[a] person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof.”

The Defendant argued that no testimony established that the missing cash was a result of the commission of a crime or that the Defendant is the individual responsible for taking the missing cash or exercising control of the missing cash.

Despite the Defendant’s argument that the evidence presented supporting this charge is too vague and ambiguous for the Commonwealth to have established its burden, the Court finds that the couple’s recollection of the missing cash is that it was neither spent nor lost. Moreover, the testimony indicates that the Defendant is the only other individual with access to the purse during the moments that it was left unattended or in the care of the Defendant. Accordingly, the Court finds that the Commonwealth presented sufficient evidence to establish the elements necessary to charge the Defendant with Count 3, and thus, the Defendant’s request to dismiss the charge is **DENIED**.

*IV. Count 4: Receiving Stolen Property, 18 Pa.C.S.A. §3925(a)*

Under 18 Pa.C.S.A. §3925(a), “[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.”

Here, Defendant argues that this charge is related to the missing cash, and that the Commonwealth did not present any testimony or evidence that established a *prima facie* showing that the Defendant ever received, retained, or disposed of the alleged missing cash.

Additionally, the Defendant argued that no testimony establishes that the missing cash was a result of the commission of a crime.

The Court finds that the Commonwealth did present sufficient evidence to establish the elements required to charge an individual with the offense charged in Count 4.

Accordingly, the Defendant's request to dismiss Count 4 is **DENIED**.

Accordingly, the Court enters the following Order:

**ORDER**

**AND NOW, this \_\_\_\_ day of May, 2025**, based on the arguments presented, the testimony and evidence provided, and for the aforementioned reasons, the Defendant's Petition for Writ of Habeas Corpus regarding:

- Count 1: Access Device Issued to Another Who Did Not Authorize Use, 18 Pa.C.S.A. §4106(a)(1)(ii), is **DENIED**;
- Count 2: Financial Exploitation of Older Adult or Care Dependent Persons, 18 Pa. C.S.A. §3922.1, is **DENIED**;
- Count 3: Theft by Unlawful Taking—Movable Property, 18 Pa.C.S.A. §3921(a), is **DENIED**;
- Count 4: Receiving Stolen Property, 18 Pa.C.S.A. §3925(a), is **DENIED**.

By the Court,

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Ryan M. Tira, Judge

RMT/asw

CC: DA (EB)  
PD (AF)  
Gary Weber, Esquire-Lycoming Reporter  
CA