G. Weber

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	**CRIMINAL DIVISION**
	:	**NO. CR-1314-2024**
v.	:	
	:	**Post-Sentence Motion**
REBECCA L. COLARUSSO,	:	
Defendant	:	

OPINION

This matter was before the Court on September 8, 2026, for a hearing on the Post-Sentence Motion filed by Defendant on August 7, 2026, by and through counsel, Alyssa Fenoy, Esquire.

Defendant was initially charged with one count of Identity Theft[1], felony of the third degree; one count of Identity Theft[2], misdemeanor of the first degree; one count of Access Device Fraud[3], felony of the third degree; one count of Forgery—Writing[4], felony of the third degree; one count of Theft by Unlawful Taking[5], felony of the third degree; and one count of Theft by Deception[6], a felony of the third degree. On May 5, 2026, a jury was selected, and trial was scheduled to commence on May 14, 2026. By way of agreement, an Amended Information was filed on May 11, 2026, to add an additional count of Forgery—Writing[7], felony of the third degree. At the trial on May 14, 2026, the Commonwealth presented two witnesses: Officer Michael Engle from Lycoming Regional Police Department and Ludwig Schappell. Defendant was the sole defense witness. Following the presentation of testimony and evidence, but before the jury charge, the Commonwealth withdrew Count 5—Theft by Deception, felony of the third degree. The Court entered an Order amending the

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[1] 18 Pa.C.S. §4120(a).
[2] 18 Pa.C.S. §4120(a).
[3] 18 Pa.C.S. §4106(a)(1)(iv).
[4] 18 Pa.C.S. §4101(a)(2).
[5] 18 Pa.C.S. §3921(a).
[6] 18 Pa.C.S. §3922(a)(1).
[7] 18 Pa.C.S. §4101(a)(2).

charges and renumbering initial counts 6 and 7 as counts 5 and 6. After deliberation, the Jury returned the following verdict:

Count 1, Identity Theft:	Guilty
Count 2, Access Device Fraud:	Guilty
Count 3, Forgery:	Not Guilty
Count 4, Theft by Unlawful Taking:	Guilty
Count 5, Identity Theft:	Not Guilty
Count 6, Forgery:	Not Guilty

Defendant was sentenced on July 26, 2026, to 2 to 24 months less one day of incarceration in the Lycoming County Prison on Count 4, seven (7) years of county probation on Count 1, concurrent with Count 4, and seven (7) years of county probation on Count 2, concurrent with Count 4 and Count 1. In her Post-Sentence Motion, Defendant submits a Motion for New Trial averring that the conviction under Counts 1, 2, and 4 was against the weight and sufficiency of the evidence. Defendant further submits a Motion in Arrest of Judgment asserting that the evidence presented at trial was insufficient to convict her of the offenses. Additionally, Defendant submitted a request to supplement her Post-Sentence Motion upon receipt of the transcripts. At the hearing on the Motion, Defendant was granted until October 8, 2026, to supplement her motion. On October 8, 2026, Attorney Fenoy submitted that no supplemental motion will be filed in support of her Motion in Arrest of Judgment. Accordingly, the Post-Sentence Motion is ripe for decision.

I. Motion for New Trial

A. Defendant's Assertion that the Convictions on Counts 1, 2, and 4 are against the weight of the evidence presented at trial lacks merit

Defendant avers that the convictions at Counts 1, 2, and 4 are against the weight of the evidence presented at trial. Specifically, Defendant argues that the Commonwealth's witnesses testified that both her and Mr. Schappell' s information was included in the authorization for the Capital One card; that the Capital One card was active for a period of a

few months during the life of an approximately eight-year long relationship between Defendant and Mr. Schappell; Mr. Schappell did not open the Capital One account on his own; that the Capital One account was maxed out and accrued late fees, but a payment was made toward the balance; that charges on the card included things such as payments made to Mr. Chappell's son who was incarcerated at the time and to AAA for the Defendant's car; and that both Mr. Schappell and the Defendant lived together in the same residence. Defendant further avers, based on her testimony, that she did not open the Capital One card; that Mr. Schappell often used her contact information for services; that Mr. Schappell would give her access to his funds; and that she did not access any of his personal information or finances without his permission.

It is well settled that:

> [a]n allegation that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. *Commonwealth v. Brown*, 538 Pa. 410, 648 A.2d 1177 (1994). A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. *Thompson* [*v. City of Philadelphia*, 507 Pa. 592, 493 A.2d 669, 673 (1985)], *supra*. A trial judge must do more than reassess the credibility of the witnesses and allege that he would not have assented to the verdict if he were a juror. Trial judges, in reviewing a claim that the verdict is against the weight of the evidence do not sit as the thirteenth juror. Rather, the role of the trial judge is to determine that "notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice." *Id.*

The Pennsylvania Superior Court further stated in *Commonwealth v. West*, 937 A.2d 516, 521 (Pa. Super. 2007):

> The weight given to trial evidence is a choice for the factfinder. If the factfinder returns a guilty verdict, and if a criminal defendant then files a motion for a new trial on the basis that the verdict was against the weight of the evidence, a trial court is not to grant relief unless the verdict is so contrary to the evidence as to shock one's sense of justice.

> When a trial court denies a weight-of-the-evidence motion, and when an appellant then appeals that ruling to this Court, our review is limited. It is important to understand we do not reach the underlying question of whether the verdict was, in fact, against the weight of the evidence. We do not decide how we would have ruled on the motion and then simply replace our own judgment for that of the trial court. Instead, this Court determines whether the trial court abused its discretion in reaching whatever decision it made on the motion, whether or not that decision is the one we might have made in the first instance.
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> Moreover, when evaluating a trial court's ruling, we keep in mind that an abuse of discretion is not merely an error in judgment. Rather, it involves bias, partiality, prejudice, ill-will, manifest unreasonableness or a misapplication of law. By contrast, a proper exercise of discretion conforms to the law and is based on the facts of record.

In the instant matter, the Commonwealth presented the testimony of the arresting officer as well as the victim. The Commonwealth also introduced various exhibits including, but not limited to, the origination documentation for the Capital One credit card as well as various Capital One monthly expense statements. The victim and the Defendant were never married but did maintain a long-term relationship. The Defendant resided with the victim in the victim's home for a long period of time until the relationship ended and the Defendant relocated. The victim testified that he personally did not open the Capital One credit card, he did not authorize Defendant to utilize his personal information to open the card in his name and he did not authorize Defendant to use the credit card, including the transactions reflected on the monthly statements. The victim further testified that he had no knowledge of the Capital One credit card until after the Defendant moved out of the home and the victim received a collection notice in the mail regarding the Capital One card. The victim stated that he never previously observed a Capital One credit card statement. The total loss to the victim as a result of Defendant's unauthorized use of the Capital One credit card equaled $10,187.48.

The Defendant testified that during the time she resided with the victim, it was a shared household and although the victim always worked, the Defendant assumed many of the responsibilities within the shared residence. The Defendant further testified that the victim previously permitted Defendant to use the victim's bank card and to write checks using the victim's checkbook to satisfy various expenses. Defendant also testified that the victim did provide her permission to sign checks on his behalf. Finally, the Defendant denied opening the Capital One credit card.

The jury was in the best position to receive the testimony of all witnesses, judge the credibility of each witness and to assign the appropriate weight to the testimony and evidence. In light of the testimony and evidence presented at trial, the verdict is not so contrary to the evidence as to shock one's sense of justice.

B. Defendant's assertion the evidence was insufficient to support Defendant's convictions for Counts 1, 2, and 4 lacks merit

Defendant avers that the Commonwealth submitted insufficient evidence to meet its burden beyond a reasonable doubt that Defendant committed the offenses charged against her at Counts 1, 2, and 4 such that the convictions should be sustained. More specifically, Defendant submits that the Commonwealth failed to present (1) any testimony showing that Defendant was the one who submitted the application for the Capital One card; (2) any testimony showing who submitted a payment toward the Capital One card's balance; (3) the testimony establishing Defendant had utilized the card was not sufficient to prove the Commonwealth's case beyond a reasonable doubt.

The standard for reviewing a sufficiency of the evidence claim 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 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. Furthermore, when reviewing a sufficiency claim, our Court is required to give the prosecution the benefit of all reasonable inferences to be drawn from the evidence.
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> However, the inferences must flow from facts and circumstances proven in the record, and must be of such volume and quality as to overcome the presumption of innocence and satisfy the jury of an accused's guilt beyond a reasonable doubt. The trier of fact cannot base a conviction on conjecture and speculation and a verdict which is premised on suspicion will fail even under the limited scrutiny of appellate review.

Commonwealth v. Matthews, 870 A.2d 924, 928-929 (Pa. Super. 2005)(*en banc*)(citations, quotations and ellipses omitted).

"A solitary witness's testimony *may* establish every element of a crime, assuming that it speaks to each element, directly and/or by rational inference." *Commonwealth v. Johnson*, 180 A.3d 474, 479 (Pa. Super. 2018)(emphasis in original).

In the instant matter, the Commonwealth presented the testimony of the arresting officer as well as the victim. The Commonwealth also introduced various exhibits including, but not limited to, the origination documentation for the Capital One credit card as well as various Capital One monthly expense statements. The victim and the Defendant were never married but did maintain a long-term relationship. The Defendant resided with the victim in the victim's home for a long period of time until the relationship ended and the Defendant relocated. The victim testified that he personally did not open the Capital One credit card, he did not authorize Defendant to utilize his personal information to open the card in his name and he did not authorize Defendant to use the credit card, including the transactions reflected

on the monthly statements. The victim further testified that he had no knowledge of the Capital One credit card until after the Defendant moved out of the home and the victim received a collection notice in the mail regarding the Capital One card. The victim stated that he never previously observed a Capital One credit card statement. The total loss to the victim as a result of Defendant's unauthorized use of the Capital One credit card equaled $10,187.48.

The Defendant testified that during the time she resided with the victim, it was a shared household and although the victim always worked, the Defendant assumed many of the responsibilities within the shared residence. The Defendant further testified that the victim previously permitted Defendant to use the victim's bank card and to write checks using the victim's checkbook to satisfy various expenses. Defendant also testified that the victim did provide her permission to sign checks on his behalf. Finally, the Defendant denied opening the Capital One credit card.

Under Title 18 Pa.C.S. Section 4120(a), "[a] person commits the offense of identity theft of another person if he possesses or uses, through any means, identifying information of another person without the consent of that other person." In addition to Defendant's testimony that he had no knowledge of the Capital One card, Officer Michael Engel with the Lycoming Regional Police Department testified the information contained on the application for the card provided by Capital One contained Defendant's name, social security number, and the address of the residence cohabited by Mr. Schappell and Defendant. However, the contact information provided belonged to Defendant. The email provided in the application was "rcolarusso@live.com" and Officer Engel was able to contact Defendant with the primary phone number provided on the application. *See also*: Commonwealth Exhibit No. 1A through 1L, Credit Card Monthly Statements). Mr. Schappell testified that he never used

Defendant's email address, no conversation occurred to entertain the idea of Defendant opening a credit card, and Mr. Schappell did not give permission to Defendant for her to open a credit card in his name. *See also*: Commonwealth Exhibit No. 1A through 1L, Credit Card Monthly Statements). Despite Defendant's testimony that she was previously authorized to use Mr. Schappell's bank card and write checks on his behalf, Mr. Schappell testified that he did not authorize or even discuss Defendant opening a credit card in his name. Accordingly, there was sufficient evidence to establish each material element of Identity Theft beyond a reasonable doubt.

Under Title 18 Pa.C.S. Section 4106(a)(1)(iv), "[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: for any other reason [her] use of the access device is unauthorized by the issuer or the device holder." In addition to the evidence and testimony as set forth above supporting the conviction for Count 1, Mr. Schappell testified that he received a collection notice notifying him of the outstanding and overdue balance in the amount of $10,187.48 that was charged to the Capital One card without Mr. Schappell's knowledge. Through the testimony of Commonwealth's Exhibits Nos. 1C through 1L, Mr. Schappell testified to various charges incurred with the Capital One card from September of 2022 to August of 2023. Mr. Schappell testified that he was neither aware of nor authorized any of the charges itemized in the credit card statement reports. The statements showed purchases being made at the Bloomsburg Fair, Kohls, the Williamsport West Veterinary Hospital, Sirius XM Radio, and charges incurred at businesses in the area where Defendant's parents reside. While charges were incurred on the credit card, no payments were being made and an interest charge due to the outstanding payment was recurring monthly. Mr. Schappell testified that he never saw the credit card statements admitted into evidence at the time the credit card was

being used, and he was not made aware of the outstanding debt against him until he received the collection notice from Capital One. Accordingly, there was sufficient evidence to establish each material element of Unauthorized Use of an Access Device beyond a reasonable doubt.

Under Title 18 Pa.C.S. 3921(a), "[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." Mr. Schappell faces $10,187.48 worth of debt he did not incur nor authorize on the Capital One credit card in his name. The evidence shows the Capital One card that was issued in Mr. Schappell's name was taken and used by Defendant to incur a large amount of debt for which Mr. Schappell would otherwise be financially responsible resulting in a loss of his money in an amount over $10,000 for which he cannot personally account. The evidence and testimony support a strong inference that the Defendant intended to permanently deprive Mr. Schappell of the $10,187.48. Specifically, she incurred all of the listed expenses without his knowledge, made no payments toward the balance, and vacated the residence without informing him of the debt she amassed in his name. Accordingly, there was sufficient evidence to establish each material element of Theft by Unlawful Taking beyond a reasonable doubt.

After viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there was sufficient evidence to enable the fact-finder to find beyond a reasonable doubt every element of the crimes for which Defendant was found guilty.

II. Motion in Arrest of Judgment

Defendant argues, for the reasons asserted above, the evidence presented at trial was insufficient to convict her of the offenses alleged and requests this Court arrest judgment and discharge Defendant. Finally, Defendant argues in her Post-Sentence Motion that, for the

same reasons as outlined in her Motion for New Trial, the evidence presented at trial was insufficient to convict her of Counts 1, 2, and 4. Thus, Defendant requests the Court enter an order in arrest of judgement and discharge the Defendant. For the reasons specified herein, the Court does not find that the evidence was insufficient such that an arrest of judgment is warranted. Thus, Defendant's Motion in Arrest of Judgement is **DENIED.**

Accordingly, the Court enters the following Order:

ORDER

AND NOW, this 6th day of November, 2026, based on the arguments presented, and for the aforementioned reasons it is hereby **ORDERED and DIRECTED** that:

I. Defendant's Motion for a New Trial is **DENIED** concerning all arguments presented; and,

II. Defendant's Motion in Arrest of Judgement is **DENIED.**

Defendant is advised of the following:

I. You have the right to file an appeal within 30 days of entry of this Order;
II. You have the right to assistance of counsel in the preparation of your appeal;
III. You have the right, if you are indigent, to appeal in forma pauperis and to proceed with assigned counsel as provided in Pa.R.Crim.P. 122; and,
IV. You have a qualified right to bail under Pa.R.Crim.P. 521(B).

By the Court,

Hon. Ryan C. Gardner, Judge

RCG/asw
CC: DA; PD; CA; APO
Gary Weber, Esq.—Lycoming Reporter