

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
MEDINA LYNN SOUDERS	:	
	:	
Appellant	:	No. 1648 MDA 2017

Appeal from the Judgment of Sentence June 20, 2017
In the Court of Common Pleas of Fulton County
Criminal Division at No(s): CP-29-CR-0000038-2016

BEFORE: GANTMAN, P.J., OTT, J., and KUNSELMAN, J.

MEMORANDUM BY GANTMAN, P.J.:

FILED JUNE 22, 2018

Appellant, Medina Lynn Souders, appeals from the judgment of sentence entered in the Fulton County Court of Common Pleas, following her jury trial convictions for forgery by uttering, solicitation to commit forgery by making, solicitation to commit forgery by uttering, and conspiracy to commit forgery and theft.¹ We affirm.

In its opinion, the trial court fully and correctly sets forth the relevant facts and procedural history of this case. Therefore, we have no reason to restate them.

Appellant raises two issues for our review:

DID THE TRIAL COURT ERR IN DENYING [APPELLANT]'S
POST-SENTENCE MOTION BECAUSE THE EVIDENCE WAS
INSUFFICIENT AS A MATTER OF LAW TO SUPPORT

¹ 18 Pa.C.S.A. §§ 4101(a)(3), 902, and 903, respectively.

[APPELLANT]'S CONVICTIONS FOR SEVEN COUNTS OF SOLICITATION TO COMMIT FORGERY?

DID THE TRIAL COURT ERR IN DENYING [APPELLANT]'S POST-SENTENCE MOTION BECAUSE [APPELLANT]'S CONVICTIONS FOR SEVEN COUNTS OF SOLICITATION TO COMMIT FORGERY WERE AGAINST THE WEIGHT OF THE EVIDENCE?

With respect to a sufficiency claim:

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 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 [finder] 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. Jones, 874 A.2d 108, 120-21 (Pa.Super. 2005) (quoting ***Commonwealth v. Bullick***, 830 A.2d 998, 1000 (Pa.Super. 2003)).

Our standard of review for a challenge to the weight of the evidence is as follows:

The weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. An

appellate court cannot substitute its judgment for that of the finder of fact. Thus, we may only reverse the lower court's verdict if it is so contrary to the evidence as to shock one's sense of justice. Moreover, where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.

Commonwealth v. Champney, 574 Pa. 435, 444, 832 A.2d 403, 408 (2003), *cert. denied*, 542 U.S. 939, 124 S.Ct. 2906, 159 L.Ed.2d 816 (2004) (internal citations omitted).

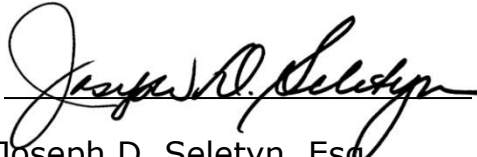
After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Angela R. Krom, we conclude Appellant's issues merit no relief. The trial court opinion comprehensively discusses and properly disposes of the questions presented. (**See** Trial Court Opinion, filed October 5, 2017, at 2-16) (finding: **(1)** co-defendant's mental capability is limited; co-defendant cannot read, spell, or complete check without assistance; co-defendant testified when she and Appellant visited Victim's home, Appellant told co-defendant to take Victim's blank checks or Appellant would make co-defendant walk home; two weeks after incident, co-defendant provided to Trooper Falkosky written statement admitting she signed Victim's name on eight stolen checks; Appellant's sister, Elizabeth Fern Souders, testified Appellant gave her one of Victim's checks in amount of \$120.00, and explained Victim had loaned Appellant money to pay bills; Ms. Souders identified Appellant's handwriting on payee line of check;

Commonwealth introduced at trial composite of Appellant's signatures from her written statement to police and copy of completed stolen check, which permitted jury to compare Appellant's signatures on written statement with handwriting on check; also, co-defendant gave Lynn Mellot another of Victim's checks made payable to Ms. Mellot for Appellant's daughter's rent; Ms. Mellot testified bank rejected check she had received from co-defendant; when Ms. Mellot questioned Appellant, Appellant explained Victim had put stop payment on some of his checks, because his girlfriend had stolen some checks; Appellant told Ms. Mellot that check co-defendant had given her was not stolen; evidence was sufficient to demonstrate co-defendant stole Victim's checks at Appellant's behest and Appellant commanded, encouraged, or requested co-defendant to commit forgery; **(2)** jury's verdict suggests jury gave little weight to: video Appellant's sisters orchestrated in which co-defendant provided different explanation for how she obtained Victim's blank checks; Appellant's suggestion that Victim had given Appellant and co-defendant blank checks in exchange for sexual favors; and Appellant's argument she had no reason to commit offenses because she and her boyfriend were financially stable; jury's verdict is consistent with evidence at trial). The record supports the trial court's rationale. Accordingly, we affirm on the basis of the trial court's opinion.

Judgment of sentence affirmed.

J-S20031-18

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 06/22/2018

**IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT
OF PENNSYLVANIA – FULTON COUNTY BRANCH**

Commonwealth of Pennsylvania	:	Criminal Action
	:	
v.	SCANNED	No. CR-38-2016, Count 17
	:	
Medina Lynn Souders,	:	
Defendant	:	Honorable Angela R. Krom, J.

OPINION

Before the Court is the Post-Sentence Motion filed by Defendant on June 27, 2017. For the reasons the follow, Defendant's Motion will be denied.

STATEMENT OF THE CASE

Defendant was convicted after trial by jury on June 2, 2017, of one count of forgery by uttering;¹ eight counts of solicitation to commit forgery (by making);² seven counts of solicitation to commit forgery (by uttering);³ and one count of conspiracy (to forgery and theft).⁴ On June 20, 2017, this Court imposed an aggregate sentence of 45 months to 108 months in a state correctional institution followed by 12 months' probation supervision.⁵ The instant Motion followed. The defendant filed a brief in support on June 28, 2017; the Commonwealth's brief in response was filed on August 11, 2017. Evidentiary hearing was determined to be unnecessary to review of the defendant's claims of error. Accordingly, this matter is now ready for resolution.

¹ 18 Pa.C.S. §4101(a)(3)

² 18 Pa.C.S. §902 to 18 Pa.C.S. §4101(a)(2)

³ 18 Pa.C.S. §902 to 18 Pa.C.S. §4101(a)(3)

⁴ 18 Pa.C.S. §903

⁵ Pursuant to 18 Pa.C.S. §906, we declined to sentence the defendant on counts 10 through 16.

DISCUSSION

In her Motion the defendant challenges both the sufficiency and the weight of the Commonwealth's evidence. Before we discuss each claim of error, we will summarize the evidence presented at trial.

The Commonwealth presented the testimony of Fred McFadden, ("McFadden"), the victim of the defendant's criminal activity. At one time Judy Seville ("Seville"), the co-defendant in this matter, lived with McFadden in a romantic relationship; however as of October 2015, McFadden and Seville were just friends. Notes of Testimony, June 2, 2017 at 5.⁶ On October 13, 2015, Seville and the defendant went to McFadden's home to borrow a vacuum cleaner. N.T. at 6. McFadden agreed to lend the women his Shop Vac and went to his basement to retrieve it. N.T. at 7. At one point, Seville used his bathroom while McFadden was occupied with the defendant. *Id.* McFadden admitted that the defendant gave him a kiss for letting them use the vacuum. *Id.*

McFadden first became aware there was a problem with his checking account when his bank called on Friday, October 16, 2015, to ask if he had given Seville permission to cash his checks. N.T. at 7-8. The call prompted McFadden go to his bank and "cancel" the checks – all but the checks that had already been passed. N.T. at 8-9.

After he left the bank McFadden went to the defendant's house where Seville also lived at the time. N.T. at 10. He spoke with the defendant, who denied any knowledge of the stolen and forged checks. *Id.* McFadden recounted that the defendant admonished Seville, saying, "You know, you shouldn't be doing that." McFadden told Seville he knew what she was doing and he knew they took a whole book of checks; however, he had them "canceled," so if they wrote out

⁶ Hereinafter "N.T."

any more, the checks wouldn't be good. N.T. at 9. Seville retrieved the remaining blank checks and returned them to McFadden. *Id.* Seville cried and said, 'I'm going to go to jail,' [...] and told McFadden she'd pay him back. N.T. at 10.

During their 10-year relationship, McFadden learned that Seville could not read and write. N.T. at 14. She could not spell words out and he never saw her write a check. *Id.*

McFadden identified Commonwealth's Exhibits 1 through 9 as copies of checks from his checking account.⁷ N.T. at 10. McFadden denied making out any of the checks himself, giving Seville authorization to fill out or sign the checks, or giving either Seville or the defendant blank checks. N.T. at 12-13. As a result of the unauthorized use of his checks, McFadden suffered a financial loss of \$540. N.T. at 14.

On cross-examination McFadden admitted that even after the charges were filed in this case, he gave Seville money for cigarettes. N.T. at 15. McFadden also acknowledged that Seville and another individual had taken one of his checks in the past, but he declined prosecution. N.T. 18-19.

Judy Seville testified.⁸ She acknowledged living with McFadden for about 11 years (although the timeline was a bit confused). N.T. at 22. Seville also acknowledged knowing the defendant all of her life and living with her for a period of three months in a house on First Street in McConnellsburg. *Id.*

⁷ Commonwealth's Exhibit 1 is check #549 payable to Elizabeth F. Souders in the amount of \$120.00
Commonwealth's Exhibit 2 is check #550 payable to Cutchall's Gulf in the amount of \$120.00
Commonwealth's Exhibit 3 is check #552 payable to Pit Stop in the amount of \$40.00
Commonwealth's Exhibit 4 is check #557 payable to Lynn Mellott in the amount of \$550.00
Commonwealth's Exhibit 5 is check #560 payable to Judy Seville in the amount of \$400.00
Commonwealth's Exhibit 6 is check #561 payable to Judy A. Seville in the amount of \$300.00
Commonwealth's Exhibit 7 is check #563 payable to Judy A. Seville in the amount of \$300.00
Commonwealth's Exhibit 8 is check #571 payable to Cutchall's Gulf in the amount of \$100.00
Commonwealth's Exhibit 9 is a copy of all eight of the above checks on one page.

⁸ Seville's testimony can best be characterized as confusing and contradictory for reasons we will explain below. We will do our best to summarize it.

When shown Commonwealth's Exhibit 1, check # 549, Seville admitted signing McFadden's name and filling out the date. N.T. at 23. She denied completing the payee, "Elizabeth F. Souders." *Id.* With respect to Commonwealth's Exhibit 2, check #550, Seville admitted filling out the date, Fred McFadden's signature, and the written words "one hundred twenty" in the amount line. *Id.* She denied completing the payee, "Cutchall's Gulf." On Commonwealth's Exhibit 3, check #552, Seville told the jury she signed McFadden's name and completed the date, but not the rest of the check. N.T. at 24. Seville testified that the defendant wrote the payee ["Pit Stop"]. N.T. at 36. Seville went to the Pit Stop in Warfordsburg with the defendant, who drove, and Randy Mills. N.T. at 36, 45-46.

On Commonwealth's Exhibit 4, check #557, Seville acknowledged completing McFadden's signature and the date, but testified that she does not know the name at the top, "Lynn Mellott." *Id.* Seville admitted filling out Commonwealth's Exhibits 5, 6 and 7, checks numbered 560, 561, and 563, respectively. N.T. at 24-25. She deposited those checks into her own account at F&M Bank in Chambersburg. N.T. at 35. She also admitted dating and signing McFadden's name on check #571, but not completing the rest of the check. N.T. at 25.

Seville explained that she took the checks. *Id.* She and the defendant went to McFadden's house to borrow a vacuum cleaner. N.T. at 26. She was living with the defendant at the time. On the way to McFadden's house Seville told the defendant that she was only going to McFadden's house to get the Shop Vac. *Id.* The defendant then stopped the car and told her that if she didn't do "what they planned to do" she could get out of the car and walk back to town. *Id.* When asked what was meant by "planned to do," Seville responded, "[T]he checks." N.T. at 26. Seville then related:

So we went on down to get the sweeper, pulled in the driveway, got the shop vac, put it in the car. I had a cigarette. I got done. I walked in. I seen [sic] Fred playing

with her boobs and her pants, so I turned around, walked back out and had another one. I got back in. I had said, 'Fred, can I use your restroom?' So I went to the restroom in the bathroom in the bedroom, came back out -- came back out and then I walked back in and that's when I did this.

N.T. at 26. Seville testified that she does not know why she took the checks. N.T. at 27. The defendant took her to the places where the checks were passed. *Id.* Seville does not drive; she does not have a car or a license. N.T. at 27-28. According to Seville, the defendant got the money from the checks. N.T. at 28. Seville received nothing. *Id.*

The district attorney then confronted Seville with a video of herself giving a very different account of how the checks came into her possession. The video was played for the jury and depicts Seville sitting in a booth of a McDonald's restaurant. See Commonwealth's Exhibit 13. The defendant's sisters, "Renie"⁹ and "Fern"¹⁰ were present and appear to be the individuals prompting Seville's statement, including her report that McFadden gave her the checks, McFadden was drunk, McFadden touched the defendant sexually, and her attorney (Phil Harper) told her to lie. Seville testified that she recalled the lunch at McDonald's with the defendant's sisters, Renie and Fern. N.T. at 29. Seville testified that she did not want to be recorded and does not recall giving permission for the recording (at McDonald's) to be made.¹¹ *Id.* On cross-examination, Seville confirmed that she told the district attorney some of the things she said on the video, including that McFadden gave her some of the checks and that he touched the defendant. N.T. at 41-21. However, on re-direct, Seville returned to her prior position and explained that in a meeting with the district attorney the week prior to trial, she maintained that she did not want to take the checks but the defendant told her to take the checks or she would

⁹ Maureen "Renie" Gordon

¹⁰ Elizabeth Fern Souders

¹¹ In a second video (Commonwealth's Exhibit 14) recorded on a later date, Seville stated that she gave permission for the recording of the first video (Commonwealth's Exhibit 13). Seville identified the defendant's sister, Renie, as the individual who recorded the second video. N.T. at 30.

have to walk back to town. N.T. at 49. Seville also confirmed in the same meeting that she needed help filling out the checks and it was the defendant who helped her. *Id.*

Seville recalled giving a statement to Pennsylvania State Police Trooper Falkosky ("Falkosky") about two weeks after the incident. N.T. at 30. She has trouble writing, but remembers the trooper writing out questions and her writing out answers and initialing them. *Id.* In those questions and answers Seville admitted taking the checks from McFadden's house and signing McFadden's name to eight of the checks. N.T. 30-31. Seville told Falkosky that the defendant gave check #549 to Elizabeth Souders. N.T. at 31. Seville told the trooper that the defendant made her take the checks from McFadden and that the defendant got all the extra cash from the checks. N.T. at 32. Seville denied that Falkosky threatened her or was mean to her when she made her statement. *Id.*

When asked, "Did you tell [Falkosky] the truth about what happened?" Seville responded, "Sometimes I do and sometimes I don't. I didn't mean to say the wrong thing." N.T. at 33. When asked, "Why did you take the checks?" Seville responded, "Because he said that he could get me the checks to buy cigarettes, and stuff, and snacks, whenever I wanted, because he owed me that back. He promised to give them to me, but I had to give them all, some of them back when he came down to [the defendant's] place. And the rest of them, I do not know what happened to them." N.T. at 33. Seville confirmed that the person who got the money from the checks was the defendant. *Id.*

On cross-examination Seville testified that she's always liked the defendant and did not want anything to happen to her. N.T. at 37. She further testified that she was "telling the truth for the judge to hear the truth..." and that what she said on the video was the truth, including her statement that McFadden gave her the checks for food and clothes. *Id.*

Seville explained that her income comes from SSI and that her caseworker handles her money. She does not know how much money she gets each month because the check goes directly to her caseworker; however, at the time of the incident she was getting the checks herself. N.T. at 39. When she lived with the defendant she gave part of her SSI money to the defendant. N.T. at 46. She explained that she has never written out a check and does not know how to. N.T. at 43. After she told them what happened with the checks, Falkosky helped Seville move out of the defendant's house and in with Fern, the defendant's sister. N.T. at 48.

Seville testified that she has not been charged or arrested for the checks and that she has not been in court for the checks or stood in front of a judge. N.T. at 42. Attorney Harvey asked, "Do you expect to be sentenced by the Judge?" Seville replied, "I thought I was. That's why I'm upset" and then detailed her health concerns. N.T. at 43. Seville acknowledged convictions for bad checks and retail thefts for which she has paid fines and is going to shoplifting class. N.T. at 44.

Elizabeth Souders ("Fern") testified that she is the defendant's older sister. She recognized Commonwealth's Exhibit 1 as a check given to her by the defendant because the defendant owed her money. N.T. at 52-53. It seemed strange to Fern that the check her sister gave her had McFadden's name and signature on it; however, the defendant explained that McFadden loaned her money to pay some bills. N.T. at 53-54. Fern identified the handwriting on the payee line as the defendant's. N.T. at 54. As a result of taking check #549 from the defendant, Fern suffered financial loss in the amount of \$120 plus a \$15 bank overdraft fee. N.T. at 54-55. On cross-examination Fern admitted that she and the defendant had a falling out and they don't see eye-to-eye sometimes. N.T. at 56-57.

Pennsylvania State Police Trooper Kenneth Falkosky,¹² the investigating officer in this matter, testified that he interviewed the defendant on November 3, 2015. N.T. at 60. He identified Commonwealth's Exhibit 10 as a non-custodial written statement form he used in the interview. N.T. 60-61. The exhibit includes nine questions written by Falkosky with responses written by the defendant. Specifically, the defendant answered "no" to the question, "Did you and Judy discuss getting checks from Fred McFadden before going to his house to get sweeper?" The defendant also answered "no" to the question, "Did you give your sister, Elizabeth Fern Souders, a check for \$120 at her house on 10/18/15." In response to the question, "Do you know what the check given to Elizabeth Fern Souders was payment for?" the defendant answered, "Judy told me she owed Fern money." The defendant's response to the question, "Did you ask Judy to pay rent for your daughter, Misty Souders, to Lynn Mellott?" was, "No I did not." The defendant told Falkosky [Seville] paid \$250 to live with her and [her boyfriend] Bernard Kelly and that "she occasionally pays garbage or TV, sometimes cable." The defendant told the trooper that [Seville] paid rent/bills with cash. When asked, "Did you take [Seville] to F&M Bank in Chambersburg?" the defendant answered, "not sure yes." To the trooper's question, "Which bank in Chambersburg?" the defendant responded, "out by Kohl's." See Commonwealth's Exhibit 10 and N.T. 64-66. Counsel for the defendant clarified on cross-examination that, while Falkosky intended to interview the defendant at some point, she was actually interviewed on November 3, 2015, because she called and requested to come in and be interviewed. N.T. at 70.

The Commonwealth introduced its Exhibit 11, a composite of the defendant's signatures from Exhibit 10 (the non-custodial written statement form) and a copy of check #549 payable to

¹² In October, 2015, Falkosky was a criminal investigator and held the rank of "trooper." Upon his promotion to corporal, which occurred sometime prior to the trial, he was also appointed the crime unit supervisor at the McConnellsburg, Pennsylvania State Police barracks. N.T. at 59. In this Opinion, we will refer to Falkosky as "trooper" for the sake of consistency.

Elizabeth F. Souders. In moving to publish the exhibit, the District Attorney asked that the jurors be able to compare the signatures, especially "Souders" on each of the lines with the check and the four signatures from Commonwealth's Exhibit 10. N.T. at 68.

Falkosky helped Seville move from the defendant's home because Seville did not want to live with the defendant. N.T. at 71. The trooper's initial interview with Seville was on October 30, 2015. N.T. at 73. During that initial interview, Seville did not tell the trooper that the defendant stopped her car on the way to McFadden's residence, nor do the complaint and affidavit include that information. N.T. at 74. In fact, the first time that information was revealed was in a trial preparation meeting just prior to trial. *Id.*

Lynn Mellott ("Mellott") testified that she owns a property that she rented to Misty Souders, daughter of the defendant. N.T. at 75-76. In the months prior to October, 2015, the defendant paid her daughter's rent. N.T. at 76. Mellott recognized Commonwealth's Exhibit 4 as a check Seville handed her in the middle of October, 2015, for Misty's rent. N.T. at 77. The check was filled out when Seville handed it to her. *Id.* Seville is not a tenant of Mellott's and Seville did not owe her any money. *Id.* In fact, Seville had never paid Misty's rent before. *Id.* A few days after receiving the check, Mellott deposited it into her rental account. N.T. 77-78. She got the check "back" because there was a stop payment on the check. N.T. at 78. Toward the end of October, Mellott finally spoke to the defendant regarding the check. Mellott recognized the defendant's voice and the defendant's home phone number. N.T. at 78. The defendant explained to Mellott that McFadden had some checks stolen by his girlfriend, "Evelyn,"¹³ but the check to Mellott wasn't one of the stolen checks; however, McFadden stopped payment on all of the checks because he did not know which checks were taken. N.T. at 79. As a result, Mellott

¹³ McFadden testified that he had a girlfriend named "Evelyn"; however, she died in 2013. He did not tell anyone in October, 2015, that he believed Evelyn had stolen his checks. N.T. at 83-84. Seville may have known of Evelyn. N.T. at 84.

suffered a financial loss of \$550 for the lost rent and an additional \$15 in bank fees. N.T. at 79-80.

The Commonwealth's final witness was Philip Harper, attorney for Seville. Harper represented Seville in this matter regarding the checks stolen from McFadden. N.T. at 85. Harper reviewed the video admitted as Commonwealth's Exhibit 13. He denied ever advising Seville to give false testimony. N.T. at 86. While Seville advised Harper that at some point in time McFadden had given her money, Seville never told Harper that McFadden had given her the eight checks at issue. *Id.*

Maureen "Renie" Gordon ("Gordon"), twin sister of the defendant, testified that after this incident she saw McFadden give Seville money. N.T. at 93. Seville told her it was "like \$700." *Id.* McFadden told Gordon that Seville kept getting money from him and "it was going to have to come to a stop." N.T. at 94. She further testified that the defendant spoke to McFadden on Gordon's phone using the speaker regarding McFadden touching the defendant "where he shouldn't have been." N.T. at 94. On cross-examination Gordon admitted making the recording of Seville at McDonald's, as well as the second recording of Seville's "consent" to be recorded. N.T. at 95-96. To rebut Gordon's testimony, McFadden was recalled and admitted giving Seville \$400 in December 2015 because "they came up with a story that she was in trouble in Chambersburg. That they was [sic] going to lock her up that night if she didn't have \$400..." N.T. at 111-112. McFadden also was adamant that "everything was consensual" between him and the defendant. N.T. at 111.

The defendant offered the testimony of Bernard Kelly ("Kelly"), the defendant's paramour since 2002. Kelly confirmed that Seville was living with him and the defendant in October, 2015 and had been for about 17 months because she had no place to live. N.T. at 102-

103. She paid them about \$250 a month. N.T. at 103. In 2015 Kelly's annual income was about \$93,000 and he was financially secure. N.T. at 104, 107. The defendant had access to his checking account if she needed anything and, in fact, the defendant wrote checks on his account.

N.T. at 104-105. See Defendant's Exhibits 1-4.

On cross-examination the district attorney questioned Kelly about several civil judgments against him in 2013 and 2009. N.T. at 108. Kelly acknowledged his guilty pleas to bad check cases in 2010, 2013, and 2015 – including a guilty plea to a bad check in February, 2015, a month before the instant matter. N.T. at 109-110.

I. Sufficiency of The Evidence:

In reviewing a claim that the evidence was insufficient to sustain the verdict, we must view the evidence in the light most favorable to the Commonwealth as the verdict winner to determine whether sufficient evidence to allow the jury to find every element of the crime beyond a reasonable doubt was presented at trial. *Commonwealth v. Tejada*, 107 A.3d 788, 792 (Pa.Super. 2015); *Commonwealth v. Miklos*, 159 A.3d 962, 967 (Pa. Super. 2017) (“Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt.”). The court,

[...] 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 [finder] 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. Valentine, 101 A.3d 801, 805 (Pa.Super. 2014).

In her motion the defendant claims that the evidence was insufficient with respect to Counts 2-7, solicitation to commit forgery (by making). Specifically, the defendant argues, “solicitation would require evidence that the defendant ‘commanded, encouraged or requested the other person to engage in specific conduct’ constituting the crime. There was sufficient [sic] evidence to prove that defendant engaged in multiple acts fitting that definition or that any ‘command, encouragement or request’ encompassed all of the acts committed by the co-defendant.” Post-Sentence Motion, ¶4. The defendant further claims “the evidence offered to support the verdict on charges of solicitation is in contradiction to the physical facts, in contravention to human experience and the laws of nature, and is insufficient as a matter of law.” Post-Sentence Motion, ¶5.

The Crimes Code provides,

A person is guilty of solicitation to commit a crime if with the intent of promoting or facilitating its commission he commands, encourages or requests another person to engage in specific conduct which would constitute such crime or an attempt to commit such crime or which would establish his complicity in its commission or attempted commission.

18 Pa.C.S. § 902. Our Supreme Court has explained,

The purpose of the solicitation statute is to hold accountable those who would command, encourage, or request the commission of crimes by others. [...] The statute requires proof of such encouragement, but with the intent to accomplish the *acts* which comprise the crime, not necessarily with intent specific to all the *elements* of that crime, much less those crimes with elements for which scienter is irrelevant. Appellee intentionally

Commonwealth v. Hacker, 15 A.3d 333, 336 (Pa. 2011). If the individual intentionally encouraged the specific conduct which comprised the crime and the encouragement was with the

intent of facilitating or promoting commission of that conduct, it is sufficient to satisfy the requirements of the solicitation statute. *Id.*

In the instant matter, the defendant was convicted of solicitation to commit forgery by making and uttering. As we noted above, the defendant was sentenced only on the solicitation to forgery by making at counts 2 through 9.

With respect to the offense of forgery, the Crimes Code provides:

A person is guilty of forgery if, with intent to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:

- (1) alters any writing of another without his authority;
- (2) makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or
- (3) utters any writing which he knows to be forged in a manner specified in paragraphs (1) or (2) of this subsection.

18 Pa.C.S. §4101.

The defendant argues that the only evidence against her was the testimony of Seville, who the Commonwealth acknowledged was mentally challenged and had to be led through her testimony. The defendant further argues that Seville gave various explanations for who solicited or helped her to write out the checks. The Commonwealth disagrees.

It was abundantly clear to this Court, and likely to any person observing her as she testified--including the jury, that Seville was not functioning on a high level intellectually. To be blunt, she was limited in her mental abilities. Seville cannot read, spell or complete a check without assistance. She receives SSI income which is now handled through a case worker. She was easily confused, upset, and manipulated. Seville was the perfect foil for a crime such as this, especially considering the soft spot in his heart McFadden seems to still hold for Seville.

The Commonwealth's theory, that Seville stole McFadden's checks at the suggestion and insistence of the defendant, was supported by the evidence presented at trial. Also supported by the evidence was the Commonwealth's assertion that Seville was the scapegoat for the defendant's criminal activity. Seville testified that she traveled with the defendant to McFadden's house to borrow a vacuum cleaner. On the way, Seville told the defendant that she was only going to borrow the sweeper; however, the defendant told her that they were going to do "what they planned" or the defendant was going to make Seville walk back to town. "What they planned" to do was steal McFadden's blank checks. As the Commonwealth correctly notes, and the jury was free to infer, blank checks are relatively worthless unless made out for some value and passed.

Admittedly, Seville's contradictory and confused testimony alone may have been insufficient to establish the defendant's guilt; however, the jury had additional evidence to consider which corroborated the version of events Seville: 1) told Falkosky just two weeks after the theft of the checks, and 2) testified to at trial. Check #549 was made payable to "Elizabeth F. Souders" in the amount of \$120. Fern testified that her sister, the defendant, gave her the check because the defendant owed her money. The defendant gave Fern a bogus story about McFadden loaning her money to pay bills. Fern identified her sister's handwriting on the payee line. Commonwealth's Exhibit 11 also permitted the jury to compare the defendant's signatures on the non-custodial written statement form (Commonwealth Exhibit 10) with the payee line on check #549, specifically, the word, "Souders."¹⁴

Check #557 was made payable to "Lynn Mellott" and given to Mellott by Seville in payment for the defendant's daughter's rent. As Mellott explained, Seville was not her tenant, did not owe her any money, and had never paid Misty Souders' rent before; however, the

¹⁴ See Pa.R.E. 901(b)(2) and (3) and 42 Pa.C.S. §6111(a)(1) and (d).

defendant had customarily paid her daughter's rent. Mellott also recounted the explanation she received from the defendant regarding the check when it was dishonored by the bank.

Specifically, the defendant told her that McFadden had put a stop payment on some checks stolen by his girlfriend, "Evelyn," but the check to Mellott wasn't one of the stolen checks. The check was never made good by the defendant.

Accordingly, viewing the evidence in the light most favorable to the Commonwealth as the verdict winner, we find the evidence presented at trial sufficient to allow the jury to find every element of the crime of solicitation to commit forgery as to counts 2 through 7, beyond a reasonable doubt. Through both direct and circumstantial evidence the Commonwealth has established that the defendant commanded, encouraged, and/or requested Seville to commit the crime of forgery of McFadden's checks. The defendant is entitled to no relief as to this claim of error.

II. Weight of the Evidence:

The law is well-settled that a motion for a new trial based on a claim that the verdict is against the weight of the evidence is addressed to the discretion of the trial court and that a new trial should not be granted merely because of a conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. *Commonwealth v. Clay*, 64 A.3d 1049, 1054-55 (Pa. 2013). "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.* at 1054-55 (citation omitted). Further, a new trial should be awarded only when "the jury's verdict is so contrary to the evidence as to

shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail." *Id.* at 1055.

The defendant claims, "the verdict of the jury on all accounts was also against the weight of the evidence, and that the evidence of defendant's complicity was primarily that of the witness Judy Seville, which was vague and inconsistent, and notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or give them equal weight with all the facts is to deny justice." Post-Sentence Motion, ¶6. Again, the Commonwealth disagrees, as do we.

The jury's verdict suggests that it gave a little weight to the video orchestrated by the defendant's sisters. The jury's verdict also suggests that it gave little weight to the defendant's suggestion that blank checks were given to the defendant and/or Seville by McFadden in exchange for sexual favors or that the defendant had no motive or reason to commit these offenses because she and her boyfriend, Kelly, were financially stable. The jury's verdict was consistent with the evidence presented at trial, particularly given the evidence corroborating Seville's initial statement to Falkosky and her trial testimony, as fully discussed above.

Upon review of all evidence presented at trial, we cannot find the jury's verdict against the weight of the evidence. Our sense of justice is not shocked by the jury's verdict and a new trial is not warranted.

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IN THE COURT OF COMMON PLEAS OF THE 39TH JUDICIAL DISTRICT
OF PENNSYLVANIA – FULTON COUNTY BRANCH

Commonwealth of Pennsylvania

Criminal Action

v.

No. CR-38-2016, Count 17

Medina Lynn Souders,
Defendant

Honorable Angela R. Krom, J.

ORDER OF COURT

NOW THIS 5th day of October, 2017, upon consideration of Defendant's Post-Sentence Motions, the Commonwealth response thereto, the record and the law;

IT IS HEREBY ORDERED that Defendant's Post-Sentence Motions are DENIED.

THE DEFENDANT IS HEREBY NOTIFIED that she has the right to appeal the denial of her Post-Sentence Motions to the Superior Court of Pennsylvania by filing a written Notice of Appeal within thirty (30) days of date of the entry of this Order. The defendant is further advised that she has the right to the assistance of counsel in the preparation of an appeal. The defendant is also advised that if she is indigent she may qualify to proceed *in forma pauperis*, entitling her to a waiver of filing fees and costs in pursuing an appeal.

Pursuant to the requirements of Pa.R.Crim.P. 114, the Clerk of Courts shall immediately docket this Order and record in the docket the date it was made. The Clerk shall forthwith furnish a copy of the Order, by mail or personal delivery, to each party or attorney, and shall record in the docket the time and manner thereof.

By the Court,


_____ J.

Distribution:
Fulton County District Attorney
Dwight C. Harvey, Esq., Counsel for Defendant

FULTON COUNTY
PENNSYLVANIA
FILED

OCT 05 2017

PROTHONOTARY CLERK OF COURTS,
CLERK OF ORPHANS COURT,
REGISTER OF WILLS, RECORDER OF DEEDS

10-5-17
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