

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
DWAYNE A. GOLSTON	:	
	:	
Appellant	:	No. 910 WDA 2017

Appeal from the Judgment of Sentence May 22, 2017
In the Court of Common Pleas of Erie County
Criminal Division at No(s): CP-25-CR-0002218-2016

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

MEMORANDUM BY GANTMAN, P.J.:

FILED MAY 30, 2018

Appellant, Dwayne A. Golston, appeals from the judgment of sentence entered in the Erie County Court of Common Pleas, following his jury trial convictions for forgery, access device fraud, identity theft, receiving stolen property, and possessing instruments of crime.¹ We affirm.

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

Appellant raises three issues for our review:

APPELLANT AVERS AND BELIEVES THAT THE [COURT] ERRED WHEN IT DENIED APPELLANT'S OMNIBUS PRE-TRIAL MOTIONS AND THEREBY RULED THAT APPELLANT'S CONSTITUTIONAL RIGHTS HAD NOT BEEN VIOLATED BY THE MILLCREEK TOWNSHIP POLICE DEPARTMENT (MPD), SPECIFICALLY THAT THE STOP AND/OR SEARCH OF

¹ 18 Pa.C.S.A. §§ 4101(a)(2); 4106(a)(1)(ii); 4120(a); 3925(a); 907(a), respectively.

APPELLANT WAS CONSTITUTIONAL (*I.E.*, THAT THE MILLCREEK TOWNSHIP POLICE DEPARTMENT HAD REASONABLE SUSPICION AND/OR PROBABLE CAUSE).

WHETHER THE VERDICT GOES AGAINST THE SUFFICIENCY OF THE EVIDENCE BECAUSE THE COMMONWEALTH'S PRIMARY WITNESSES TESTIFIED AND/OR PRESENTED EVIDENCE OF WHAT WAS UNCHARGED CONDUCT INSIDE THE BRANCH OF ERIE BANK, AND THE COMMONWEALTH PRESENTED NO WITNESSES OR EVIDENCE OF THE ALLEGED CONDUCT INSIDE THE BRANCH OF PNC BANK, ESPECIALLY WITH REGARDS TO THE FOLLOWING CHARGES: A) FORGERY (F2)—COUNT ONE; B) ACCESS DEVICE FRAUD (F3)—COUNT TWO; C) RECEIVING STOLEN PROPERTY (F3)—COUNT THREE; D) IDENTITY THEFT (F3)—COUNT FOUR; AND/OR E) INSTRUMENTS OF CRIME (M1)—COUNT FIVE[.]

APPELLANT AVERS AND BELIEVES THAT THE [COURT] ERRED AT TIME OF SENTENCING WHEN THE TRIAL COURT IMPOSED A PERIOD OF INCARCERATION, WHICH WAS AN AGGRAVATED RANGE SENTENCE, AND IMPOSED SUBSEQUENT CONSECUTIVE TERMS OF PROBATION AND/OR SUPERVISION THAT EXCEEDS TEN (10) YEARS, WHICH IS MANIFESTLY EXCESSIVE, CLEARLY UNREASONABLE AND INCONSISTENT WITH THE OBJECTIVES OF THE SENTENCING CODE. SPECIFICALLY, SECTION 9721(B) OF THE SENTENCING CODE STATES THAT CONFINEMENT SHALL BE CONSISTENT WITH THE PROTECTION OF THE PUBLIC, THE GRAVITY OF THE OFFENSE AND THE REHABILITATIVE NEEDS OF THE DEFENDANT. APPELLANT ARGUES THAT THE POLICIES OF SECTION 9721(B) COULD HAVE BEEN ACHIEVED WITHOUT IMPOSING SUCH A LENGTHY MINIMUM AGGREGATE SENTENCE.

(Appellant's Brief at 3).

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable William R. Cunningham, 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 August 22, 2017, at 4-13) (finding: **(1)** employees at Erie Bank told Officer Caldwell that African American man wearing tan sports coat and derby-style hat had tried, for second time, to cash savings bonds with identification card that could not be verified; Erie Bank employees told officer that suspect was walking west; Officer Caldwell knew PNC bank was nearby, so he drove there and observed black male with tan sports coat and derby-style hat; Officer Caldwell had reasonable suspicion for investigative detention, approached Appellant, and asked what he was doing; after learning of Appellant's failure to cash savings bonds at Erie Bank and at PNC Bank, officer asked Appellant for his identification, which Appellant produced; when officer attempted to verify it, it came back as white female with different name and address than listed on identification card; officer asked Appellant about savings bonds; Appellant handed one over; officer verified that name and social security number on savings bond belonged to 81-year-old white male resident of Arizona; Appellant then admitted his real identity and claimed he had found savings bonds on top of urinal in restaurant in Chicago; at this point, officer had probable cause to arrest Appellant; court properly denied suppression motion; **(2)** after failed attempts at banks in Ohio and Illinois, Appellant travelled to Pennsylvania to try to cash savings bonds belonging to Arizona resident, Mr. Peele; Appellant secured false identification card in Ohio so he could pass himself off as Mr. Peele; Appellant signed

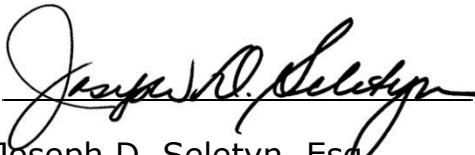
identification card as Mr. Peele and wrote on and/or signed at least one of savings bonds; no evidence showed Mr. Peele authorized Appellant to write on his savings bonds; Appellant claimed he found savings bonds in bathroom of restaurant in Chicago or near dumpster of restaurant, or in projects of Ohio; whichever version of Appellant's story jury believed demonstrated Appellant knew or had reason to know savings bonds were stolen; Commonwealth presented sufficient evidence to sustain each of Appellant's convictions; **(3)** Appellant challenges excessive nature of his sentence,² which does not raise substantial question under circumstances of this case; moreover, court considered Appellant's character, prior record, seriousness of offenses, impact of offenses on Victim, and reviewed pre-sentence investigation report; court stated reasons for sentence imposed on record at time of sentencing; court

² Appellant filed *pro se* correspondence on May 30, 2017, within ten days of sentencing, stating he wanted to challenge the discretionary aspects of his sentence. The court forwarded the correspondence to counsel, consistent with Pa.R.Crim.P. 576(a)(4) (stating in any case in which defendant is represented by counsel, if defendant submits for filing written motion, notice or document that has not been signed by defendant's attorney, clerk of courts shall accept it for filing and forward copy of time stamped document to defendant's attorney and attorney for Commonwealth within 10 days of receipt). Counsel asserted in Appellant's Pa.R.A.P. 1925(b) statement that the court erroneously denied Appellant's post-sentence motions, but the certified record and docket entries show counsel did not file a post-sentence motion on Appellant's behalf. Consequently, Appellant's discretionary aspects of sentencing issue is waived. **See Commonwealth v. Griffin**, 65 A.3d 932 (Pa.Super. 2013), *appeal denied*, 621 Pa. 682, 76 A.3d 538 (2013) (explaining objections to discretionary aspects of sentence are waived if they are not raised at sentencing hearing or in timely filed post-sentence motion). Even if Appellant had preserved his sentencing challenge, we would agree with the trial court's conclusion that his claim merits no relief.

did not abuse sentencing discretion). Accordingly, we affirm on the basis of the trial court's opinion regarding Appellant's first and second issues. Appellant's third issue on appeal is waived; even if Appellant had preserved this claim, we would affirm on the basis of the trial court's opinion.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style with a horizontal line underneath it.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 5/30/2018

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
 v. : OF ERIE COUNTY, PENNSYLVANIA
 : CRIMINAL DIVISION
 :
 :
 :
 : NO. 2218 of 2016

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 ERIE COUNTY
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OPINION

Appellant, Dwayne Golston, filed a Notice of Appeal on June 21, 2017, from the judgment of sentence imposed on May 22, 2017. This Opinion is in response to the Statement of Matters Complained of on Appeal filed July 14, 2017.

BACKGROUND

Erin Bednaro (née Mehler), the office manager at Erie Bank in Millcreek Township, testified Appellant came in on June 15, 2016 and tried to cash savings bonds. *See Trial Transcript, Day One, April 3, 2017, p. 23* (“*N.T.I.*”). One of the tellers alerted her because Appellant’s Ohio-issued ID was not going through the scanners. *N.T.I. p. 23, 25-27*. Bednaro was able to identify Appellant by his facial features and jacket. *N.T.I. p. 23*. Appellant tried to cash the same savings bonds at Erie Bank within the preceding two weeks. *N.T.I. p. 24*. There were eight \$1,000 savings bonds for a total of \$8,000. *N.T.I. p. 24*.

The ID presented by Appellant contained Andrew Peele’s name, which matched the name on the savings bonds. *N.T.I. p. 27*. The social security number of Andrew Peele was present on the top of the savings bonds. *N.T.I. p. 30*.

When Appellant left, Bednaro called the police and let them know he was heading west, in the direction of nearby PNC Bank. *N.T.I. pp. 35-36*. There was a stamp on one of the savings bonds indicating that PNC Bank attempted to process it. *N.T.I. pp. 30-31*.

Officer Kyle Caldwell responded to the dispatch call and went to Erie Bank. *N.T.I. p. 40.* After speaking with Bednaro and receiving a description of the suspect as an African American male wearing a derby-style hat and tan sport coat, and receiving a copy of the identification card, Officer Caldwell drove towards PNC Bank. *N.T.I. pp. 40-41.* When he arrived, he could see through the front glass windows a man wearing a derby-style hat and a tan sport coat that matched the description of Appellant. *N.T.I. p. 43.*

As Appellant was leaving the bank, Officer Caldwell engaged him in a discussion about the savings bonds. *N.T.I. p. 44.* Appellant said he was unable to cash the bonds because of an issue with his driver's license and that he had also failed at Erie Bank. *N.T.I. p. 44.* When the operator license number was run on the license, it came back to a white female named Rose M. Tanker from Lyndhurst, Ohio. *N.T.I. pp. 45-46.* When the officer ran the name Andrew J. Peele, there was no record found in Ohio. *N.T.I. p. 47.*

Upon examining the savings bonds, Officer Caldwell ran the name Andrew Peele at the listed Arizona address with the associated Social Security number. *N.T.I. p. 48.* The result verified Andrew Peele was an 81 year old Caucasian living in Arizona. *N.T.I. pp. 48-50.* The Ohio ID Appellant used had the correct birthdate for Andrew Peele even though it is not present anywhere on the savings bonds. *N.T.I. p. 50.*

Appellant then identified himself as Dwayne Golston. *N.T.I. p. 51.* Officer Caldwell ran that name along with the date of birth, address, and phone number provided by Appellant. An Ohio identification card verified Golston's identity. *N.T.I. p. 51.*

Appellant stated that he came across the savings bonds on the back of a urinal in a White Castle restaurant in Chicago, Illinois. *N.T.I. pp. 52-53.* Appellant was placed under arrest and given his Miranda warnings. *N.T.I. p. 53.* When later interviewed, Appellant gave a different

version, that he received the bonds from somebody somewhere in the Cleveland projects. *N.T.I.* p. 55. Appellant then made a written statement asserting he found the bonds in a White Castle near a dumpster, that he had a disability, needed to take care of his 9-year-old daughter, and had a fake ID made by a guy named Bo. *N.T.I.* pp. 57-58. Appellant tried to cash the bonds in Chicago and Cleveland as well. *N.T.I.* p. 58.

On August 5, 2016, the District Attorney's Office filed a Criminal Information charging Appellant with forgery, access device fraud, receiving stolen property, identity theft, and possessing instruments of crime.¹ After a suppression hearing on December 20, 2016, Judge Stephanie Domitrovich issued Findings of Fact and Conclusions of Law along with an Order denying Appellant's Omnibus Pre-trial Motion. After a two-day jury trial on April 3-4, 2017, Appellant was found guilty of all charges.

Appellant was sentenced on May 22, 2017 as follows:

Count One: Forgery – 33 to 66 months of incarceration with 342 days of credit for time served;

Count Two: Access Device Issued to Another – 39 to 78 months of incarceration, consecutive to Count One;

Count Three: Receiving Stolen Property – 24 to 48 months of incarceration, consecutive to Count Four;

Count Four: Identity Theft – 39 to 78 months of incarceration, concurrent to Count Two; and

Count Five: Possessing Instruments of Crime ~~48~~⁴⁸ months of probations, consecutive to Count 3.

Appellant filed a Notice of Appeal on June 21, 2017 and a Statement of Matters Complained of on Appeal ("Concise Statement") on July 14, 2017. Appellant preserved three issues on appeal. The first is that the Honorable Stephanie Domitrovich erred in denying Appellant's Motion for Suppression. The second is that the verdict at each count is based on insufficient evidence of the Appellant's conduct inside PNC Bank and was based on uncharged

¹ 18 Pa.C.S.A. § 4101(a)(2); 18 Pa.C.S.A. § 4106(a)(1)(ii); 18 Pa.C.S.A. § 3925(a); and 18 Pa.C.S.A. § 4120(a); 18 Pa.C.S.A. § 907(a), respectively.

conduct inside Erie Bank. The third is that the sentences imposed were manifestly excessive, clearly unreasonable, and inconsistent with the objectives of the Sentencing Code, specifically noting that the policies of Section 9721(b) could have been achieved without imposing such a lengthy minimum aggregate sentence.

SUPPRESSION

The Honorable Judge Stephanie Domitrovich found that Officer Caldwell had reasonable suspicion to initiate an investigative detention of Appellant and developed sufficient probable cause to place him under arrest. Appellant alleges this was in error.

There are three forms of police-citizen interaction: a mere encounter, an investigative detention, and a custodial detention. *Commonwealth v. Boswell*, 721 A.2d 336, 340 (Pa. 1998). A mere encounter between police and a citizen “need not be supported by any level of suspicion, and carr[ies] no official compulsion on the part of the citizen to stop or to respond.” *Commonwealth v. Riley*, 715 A.2d 1131, 1134 (Pa. Super. 1998). An investigatory stop, which subjects a suspect to a stop and a period of detention, but does not involve such coercive conditions as to constitute an arrest, requires a reasonable suspicion that criminal activity is afoot. *See Terry v. Ohio*, 392 U.S. 1, 21 (1968). A custodial detention is an arrest and must be supported by probable cause. *Id.*

Here, Officer Caldwell engaged Appellant in a conversation as he was leaving PNC Bank. This was a mere encounter as Appellant was free to leave or not respond to the officer’s inquiry. As more incriminating evidence developed, the interaction with Appellant evolved into a custodial detention.

Officer Caldwell's initial stop of Appellant was supported by reasonable suspicion. *See Commonwealth v. Fulton*, 921 A.2d 1239, 1243 (Pa. Super. 2007) (*quoting Commonwealth v. Little*, 903 A.2d 1269, 1272 (Pa. Super. 2006) ("To establish grounds for 'reasonable suspicion ... the police officer must articulate specific observations which, in conjunction with reasonable inferences derived from these observations, led him reasonably to conclude, in light of his experience, that criminal activity was afoot and the person he stopped was involved in that activity.")). Upon arriving at Erie Bank, he was given the description of an African American man wearing a tan sports coat and a derby-style hat who tried, for the second time, to cash savings bonds with an identification card which could not be verified by the scanners. He was told the suspect was walking west. Knowing there was another bank nearby, Officer Caldwell drove there and saw a black male with a tan sports coat and derby-style hat. At this point, there was reasonable suspicion for an investigative encounter.

Officer Caldwell approached Appellant and asked what he was doing. After learning of his failure to cash the savings bonds both at PNC Bank and Erie Bank, Officer Caldwell asked for his ID. Appellant provided his ID voluntarily. When Officer Caldwell attempted to verify, it came back to a white female with a different name and address than listed on the ID. Officer Caldwell then asked about the savings bonds. When Appellant voluntarily handed one over, Officer Caldwell verified the name, Arizona address, and Social Security number belonged to an 81 year old white man presently living in Tucson. Confronted with this information, Appellant admitted his name was Dwayne Golston and said he found the savings bonds on top of a urinal in a White Castle restaurant in Chicago, Illinois. These circumstances provide probable cause to arrest Appellant. *See Commonwealth v. Ibrahim*, 127 A.3d 819, 824 (Pa. Super. 2015) (*quoting Commonwealth v. Rodriques*, 585 A.2d 988, 990 (Pa. 1991) (a trial court must consider "whether

the facts and circumstances which are within the knowledge of the police officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime.”).

The findings of fact and conclusions of law of Judge Domitrovich were consistent with the record. There is no basis for suppressing the evidence gathered by Officer Caldwell.

SUFFICIENCY OF THE EVIDENCE

The standard of review of a sufficiency of the evidence claim is as stated by the Superior Court:

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 weight 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 beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Brown, 23 A.3d 559-60 (Pa. Super. 2011) (en banc), quoting *Commonwealth v. Hutchinson*, 947 A.2d 800, 805 (Pa. Super. 2008).

This standard of review will be applied to each of the Appellant’s convictions.

A. Forgery

In order to find Appellant guilty of forgery, the jury needed to find (1) he executed a writing purporting to be another (2) who did not authorize it (3) with the intent to defraud another. *See* 18 Pa.C.S.A. § 4101 (a)(2). There is sufficient evidence in the record to enable the fact-finder to find every element of this crime beyond a reasonable doubt.

After failed attempts at banks in Ohio and Illinois, Appellant travelled to Erie, Pennsylvania several times intending to cash savings bonds belonging to Andrew Peele, an octogenarian residing in Arizona. To accomplish this theft, Appellant secured a false ID in Ohio so he could pass himself off as Andrew Peele. He signed the ID as Andrew Peele, thereby creating the false impression he was the owner of the savings bonds.

The circumstantial evidence shows he also wrote on and/or signed at least one of the savings bonds that was partially processed at a PNC branch in Erie. Appellant admitted trying to cash the bonds at PNC, so it had to be Appellant and not the real Andrew Peele who wrote on the savings bond at PNC in an attempt to cash it.

There is no evidence that Arizona resident Andrew Peele authorized, or would have authorized, Appellant to write on Peele's savings bonds in order to cash them in Chicago, Cleveland or Erie. Likewise, it is uncontrovertible that Andrew Peele would not have authorized Appellant to secure an Ohio identification card in Peele's name and sign it thereby enabling Appellant to falsely hold himself out as Peele.

Accordingly, there was sufficient evidence to support Appellant's conviction for forgery.

B. Access Device Fraud

In order to convict Appellant of access device fraud, the jury needed to find (1) he used an access device to obtain property with knowledge (2) that was issued to another person who has not authorized its use. *See* 18 Pa.C.S.A. § 4106(a)(1)(ii).

The savings bonds Appellant was attempting to cash fall within the definition of an access device because the bonds are a “means of account access that can be used alone or in conjunction with another access device to obtain money...” *See* 18 Pa.C.S.A. § 4106(d). Appellant was trying to obtain money and he was not authorized to do so from the owner of the bonds, Andrew Peele. To the contrary, Appellant bought a fake Ohio identification card to support his effort to cash Peele’s bonds.

C. Theft by Receiving Stolen Property

In order to convict Appellant of receiving stolen property, the jury needed to find (1) he intentionally received, retained, or disposed property of another (2) knowing or believing it had probably been stolen. 18 Pa.C.S.A. § 3925(a). The evidence in the record is sufficient to support this conviction.

Appellant was found in possession of eight savings bonds with the name Andrew J. Peele on them that he variously described as finding either on the back of a urinal in a White Castle in Chicago, Illinois, near a dumpster at the White Castle, or in the projects of Cleveland, Ohio. No matter which version the jury believed, it is a reasonable inference to find Appellant knew or believed that the savings bonds had been stolen. There is no plausible explanation for Appellant’s efforts to secure a false ID so that he could cash the savings bonds other than his knowledge the bonds were stolen and that he had no authority from Andrew Peele to cash them.

Identify Theft

To convict Appellant identity theft, the jury had to find (1) he possessed or used identifying information of another person (2) without the consent of that other person (3) to further an unlawful purpose. 18 Pa.C.S.A. § 4120(a). For the purposes of grading, if the value involved was \$2,000 or more, the offense is a felony of the third degree. 18 Pa.C.S.A. § 4120(c)(1)(ii). If the victim of the offense is 60 years of age or older, the grading of the offense shall be one grade higher than otherwise specified. 18 Pa.C.S.A. § 4120(c)(2).

Appellant used the identifying information of Andrew J. Peele without his consent to try to defraud several banks. The information listed on the savings bonds included Andrew Peele's name, address, and social security number. Nowhere listed on the savings bonds was Andrew Peele's birthdate, but somehow Appellant was able to get the correct birthdate and use it on his fake Ohio identification card along with Mr. Peele's name. Andrew Peele was 81 years old at the time of the offense. There were eight \$1,000 savings bonds for a total of \$8,000.

D. Possessing Instruments of Crime

In order to convict Appellant of possessing instruments of crime, the jury must have found (1) he possessed any instrument of crime (2) with the intent to employ it criminally. 18 Pa.C.S.A. § 907(a). An instrument of crime is anything made or specially adapted for criminal use, or anything used for criminal purposes and possessed by the actor under circumstances not manifestly appropriate for lawful uses it may have. 18 Pa.C.S.A. § 907(d).

Here, the fake Ohio identification card was specially made for the purpose of trying to defraud a bank in order to obtain \$8,000 in exchange for savings bonds issued to Andrew J.

Peele. Appellant stated in a police interview and in a written confession that he went to a guy named Bo in order to get this ID card made with this name and birthdate on it so that he could cash those savings bonds.

The evidence for each of the above crimes is overwhelming. There is no basis to overturn the jury's verdict.

SENTENCING

Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. *Commonwealth v. Zirkle*, 107 A.3d 127, 133 (Pa. Super. 2014); *Commonwealth v. Cunningham*, 805 A.2d 566, 575 (Pa. Super. 2002). Challenges to the discretionary aspects of sentencing are not appealable as of right. *Commonwealth v. Sierra*, 752 A.2d 910 (Pa. Super. 2000). For jurisdictional purposes, an appellant must demonstrate there is a substantial question as to the appropriateness of the sentence under the Sentencing Code. *Commonwealth v. Mouzon*, 812 A.2d 617, 621-622 (Pa. 2002).

A substantial question exists only when the appellant advances a colorable argument the sentence was either (1) inconsistent with a specific provision of the Sentencing Code; or (2) contrary to the fundamental norms which underlie the sentencing process. *Id.*

Appellant argued the court erred at the time of sentencing “when the trial court imposed a period of incarceration, which was an aggravated range sentence, and imposed subsequent consecutive terms of probation and/or supervision that exceeds 10 years.” *Concise Statement*, p. 2. This bald allegation does not rise to a substantial question. See *Commonwealth v. Moury*, 992 A.2d 162, 171-172 (Pa. Super. 2010) (“The imposition of consecutive, rather than concurrent,

sentences may raise a substantial question in only the most extreme circumstances, such as where the aggregate sentence is unduly harsh, considering the nature of the crimes and the length of imprisonment.”). Therefore, Appellant has failed to raise a substantial question and has not preserved a challenge to the discretionary aspects of his sentence.

Assuming *arguendo* Appellant has raised a substantial question, Appellant’s sentence is supported by the record.

The particular circumstances of Appellant’s character, his prior record, the seriousness of the offenses, and the impact of the offenses on the victim were considered. The Pre-Sentence Report was reviewed *en toto*. The sentencing Judge also presided over Appellant’s trial. As the Court stated at the sentencing hearing:

THE COURT: I’m well aware, as you pointed out, Mr. Checque, that this trial involved eight different bonds of 1,000 each and that’s what we’re here for. I’ll order restitution in the amount of \$8,000.

MR. CHECQUE: Thank you, Your Honor.

THE COURT: It’s apparent – I read some of the police reports that’s a part of the Presentence Report and it’s apparent that Mr. Peele was very much taken advantage of and exploited. He’s an elderly person, but that occurred in Arizona and the figures that he puts there relate to what occurred in Arizona.

MR. CHECQUE: That’s correct, Your Honor.

THE COURT: And there’s no evidence in the record connecting Mr. Golston to that. But what does connect Mr. Golston is he appeared in Erie with \$8,000 of those bonds, that’s all we have to connect those dots. So, in fairness to Mr. Golston, I’ll order restitution in that amount.

But I presided over the trial. I listened to the evidence. I’ve listened to your explanation of it, Mr. Golston, through your counsel, and I don’t find it to be credible at all being that your sole purpose of coming to Erie County, Pennsylvania was to commit these crimes knowing full well that you had no legal interest in any of these items. And the fact that you would get a false ID is evidence of your criminal intent. And what’s really unfortunate is: This is an old person who’s getting further exploited by you.

But you have a history, basically, nonstop since 1984 of a lot of variety of offenses including a lot of forgery charges – and I mean a lot of forgery charges – a lot of theft charges, possessing criminal instruments, robberies, drugs, attempted

escape, receiving stolen property, identity theft – identity fraud is what it was. And you would have been on supervision in Ohio when these offenses were committed.

And, in addition to just the lengthy incredible array of people that you've victimized, you've been incarcerated. You've been given community supervision. But, notably, you've been revoked a number of times including in 1986, 1987, 2008 – these are all different docket numbers.

And there's no evidence to support the representation of your health issues but, obviously, those health issues that you described didn't deter you from finding the means and devising the plan, and executed plan, to come to Pennsylvania to victimize yet another person. And that is of big concern.

Explain to me why you would have, according to the Presentence Report – seven different aliases. There's seven names attributed to you. Why would that be? Actually eight if you include the one you're here on...

Well, that's hard to believe given your history, do you understand that? I mean, my concern is your criminal history – I know it's reflected in your prior record score – what is just astounding is how consistent it's been for a variety of offenses including crimes of violence like robbery. But just the number of people you've victimized over the years and yet you continued to do that. And you did a lot of it in Ohio and now you've come over in Pennsylvania, again, to victimize an elderly person.

I read his Victim Impact Statement and it describes the extreme difficulty he has in trusting other people. In fairness to you, I don't know that we can separate, in his Victim Impact Statement, your actions from the people in Arizona, but you certainly compounded the problem when you intentionally tried to exploit the situation.

For all the reasons that I stated, I'm going to fashion the following sentence: As to Count 1, I'm going to order a period of incarceration of 33 to 66 months, that's in the aggravated range, but given his long history of forgery, the fact this involved an elderly person, and you were on supervision at the time you committed the offense.

As to the charge of access device fraud, I'll order a sentence in the aggravated range of 39 to 78 months. I'll make that consecutive to Count 1.

As to the charge of Identity Theft, I'll order a sentence of 39 to 78 months. I'll make that concurrent to Count 2.

And as to the charge of Theft, I'll order a period of incarceration of 24 to 48 months –

MR. CHECQUE: Your Honor, do you mean Count 3, Receiving Stolen Property?

THE COURT: Yes.

MR. CHECQUE: Sorry.

THE COURT: Okay. 24 to 48 months. I'll make that consecutive to Count 4.

As to Count 5, Possessing Instruments of Crime, order a period of probation of 48 months consecutive then to Count 3.

I'll order the restitution in the amount of \$8,000. Order a letter of apology to Mr. Peele. And I would authorize any and all mental health treatment deemed appropriate. That's State supervised and he is not RRRI eligible.

PROBATION OFFICER BOWERS: Credit for time served in this matter?

THE COURT: Yes.

Sentencing Transcript, May 22, 2017, pp. 7-9, 11-13.

Appellant's sentence was supported by ample reasons of record in Appellant's presence.

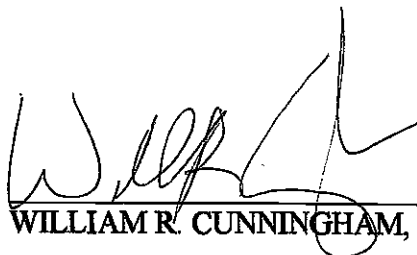
CONCLUSION

The Motion to Suppress was properly denied. The evidence is sufficient to support each of Appellant's convictions. Because no substantial question exists, Appellant's challenge to the discretionary aspects of his sentence has not been preserved. There is no underlying merit to Appellant's challenge to his sentence.

BY THE COURT:

Date: _____

5/22/17



WILLIAM R. CUNNINGHAM, JUDGE

cc: District Attorney's Office

Jason A. Checque, Esquire, 509 Sassafra Street, Erie, PA 16507