

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
CHUNG LY	:	
	:	
Appellant	:	No. 26 EDA 2026

Appeal from the Judgment of Sentence Entered March 14, 2025
In the Court of Common Pleas of Montgomery County Criminal Division
at No(s): CP-46-CR-0006550-2023

BEFORE: NICHOLS, J., McLAUGHLIN, J., and KING, J.

MEMORANDUM BY KING, J.:

FILED OCTOBER 15, 2026

Appellant, Chung Ly, appeals from the judgment of sentence entered in the Montgomery County Court of Common Pleas, following his bench trial convictions for 39 counts of dealing in unlawful proceeds of an act with intent to promote, 39 counts of theft by deception, and 40 counts of receiving stolen property.¹ We affirm.

The trial court set forth the relevant facts and procedural history of this matter as follows:

In September of 2022, Gerald D'Angelo, a corporate investigator for Home Depot, received a call from Upper Moreland Township Police Department Detective Vincent Small regarding a retail theft case he was investigating for Lowe's that the detective believed may also involve Home Depot. Running an American Express credit card number provided by the detective, Mr. D'Angelo found numerous online and in-store purchases followed by returns and

¹ 18 Pa.C.S.A. §§ 5111, 3922, and 3925, respectively.

refunds for an amount greater than the original purchase. As his investigation continued, Mr. D'Angelo discovered a second card from MasterCard used for Home Depot purchases and returns. Both cards were in the name of Cuong Ly, Appellant's older brother, charged as a co-defendant. Mr. D'Angelo meticulously gathered transaction receipts, store videos and photographs, and visited Home Depot locations to view the returned merchandise when time permitted. Online purchases from homedepot.com were addressed and shipped to Cuong Ly at an address on North 12th Street in Philadelphia.

Law enforcement in Upper Moreland Township had first been notified of a potential retail theft organization operating in the tri-state area by Lowe's in July of 2022. Detective Small obtained a search warrant for the American Express credit card records in September of 2022. The detective obtained a similar search warrant for the Mastercard credit card records in November of 2022.

Detective Small and Montgomery County Detective Rick Beaghley, together with other law enforcement officers, began a joint investigation in November of 2022. They met with Mr. D'Angelo who provided them with his findings. Additionally, surveillance video from Home Depot captured images of Appellant, as well as his co-defendant brother and others arriving and/or departing in Cuong Ly's 2011 white Dodge pickup truck to and/or from various Home Depot stores after fraudulently returning various items. Often when the co-defendant brothers arrived in the parking lot together, they entered the store several minutes apart or through separate entrances.

In addition, the detectives investigated a Facebook Marketplace account in Cuong Ly's name that listed sales postings including various tools, power tools, batteries, and jump starter kits, advertised as new. On April 21, 2023, Detective James Carbo of the Montgomery County Detective Bureau worked undercover assisting Detective Beaghley in this case. Detective Beaghley gave Detective Carbo \$250 in U.S. currency to meet someone to purchase a NOCO battery jump starter kit in an arrangement made on Facebook Marketplace. As directed, Detective Carbo drove to and parked in a Wells Fargo Bank parking lot on East

Olney Avenue in Philadelphia, not far from Appellant's residence on North Front Street, and waited. Appellant drove into the lot in a Chevy Silverado Pickup truck and parked. Detective Carbo walked over to the truck and Appellant handed him the still sealed, unopened box in exchange for the \$250 in cash. Appellant confirmed the starter kit was brand new, that if the detective wanted any more starter kits, he should contact Appellant directly, and texted Detective Carbo with his cell phone so that the detective had his phone number.

On June 16, 2023, law enforcement executed search warrants on two (2) houses in Philadelphia, one noted on North 12th Street and a second nearby on North Front Street, also in Philadelphia. Evidence admitted at trial shows Appellant entering and exiting both of these residences on multiple occasions. Recovered items from the searches include, among others: jump starters, batteries, battery chargers, numerous tools, circular saws, fans, grinders, sanders, bit and drill sets, a jack, printable labels, a label maker, an HP printer, iPads, and iPhones. Mr. D'Angelo accompanied law enforcement during the execution of the search warrants and documented several tools and other goods that are sold at Home Depot located inside of both houses.

Further, law enforcement recovered approximately \$90,000 in United States currency from the address on Front Street in Philadelphia. Law enforcement located a Tupperware container storing approximately \$50,000 in co-defendant Cuong Ly's basement bedroom, with the remaining \$40,000 located throughout the residence. Appellant slept in the second floor back bedroom of the house on North Front Street and was present at the time of the search.

(Trial Court Opinion, 2/9/26, at 1-5) (internal citations to the record omitted).

Following an investigation, the Commonwealth charged Appellant with 201 counts in total, including charges for corrupt organizations, retail theft – altered label/price marking, and organized retail theft. Additionally, the Commonwealth charged Appellant's brother and co-defendant, Cuong Nam

Ly, in connection with the case.² The Commonwealth alleged Cuong Nam Ly was the leader of a corrupt organization, purchasing merchandise from Home Depot's online website using one of two credit cards in his name. The goods would be shipped to Mr. Ly's address. With the assistance of Appellant and others in the organization, Mr. Ly placed fake UPC barcode stickers on the goods, then returned them for a refund at a higher price than the value of the returned merchandise inside the box, with all amounts refunded to his credit cards. Sometimes Appellant returned the goods in person and sometimes he waited in the driver's seat of his truck while another person returned the goods.

The matter proceeded to a two-day bench trial on August 12, 2024. The Commonwealth presented the testimony of Mr. D'Angelo, as well as the testimony of Detectives James Carbo, James Reape, Vincent Small, and Richard Beaghly.

On November 4, 2024, the court delivered the verdict. The court convicted Appellant of 39 counts of dealing in unlawful proceeds of an act with intent to promote, 39 counts of theft by deception, and 40 counts of receiving stolen property. The court acquitted Appellant of corrupt organizations, retail theft - altered label, and organized retail theft.

On March 14, 2025, the matter proceeded to sentencing. The court conducted a sentencing hearing for both brothers. The Commonwealth

² Cuong Nam Ly has also separately appealed his judgment of sentence, docketed at 1996 EDA 2025.

explained during co-defendant Mr. Ly's sentencing that the standard range sentence for the Felony 1 offense of dealing in unlawful proceeds was between 9 and 16 months, and for the Felony 3 offense of theft by deception, was between 3 and 12 months. The Commonwealth sought a sentence involving state incarceration. Ultimately, the court sentenced Appellant to 11½ to 23 months of incarceration, plus eight years of probation.

The court then proceeded to thoroughly colloquy Appellant:

[Appellant] acknowledged that 1) he had the benefit of hearing [co-defendant Mr. Ly's] full sentencing hearing; 2) the Standard range sentences for him were the same as his brother's for the Felony 1 and Felony 3 convictions; 3) that the Commonwealth would be arguing for consecutive, state sentences but agreed to the lesser sentence given the sentence that [Mr. Ly] had received; 4) Appellant had a right to his own totally individualized sentencing hearing; 5) the aggregate sentence would be eleven and one-half (11½) to twenty-three (23) months in the county correctional facility with eight (8) years of consecutive probation, a \$5,000 fine, and restitution; 6) on the counts for Receiving Stolen Property, the court made a determination of guilt without further penalty; 7) Appellant had his own individual right to present witnesses, argument, and a right to allocution; 8) Appellant agreed to waive those rights; 9) the court's only discretion was in whether to accept the agreement; 10) no one forced, threatened or made any promises to get Appellant to accept this sentencing scheme; 11) Appellant was not under the influence of any drugs, alcohol, or any mental illness that prevented him from understanding what he was doing, and 12) Appellant had enough time to discuss and obtain counseling from Attorney Egan.

(Trial Court Opinion, 2/9/26, at 9). **See also** (N.T. Sentencing, 3/14/25, at 4-13). Subsequently, the court found that Appellant had knowingly, intelligently, and voluntarily accepted the agreed-upon sentence and waived

his full sentencing hearing and imposed the agreed-upon sentence.

On March 21, 2025, Appellant filed two motions. First, Appellant filed a motion seeking reconsideration of his sentence. Appellant alleged that he was not in the proper state of mind to enter in the agreement due to grief from the passing of his mother in January 2025, and that his grief prevented him from knowingly, intelligently, and voluntarily entering into the sentencing agreement. Second, counsel filed a motion to withdraw as counsel and seeking appointment of conflict counsel.

On April 11, 2025, the court held a hearing on counsel's motion to withdraw. At the hearing, the court noted that counsel had followed Appellant's wishes and filed the motion to reconsider sentence but could not argue in support of it due to his motion to withdraw. The court therefore granted counsel's motion and appointed conflict counsel.

On July 11, 2025, the court convened a hearing on the motion for reconsideration. At the hearing, the court asked counsel whether there was any evidence counsel planned to introduce, to which counsel replied that there was not and that he would be presenting argument only. Upon further questioning, counsel explained that Appellant did not wish to present evidence or testify. The court again expressed concern that, based on the nature of Appellant's claims, factual evidence might be required. Counsel stated:

I agree, Your Honor, that it is a factual issue and it is his burden. I explained to [Appellant] that it would be in his best interest to testify or present some sort of evidence regarding the allegations in his Motion for Reconsideration. He does not wish to testify or present any evidence.

(N.T. Hearing, 7/11/25, at 5). Counsel then argued that Appellant could not have knowingly, intelligently, and voluntarily agreed to his sentence due to his grief, and the court entered an order denying the motion.

On August 12, 2025, Appellant filed an untimely notice of appeal. On August 14, 2025, counsel filed a motion to withdraw as court-appointed counsel. On September 3, 2025, the court granted the motion and appointed new counsel. On September 9, 2025, the court ordered Appellant to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal.

However, on September 18, 2025, counsel filed an application to discontinue Appellant's direct appeal, with the intention of filing a petition pursuant to the Post Conviction Relief Act ("PCRA"), with a stipulated order by agreement that Appellant could file a post-sentence motion *nunc pro tunc*. Subsequently, counsel discontinued the appeal, and the matter was remanded for counsel to file the PCRA petition.

On November 6, 2025, the court granted PCRA relief and restored Appellant's right to file post-sentence motions *nunc pro tunc* and a subsequent direct appeal. On November 11, 2025, Appellant filed a post-sentence motion *nunc pro tunc*. In the motion, Appellant requested that the court modify the agreed-upon sentence. As well, Appellant challenged the weight and sufficiency of the evidence. On December 9, 2025, the court denied the post-sentence motion.

On December 22, 2025, Appellant timely filed a notice of appeal *nunc pro tunc*. On December 29, 2025, the court ordered Appellant to file a

Pa.R.A.P. 1925(b) statement of errors complained of on appeal. On January 12, 2026, Appellant timely complied with that order.

On appeal, Appellant raises the following issues for our review:

I. Whether [the trial court] abused its discretion in denying Appellant's Motion to Modify his agreed upon sentence because the records fails to establish that Appellant knowingly, voluntarily and intelligently agreed to essentially the same sentence imposed upon his co-defendant/brother Cuong Ly in that at the time of the sentencing there was no advisement as to the difference in the Sentencing Guidelines and/or maximum exposure, Appellant did not acknowledge his understanding that he was waiving his right to have individualized sentencing by this [c]ourt, and Appellant was in a state of mourning the loss of his mother in accordance with the Buddhist practices that caused him to lack the ability at that time to agree to the sentence?

[II.] Whether there was insufficient evidence to find Appellant guilty of the crimes of Dealing in Unlawful Act/Intent to Promote, 18 Pa.C.S. § 5111(a)(1), because the Commonwealth failed to establish beyond a reasonable doubt that Appellant knew that the property involved represented the proceeds of unlawful activity and acted with the intent to promote the carrying on of the unlawful activity, Theft by Deception/False Impression, 18 Pa.C.S. § 3922(a)(1), because the Commonwealth failed to establish beyond a reasonable doubt that Appellant created a false impression to obtain someone else's property and the other person relied upon that false impression;, and Receiving Stolen Property, 18 Pa.C.S. § 3925(a), because the Commonwealth failed to establish beyond a reasonable doubt that Appellant knew or believed that the property was stolen in that:

i. ... Appellant had no role in any of the transactions that occurred by his brother, other than being the person who returned some of the merchandise to the Home Depot that allowed monies to go back into his brother's account;

ii. There is no evidence establishing that Appellant knew what his brother was doing and when with respect to his transactions;

iii. There is no evidence that Appellant received any monies from the transactions conducted by his brother Cuong Ly;

iv. None of the credit cards used in these transactions were in the name of Appellant.

[III.] Whether Appellant is entitled to a new trial because the verdict was against the weight of the evidence in that there no physical evidence found in the execution of the search warrant of Appellant's bedroom of incriminating nature, and none of the store credit refunds from the transactions at issue were in Appellant's name?

(Appellant's Brief at 7-9) (reordered for purposes of analysis).

In Appellant's first issue, he contends that the court erred in imposing the agreed-upon sentence and in denying his motion to modify the sentence, because the record failed to establish that Appellant knowingly, voluntarily, and intelligently agreed to essentially the same sentence imposed upon his brother and co-defendant, Cuong Nam Ly. Appellant avers that there was no advisement as the difference in sentencing guidelines and/or maximum exposure, and that he did not understand that he was waiving his right to individualized sentencing by the court. According to Appellant, he was in a state of mourning due to the recent loss of his mother, in accordance with Buddhist practices, that caused him to lack the ability at that time to agree to

the sentence.³ Appellant concludes this Court must grant sentencing relief under these circumstances.⁴ We disagree.

“Pennsylvania’s sentencing system, as evidenced by the Sentencing Code and our case law, is based upon individualized sentencing.” ***Commonwealth v. Walls***, 592 Pa. 557, 573-74, 926 A.2d 957, 967 (2007) (citing ***Commonwealth v. Green***, 494 Pa. 406, 409 431 A.2d 918, 920 (1981)). Nevertheless,

defendants can waive valuable rights as part of a plea bargain, including the right to appeal, in exchange for important concessions by the Commonwealth, so long as the defendant’s waiver is knowing, intelligent, and voluntary. ***See, e.g., Commonwealth v. Barnes***, [687 A.2d 1163, 1166-67 (Pa.Super.] 1996), *appeal denied*, 548 Pa. 613, 693 A.2d 585 (1997) (holding defendant’s waiver of right to file motion for post-trial relief in exchange for Commonwealth’s agreement not to seek death penalty was valid). ***See also Commonwealth v. Byrne***, 833 A.2d 729, 736 (Pa.Super. 2003) (stating: “We are aware of no authority that provides an impediment to a defendant’s express, knowing, and voluntary waiver of a statutory right if that waiver is key in obtaining a bargained-for exchange from the Commonwealth”).

Commonwealth v. Snook, 230 A.3d 438, 445 (Pa.Super. 2020).

³ Appellant does not explain what Buddhist mourning practices entail, or in what way they might have affected his ability to make a knowing, voluntary, and intelligent waiver of his right to individualized sentencing. As noted ***supra***, Appellant declined to present evidence or testify during the hearing on his motion for reconsideration.

⁴ Although Appellant has included a Pa.R.A.P. 2119(f) concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of his sentence, his claim is not actually a challenge to the discretionary aspects of the sentence. Rather, it is more akin to a challenge concerning the validity of the sentencing proceedings.

Instantly, Appellant's co-defendant brother was sentenced the same day and had his sentencing hearing immediately before Appellant's sentencing proceedings. At sentencing, the Commonwealth explained the guidelines applicable to co-defendant Mr. Ly, as follows:

...I'd like to direct Your Honor's attentions to the guidelines on two specific charges. Those are dealing in unlawful proceeds. That's the Felony 1 that the defendant has been convicted of numerous counts on this case. Standard range on one of those counts is between 9 and 16 months.

Additionally, Your Honor, I'll direct you to theft by deception, false impression. Those are all, I believe, felonies of the third-degree. Standard range on those is between three and 12 months incarceration.

(N.T. Cuong Nam Ly Sentencing, 3/14/25, at 21).⁵

At sentencing, the court noted that Appellant had agreed to essentially the same sentence as Appellant's co-defendant, without the ten-year probation for theft by deception.⁶ The Commonwealth read into the record the agreed-upon sentence for Appellant of an aggregate term of 11½ to 23 months of incarceration in a county facility, with credit for time served, and a consecutive 8-year term of probation.

The court then continued:

⁵ Although a guideline range for receiving stolen property does not appear of record in the sentencing transcript, Appellant received no further penalty for that conviction.

⁶ It appears the court had originally imposed a ten-year probationary tail for Appellant's brother but later amended the sentence to include an eight-year probationary tail.

THE COURT: Again, for the record, [Appellant,] obviously I am not Judge Rogers and he was the one that found you guilty of some of the same counts, but also both parties agree it was some slightly lesser culpability. But overall, there were so many counts and so much involved with the actual scheme that what I'm hearing the Commonwealth is to say that the same way they argued for state sentences, consecutive sentences on your brother that, you know, in a sense of fairness, they're going to agree to something that otherwise the defendants are similarly situated with the understanding that there's some slight less overall involvement in terms of the charge, maybe not the overall scheme.

Is that what I'm hearing?

[COUNSEL]: Yes.

[THE COMMONWEALTH]: Yes.

THE COURT: And that is – again, I'm handling the sentencing for Judge Rogers who has retired effective December 31, 2024. This matter has rotated to me. I prepared the sentencing in terms of reading the transcripts that were available as well as the overall PSI. So I was prepared to conduct a sentencing, and most likely that sentencing would have been along the same lines in terms of the nature of the co-defendant relationships between the two defendants in this particular case.

So what's important now is you had the benefit of hearing that full sentencing. You have different counsel. You and [counsel] discussed this, but I'm going to take you through some questioning just to make sure that this is a knowing, intelligent, and voluntary decision on your part. Do you understand that?

[APPELLANT]: Yes.

(N.T. Sentencing, 3/14/25, at 3-8). The court then swore Appellant in, and the following qualifying examination took place:

THE COURT: All right. So, [Appellant], you had the benefit

of hearing the sentencing that took place for your brother with whom you find yourself now similarly situated in the overall convictions for the crimes in this case; is that correct?

You were here during sentencing?

[APPELLANT]: I'm here for sentencing, right.

THE COURT: For your brother's sentencing, you were here?

[APPELLANT]: Yes, sir.

THE COURT: You heard it all. [Counsel] has been here for parts of it, so he heard it all as well; is that correct?

[APPELLANT]: Yes.

THE COURT: But you do have a right to a totally individual sentencing. Although you're co-defendants in the same overall scheme, you do have your own separate rights as to sentencing; do you understand that?

[APPELLANT]: Yes, Your Honor.

THE COURT: Now, what has occurred here, without waiving any of your appellate rights, you have reached an agreed sentence with the Commonwealth; is that correct?

[APPELLANT]: Yes.

THE COURT: Okay. And you heard it just placed on the record. And, again, it is the sentence that will generally be that it'll be 11 and a half to 23 months in the county correctional facility with eight years consecutive probation; do you understand that?

[APPELLANT]: Yes, Your Honor.

THE COURT: And the others would fall in line with lesser amounts of concurrent sentences. So the overall sentencing scheme for you would be 11 and a half to 23, plus eight years; is that your understanding?

[APPELLANT]: Yes.

THE COURT: There will also be a \$5,000 fine on one of the counts, not the original dealing in unlawful proceeds, because that would've required a much higher fine if I issued the fine on that one.

* * *

THE COURT: So you understand that sentence; is that correct?

[APPELLANT]: Yes, Your Honor.

THE COURT: Okay. Are you in agreement with that sentence?

[APPELLANT]: Yes.

THE COURT: Okay. Now, you have a right to a full sentencing hearing. In fact, you watched one take place. You watched what counsel do. There wasn't a lot of evidence. But you have your own individual right. And you and [counsel] can go ahead and present witnesses if you wanted and you could present, you know, arguments, and you would have a right to allocution, just like your brother did; and you understand that?

[APPELLANT]: Yes.

THE COURT: But you're agreeing to waive that sentencing and those rights you have for sentencing and say there's an agreement and that one of the issues is not, you know, again, a discretionary aspect because I'm not really exercising discretion in your case. I did it in your brother's case. You looked at it. I don't know what your sentence would have been, but probably smart to think it was going to be in the same general range.

But I didn't do the individual sentencing why I issued that sentence, because this is by agreement; is that correct?

[APPELLANT]: Yes.

THE COURT: So you understand that I'm not really exercising discretion other than accepting what is now an agreement between the Commonwealth and the Defense. And you heard the Commonwealth say, Hey, we still want to argue for a higher sentence, but we heard what happened. So each side, if you will, is giving something up to reach an agreement. It's important, because, you know, in terms of any appeal or any post-sentence motion you would have as to sentencing you might have a—I would not make the consideration as to my discretion other than to say I accept the sentence; do you understand that?

[APPELLANT]: Yes.

THE COURT: If you need to have [counsel] explain it, he can do it, but you're just a little different as to your post-sentence rights.

[APPELLANT]: Yes.

THE COURT: Now, knowing that and what the sentence is going to be, has anybody forced you or threatened you or made any promises to you whatsoever to accept this as the sentence in your case?

[APPELLANT]: No.

THE COURT: And today are you under the influence of any drugs, any alcohol, any kind of mental illness that would prevent you from understanding what you're doing here today?

[APPELLANT]: No.

THE COURT: And [counsel] and you have spoken about this. Have you had enough time to consult with him about this decision?

[APPELLANT]: Yes, Your Honor.

THE COURT: And, you know, I've taken to say it's not at some later date, not about the trial, but the sentencing, at some later date you're going to say, I didn't talk to him, he

just did this on his own. There's no evidence of that here, and that's not what occurred; is that correct?

[APPELLANT]: Yes.

THE COURT: He gave you counsel and you asked him questions; is that correct?

[APPELLANT]: Yes.

(N.T. Sentencing, 3/14/25, at 3-13). Accepting that Appellant's waiver of his individualized sentencing hearing was knowing, intelligent, and voluntary, the court subsequently imposed the agreed-upon sentence.

In its Rule 1925(a) opinion, the court concluded that Appellant waived this claim, noting that defendants may waive valuable constitutional rights in exchange for concessions by the Commonwealth, so long as the waiver is knowing, intelligent, and voluntary. The court observed:

As previously stated, Appellant had been advised of the maximum allowable sentences for each of his convictions as well as the applicable standard range sentences. Appellant had the benefit of being present for his co-defendant brother's full sentencing hearing and confirmed that he had "heard it all." Appellant also confirmed that he understood the overall sentencing scheme would be eleven and one-half (11½) to twenty-three (23) months plus eight (8) years of consecutive probation and a \$5,000 fine, in addition to lesser, concurrent sentences on the remaining convictions. The court colloquied Appellant on his right to a full individualized sentencing hearing, and Appellant confirmed his understanding and waived a full hearing. Although the Commonwealth had prepared to seek a state sentence, [the assistant district attorney] was willing to agree to this sentencing scheme in light of Appellant's co-defendant brother's sentence. Appellant also confirmed that no one had forced, threatened or made any promises to get him to accept this sentencing scheme, that he was not under the

influence of any drugs, alcohol, or mental illness, and that he had had enough time and consultation with [counsel] about his decision. Accordingly, the court properly determined that Appellant had made a knowing, voluntary and intelligent decision to enter into an agreed-upon sentence.

Additionally, after the receipt and review of Appellant's post-sentence motion asking the court to reconsider his sentence given the assertion that he was not in the proper state of mind to enter into the agreement and, thus, did not do so knowingly, intelligently, and voluntarily due to his grief from the passing of his mother three (3) months prior, the court scheduled a hearing so that Appellant could present evidence in support of his claim. Appellant declined to testify or present any other evidence and rested on [c]ounsel's argument. In his post-sentence motion *nunc pro tunc*, Appellant revised his claim to assert that he was in a state of mourning in accordance with Buddhist practices that caused him to lack the ability to agree to the sentence. Again, Appellant did not provide any factual evidence in support of his claim. Despite opportunities to do so, Appellant failed to meet his burden. Accordingly, the court properly exercised its discretion in denying Appellant's post-sentence motions.

(Trial Court Opinion, 2/9/26, at 23-24).

Although Appellant did not enter a plea bargain in this case and was convicted by the court, he still agreed to waive certain rights in exchange for an agreed-upon sentence. Appellant received the benefit of that bargain by removing sentencing discretion from the court, which could have resulted in a much greater sentence. Our review of the record supports the trial court's conclusion that Appellant made a knowing, intelligent, and voluntary waiver of his right to individualized sentencing. ***See Snook, supra.*** Thus, Appellant's first issue on appeal merits no relief.

In Appellant's second issue on appeal, he challenges the sufficiency of

the evidence to support his convictions for dealing in proceeds of unlawful activity, theft by deception – false impression, and receiving stolen property. Specifically, Appellant challenges the *mens rea* aspects of these crimes, asserting that the Commonwealth presented no evidence that Appellant was aware of the scheme. Appellant insists that no physical evidence was found in his bedroom, that multiple individuals lived in the house and could have been responsible for the boxes with fake UPC codes and large amounts of cash, and highlights the fact that the transactions were not made with credit cards in his name or money deposited into his bank accounts. Appellant concludes the evidence was insufficient to sustain his convictions on these grounds. We disagree.

In reviewing a challenge to the sufficiency of the evidence, our standard of review is as follows:

As a general matter, our standard of review of sufficiency claims requires that we evaluate the record in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence. 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. Nevertheless, the Commonwealth need not establish guilt to a mathematical certainty. Any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances.

The Commonwealth may sustain its burden by means of wholly circumstantial evidence. Accordingly, [t]he fact that the evidence establishing a defendant's participation in a crime is circumstantial does not preclude a conviction where

the evidence coupled with the reasonable inferences drawn therefrom overcomes the presumption of innocence. Significantly, we may not substitute our judgment for that of the fact finder; thus, so long as the evidence adduced, accepted in the light most favorable to the Commonwealth, demonstrates the respective elements of a defendant's crimes beyond a reasonable doubt, the appellant's convictions will be upheld.

Commonwealth v. Sebolka, 205 A.3d 329, 336-37 (Pa.Super. 2019) (quoting ***Commonwealth v. Franklin***, 69 A.3d 719, 722-23 (Pa.Super. 2013)).

Additionally:

[A] defendant, who was not a principal actor in committing the crime, may nevertheless be liable for the crime if he was an accomplice of a principal actor. **See** 18 Pa.C.S.[A.] § 306; **see also** ***Commonwealth v. Bradley***, 481 Pa. 223, 392 A.2d 688, 690 (1978) (the actor and his accomplice share equal responsibility for commission of a criminal act). A person is deemed an accomplice of a principal if "with the intent of promoting or facilitating the commission of the offense, he: (i) solicit[ed the principal] to commit it; or (ii) aid[ed] or agree[d] or attempt[ed] to aid such other person in planning or committing it." 18 Pa.C.S.[A.] § 306; ***Commonwealth v. Spatz***, 552 Pa. 499, 716 A.2d 580, 585 (1998). Accordingly, two prongs must be satisfied for a defendant to be found guilty as an "accomplice." **See** ***Commonwealth v. Woodward***, [614 A.2d 239, 242 (Pa.Super.) 1992]. First, there must be evidence that the defendant intended to aid or promote the underlying offense. **See id.** Second, there must be evidence that the defendant actively participated in the crime by soliciting, aiding, or agreeing to aid the principal. **See id.** While these two requirements may be established by circumstantial evidence, a defendant cannot be an accomplice simply based on evidence that he knew about the crime or was present at the crime scene. **See** ***Commonwealth v. Wagaman***, [627 A.2d 735, 740 (Pa.Super.) 1993]. There must be some additional evidence that the defendant intended to aid in the commission of the underlying crime,

and then did or attempted to do so. **See id.** With regard to the amount of aid, it need not be substantial so long as it was offered to the principal to assist him in committing or attempting to commit the crime. **See Commonwealth v. Cox**, 546 Pa. 515, 686 A.2d 1279, 1286 (1997).

Commonwealth v. Murphy, 577 Pa. 275, 285-86, 844 A.2d 1228, 1234 (2004). In other words:

An actor and his accomplice share equal responsibility for the criminal act if the accomplice acts with the intent of promoting or facilitating the commission of an offense and agrees or aids or attempts to aid such other person in either the planning or the commission of the offense. There is no minimum amount of assistance or contribution requirement, for it has long been established that intent of the parties is a consideration essential to establishing the crime of aiding and abetting a felony. Thus, even non-substantial assistance, if rendered with the intent of promoting or facilitating the crime, is sufficient to establish complicity. **Absence or presence at the scene and the participant's role in the complicity are not dispositive of whether accomplice liability exists.** Accomplice liability does not create a new or separate crime; it merely provides a basis of liability for a crime committed by another person.

Commonwealth v. Gross, 627 Pa. 383, 395, 101 A.3d 28, 35 (2014) (cleaned up) (emphasis added). **See also Commonwealth v. Ratliff**, 328 A.3d 1024, 1053-54 (Pa.Super. 2024) (holding sufficient evidence supported conviction for dealing in proceeds of unlawful activities where, although defendant had not conducted hand-to-hand transactions, he aided co-defendant and acted with intent of facilitating commission of offenses, where he had come up with idea for crime, selected firearms to be purchased, provided cash for transactions, carried most of firearms out of store, and ultimately kept firearms).

The Pennsylvania Crimes Code defines the offense of dealing in proceeds of unlawful activities, in relevant part as follows:

§ 5111. Dealing in proceeds of unlawful activities

(a) Offense defined.--A person commits a felony of the first degree if the person conducts a financial transaction under any of the following circumstances:

(1) With knowledge that the property involved, including stolen or illegally obtained property, represents the proceeds of unlawful activity, the person acts with the intent to promote the carrying on of the unlawful activity[.]

18 Pa.C.S.A. § 5111. Additionally,

Section 5111(f) defines "financial transaction" as "a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments. The term includes any exchange of stolen or illegally obtained property for financial compensation or personal gain." *Id.* The same subsection defines "unlawful activity" as "any activity graded a misdemeanor of the first degree or higher under Federal or State law." *Id.* "Section 5111 thus presents explicit language which clearly defines unlawful activity as any felony or first degree misdemeanor, and targets the dealing in proceeds derived from any of those various illegal activities." ***Commonwealth v. Barnhart***, 722 A.2d 1093, 1096 (Pa.Super. 1998).

Commonwealth v. Hill, 210 A.3d 1104, 1112-13 (Pa.Super. 2019), *appeal denied*, 656 Pa. 345, 220 A.3d 1066 (2019).

Regarding theft by deception, the Pennsylvania Crimes Code provides, in relevant part:

§ 3922. Theft by deception

(a) Offense defined.--A person is guilty of theft if he

intentionally obtains or withholds property of another by deception. A person deceives if he intentionally:

(1) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise[.]

18 Pa.C.S.A. § 3922. In general, "the Commonwealth must demonstrate the presence of a false impression and that the victim relied on that impression."

Commonwealth v. Thomas, 684 A.2d 1085, 1086 (Pa.Super. 1996). This Court has explained that criminal intent may be "inferred from acts or conduct or the attendant circumstances." ***Commonwealth v. Grife***, 664 A.2d 116, 122 (Pa.Super. 1995), *appeal denied*, 544 Pa. 654, 676 A.2d 1196 (1996).

Regarding receiving stolen property, the Crimes Code provides:

§ 3925. Receiving stolen property

(a) Offense defined.--A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner.

(b) Definition.--As used in this section the word "**receiving**" means acquiring possession, control or title, or lending on the security of the property.

18 Pa.C.S.A. § 3925.

Here, regarding each of these crimes, the trial court concluded that direct and circumstantial evidence established that Appellant was aware of the fraudulent activity. (**See** Trial Court Opinion at 15-17). The trial court

observed that Appellant's brother had ordered less expensive tools using credit cards in his name, had them shipped to his address, and following the return of those items marked as more expensive items by Appellant and others, had Home Depot refund the higher dollar amount back to the credit cards. (**See id.**) The trial court noted that evidence at trial showed Appellant participating in the return transactions, "often going back into the store to purchase more items with cash," and that law enforcement had conducted a controlled buy of a jump starter from Appellant. (**See id.** at 16). The trial court further noted that search warrants of the 12th and Front Street properties uncovered physical evidence, including tools, equipment, and other items sold at Home Depot, many with fake UPC stickers on them, and large amounts of cash. As well, the court noted that Appellant had accepted \$250 in cash from an undercover detective in exchange for a jump starter kit, still in its sealed box, and that he told the detective to contact him directly for additional purchases.

Our review of the record supports the trial court's conclusions. Specifically, Mr. D'Angelo's investigation revealed that numerous transactions were made with two credit cards bearing Appellant's brother's name. (**See** N.T. Trial, 8/12/24, at 20). Over 600 transactions were made from September 2022 to June 2023 using those cards. (**Id.** at 21-22). During his investigation, Mr. D'Angelo downloaded and collected surveillance video for each return transaction, as well as receipts, and the surveillance video featured both Appellant and his brother, separately and together. (**Id.** at 23-

52). The transactions made with those cards were shipped, in Appellant's brother's name, to 4831 N. 12th Street, Philadelphia, Pennsylvania, which was also Appellant's residence. (***Id.***) Mr. D'Angelo described the return transactions, many of which were made by either one of the brothers, but some of which were made by both Appellant and his brother. (***Id.*** at 30-61). Mr. D'Angelo also described the Home Depot merchandise recovered from the 12th Street home, and the abnormal UPC stickers placed on the merchandise. (***Id.*** at 64-73).

Detective James Carbo was present at the execution of the search warrant at 5824 Front Street, where almost \$90,000.00 was recovered. (***See id.*** at 106). As well, Detective Carbo described a controlled buy of a battery jump starter kit from Appellant. (***See id.*** at 101-02). He stated that Detective Beaghley had communicated with an individual on Facebook regarding items posted for sale which were illegally purchased or stolen. (***See id.*** at 102). Detective Carbo went to the agreed upon location at 101 East Olney Avenue and purchased the jump starter kit from a man he identified as Appellant. (***See id.*** at 103-04). Detective Carbo asked Appellant what he should do if he wanted "more of these," and Appellant responded, "Reach out to me directly." (***See id.*** at 105). Subsequently, they exchanged phone numbers and Appellant texted Detective Carbone to confirm his number. (***See id.*** at 105).

Detective James Reape described the search warrant conducted at 4831 North 12th Street, Philadelphia, Pennsylvania, and at 5824 North Front Street,

Philadelphia, Pennsylvania. (***Id.*** at 114-124). Officers recovered evidence, including cash, various tool materials, shipping boxes, receipts, a pricing list for various materials being offered for sale, as well as a computer, from the foyer entry way and several second-floor rooms. (***Id.***) One of the boxes was addressed to “CHNG LY.” (***See id.*** at 119).

Detective Vincent Small testified regarding his involvement in the investigation, which began after being contacted by Mr. D’Angelo regarding the returns scheme; Detective Small conducted various search warrants of Cuong Nam Ly’s credit card accounts and Facebook account. (***See*** N.T. Trial, 8/13/24, at 11-20). On the Facebook account, Cuong Nam Ly posted images of DeWalt tools for sale and exchanged messages with other Facebook members about selling the tools, with the items and money to be exchanged at 101 East Olney Avenue with “his partner.” (***Id.*** at 30-34).

Detective Small also described surveillance he conducted during the investigation. He surveilled the Front Street address and observed the same white Dodge pickup truck that had been seen on Home Depot footage. (***Id.*** at 22). The vehicle was registered to Cuong Nam Ly at the 12th Street address. (***Id.*** at 23). As well, Detective Small observed Appellant exit the Front Street address and get into a Chevrolet Silverado, as well as Cuong Nam Ly carrying a box and getting into the Dodge and driving to the Front Street residence. (***Id.***) On another day, Detective Small observed both brothers coming in and out of the Front Street location. (***Id.*** at 25). Detective Small observed Cuong Nam Ly leave the house carrying a DeWalt box, which he drove to 101 East

Olney Avenue and appeared to sell to an unidentified male. (**See id.**) Notably, this was the same location at which Appellant and Detective Carbo conducted their earlier transaction. Finally, Detective Small was present for the execution of the search warrants at both 12th and Front Streets. (**Id.** at 24).

Detective Richard Beaghley also described his involvement in the investigation and the examination of Cuong Nam Ly's Facebook account activity, which involved numerous sales postings for brand new tools. (**See id.** at 56-57). The sales were for pickup at 101 East Olney Avenue. (**Id.** at 61). Detective Beaghley, using a fake account, arranged the purchase of one of the tools. (**Id.** at 63-65). Detective James Carbo made the buy from Appellant. (**Id.** at 66).

Detective Beaghley was also present for the execution of the search warrant at 5824 North Front Street. (**See id.** at 68). He described DeWalt tools, tool bags, and jump starter boxes recovered from the basement and front living room, DeWalt batteries recovered from a bedroom, and power tools and battery chargers from an additional front bedroom. (**Id.** at 69-70). From a dresser in the basement area bedroom, officers recovered approximately \$50,000 in cash. (**Id.** at 71, 97). From the bedroom in which Appellant was located, police recovered a DeWalt fan, cellular phone, wallet with Appellant's credit cards and driver's license with the 4831 North 12th Street address listed on it, and medical marijuana cards. (**Id.** at 72-78). As well, detectives recovered from the Front Street address several packages

from Home Depot, addressed to Cuong Nam Ly at 4831 North 12th Street, as well as credit cards in Cuong Nam Ly's name, large amounts of United States currency, and label makers and stickers. (***Id.*** at 73-75, 83). All of the products recovered had fake UPC code stickers on them. (***Id.*** at 103).

Here, there was ample evidence establishing Appellant's awareness of and intimate involvement with the scheme. Items used in the scheme were recovered from two residences linked to Appellant by numerous pieces of evidence, as well as large amounts of currency. Appellant was caught on video conducting returns with Cuong Nam Ly and by himself, as well as making more purchases in cash, and sold an unopened jump starter kit to undercover detectives. Appellant and his brother both had equal access to the 12th and Front Street residences. Label makers and sticker paper were recovered from the residences, and the boxes recovered bore fake UPC stickers. As well, Appellant gave Detective Beaghey his personal cell phone number to provide for the sale of additional items.

On this record, the evidence showed Appellant personally making the fraudulent returns, and that his own residence contained proof of items recovered from the stores as well as items bearing fake UPCs and a large amount of cash, indicating both his awareness of and aid given when committing the crimes. ***See Murphy, supra; Ratliff, supra.*** Viewing the evidence in the light most favorable to the Commonwealth as verdict-winner, there was sufficient direct and circumstantial evidence of Appellant's direct involvement, or involvement as an accomplice, to sustain his convictions. ***See***

Sebolka, supra.

In Appellant's final issue on appeal, he contends that the verdict was against the weight of the evidence because there was no physical evidence found during the execution of the search warrant, and none of the store credit refunds from the transactions at issue were in Appellant's name. Essentially, Appellant repeats his sufficiency arguments, contending that it was entirely plausible that Appellant was unaware that the merchandise he returned on his brother's behalf did not match the packaging label. Appellant concludes that he is entitled to a new trial. We disagree.

When examining a challenge to the weight of the evidence, our standard of review 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 ... 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). "Appellate review of a weight claim **is a review of the exercise of discretion, not of the underlying question of whether**

the verdict is against the weight of the evidence.” *Commonwealth v. Clay*, 619 Pa. 423, 432, 64 A.3d 1049, 1055 (2013) (quoting *Commonwealth v. Widmer*, 560 Pa. 308, 319, 744 A.2d 745, 751-52 (2000)) (emphasis in original). A “trial court’s denial of a motion for a new trial based on a weight of the evidence claim is the least assailable of its rulings.” *Commonwealth v. Rivera*, 603 Pa. 340, 363, 983 A.2d 1211, 1225 (2009), *cert. denied*, 560 U.S. 909, 130 S.Ct. 3282, 176 L.Ed.2d 1191 (2010).

Here, the court observed:

Instantly, Appellant asserts that he is entitled to a new trial because law enforcement found no physical evidence in Appellant’s bedroom of an incriminating nature when they executed the search warrant, and none of the Home Depot store credit refunds from the transactions at issue were in Appellant’s name. Appellant does not specify which convictions his claim applies to but, regardless, no relief is due.

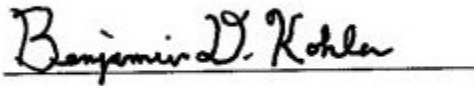
The Commonwealth’s voluminous exhibits and testimony demonstrated, *inter alia*, the following: Appellant arrived as a passenger in his co-defendant’s pickup truck and entered several different Home Depot stores in at least six (6) different counties on different dates to return boxes and/or items with affixed fake UPC labels; sometimes the brothers entered the stores minutes apart or through different doors evidencing a desire not to be seen together and raise suspicion; Appellant arrived at an arranged location not far from his residence with a brand new, still in the sealed box jump starter kit sold at Home Depot in exchange for \$250 in cash; Appellant provided his cell phone number to Detective Carbo in case the detective wanted to purchase more items, and during a search pursuant to warrants, law enforcement recovered a multitude of products, some with the fake UPC labels affixed, sold at Home Depot as well as labels, a label maker, and \$90,000 in cash throughout the Front Street house where Appellant resided. The Commonwealth demonstrated knowledge and intent

through both direct and circumstantial evidence. While the court does not have the benefit of Judge Rogers' credibility determinations, his sound discretion should be affirmed.

(Trial Court Opinion at 20-21). On this record, we cannot say that the trial court abused its discretion in denying Appellant's challenge to the weight of the evidence. ***See Champney, supra. See also Clay, supra.*** Accordingly, we affirm.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/15/2026