

violation of the Uniform Firearms Act (VUFA) (18 Pa.C.S.A. § 6106(a)(1)).¹ He was sentenced to an aggregate prison term of three to six years, and in a post-sentence motion, Appellant asserted, in relevant part, that his convictions were against the weight of the evidence. The motion was denied, and a timely appeal was filed. Appellant's counsel on appeal then filed an application to withdraw from both of the above captioned cases in the manner required by ***Anders v. California***, 386 U.S. 738 (1967), and ***Commonwealth v. Santiago***, 978 A.2d 349 (Pa. 2009). We affirm and grant appellate counsel's application to withdraw.

The trial court summarized the pertinent facts and procedural history as follows:

On October 30, 2022, the victim, Debra Lennex, was attending church services in Penn Hills. She left around 2:00 p.m. and was driving to a friend's home when she stopped her car on Reiter Road to secure food she was transporting. While stopped, two young black males entered her car through the rear doors. Co-Defendant Williams wore a mask partially covering his face and sat in the rear driver's side seat.

Lennex testified that the male in the rear passenger seat, who she identified as Appellant, pointed a rusty barreled gun at her. Appellant forced Lennex to drive at gunpoint and directed her to a secluded area located on Hill Street. Lennex testified she kept a firearm under the driver's seat. As the three of them stepped

¹ All of these convictions resulted from charges in the case now docketed at 1611 WDA 2025. In the consolidated case, now docketed at 1618 WDA 2025, Appellant was convicted of fleeing and eluding, evading arrest, recklessly endangering another person, accidents involving damage to an attended vehicle or property, and various summary traffic offenses. None of those convictions or the corresponding sentences have been challenged here, so they are not now under review.

out of the car she surreptitiously secured the firearm on her person before exiting. When she tried to reenter the car to retrieve her cell phone Appellant would not let her. Lennex remained outside with her hands up in the air as Appellant got into the driver's seat and Co-Defendant Williams moved to the front passenger seat. It was at this time Lennex observed that Williams also had a gun.

Appellant drove off and Lennex walked a few blocks to a friend's house. The friend subsequently called the police. Penn Hills Police Officer Lindsey Bigger was dispatched to the robbery call a little after 2:00 p.m. She initially responded to Hill Street, and then to the residence where Lennex was located. After speaking with Lennex Officer Bigger issued a BOLD for the vehicle. In addition to the vehicle's description, Officer Bigger was able to provide dispatch with live updates of its location as it was equipped with a tracking system.

Officer Philip Hathaway of the North Versailles Police Department was just beginning his 3:00 p.m. shift when he received the BOLD for a red/burgundy Ford Edge along with the license plate number. The updates from dispatch indicated the vehicle was driving towards his location and a few minutes later, around 3:15 p.m., Officer Hathaway observed the vehicle matching the description. He testified the vehicle was driving erratically at a high rate of speed while weaving in and out of traffic. As the vehicle navigated a bend in the road it struck the front of Officer Hathaway's patrol car causing it to reverse direction. Officer Hathaway continued to follow the vehicle as it traveled towards the City of Pittsburgh.

Officer Hathaway eventually caught up with the car when it came to a stop after colliding with a retaining wall in North Braddock. At this time, Officer Hathaway saw Appellant flee on foot after exiting from the driver's seat. Co-Defendant Williams remained in the vehicle and was placed in custody. Appellant was quickly apprehended by assisting officers from the Turtle Creek Police Department. Penn Hills Police Officer Bigger was notified about the vehicle's recovery and Lennex was transported to the North Versailles Police Department. She identified Appellant and Williams as the two individuals who took her car.

Two 9mm handguns were seized from the front passenger floorboard during a search of the vehicle. Both were found to be

operable based on lab testing. A certified record established that Appellant did not have a license to carry a firearm.

The Commonwealth's last witness was David Halushka, who in November of 2022 was employed as a technical special agent with the United States Secret Service. In that capacity, Halushka assisted in the robbery investigation by retrieving and analyzing the data module of Lennex's Ford Edge. He explained the module contains, among other things, data about the vehicle's location and device connectivity. He determined from this data that the vehicle made multiple connectivity attempts with a cell phone identified as "Jewell's iphone" starting at 2:52 p.m. The corresponding GPS coordinates showed the vehicle was moving at the times it was attempting to connect with Appellant's phone, signifying Appellant's phone was inside the vehicle.

Appellant called several witnesses in support of his alibi defense. Dennis Ham testified that Appellant worked at his restaurant, Fusion 20, located in East Pittsburgh. Ham relayed that on October 30, 2022, Appellant arrived around 9:30 a.m. Ham left a few hours later and when he returned sometime between 1:30 p.m. and 2:00 p.m., Appellant was no longer there Ham identified Appellant exiting the restaurant at 1:29 p.m. When questioned about the accuracy of the date and time, Ham offered that he knows it to be accurate but was unable to offer the underlying basis for his assertion.

Next, Appellant called Sean Langford, an investigator who reviewed the same vehicle data retrieved and analyzed by David Halushka for the Commonwealth. There were not any identifiable discrepancies between Langford and Halushka's findings. To further illustrate the vehicle's travel path, Langford created a map using the location data points. This map showed that the vehicle stopped and tuned off at 2:48 p.m. at a residence in Swissvale he later learned was Appellant's address. The car remained there for twenty-one minutes before it began driving again. Four minutes later, at 2:52 p.m., the Carplay connectivity data showed Appellant's phone attempted to connect to the car for the first time.

Appellant briefly recalled Debra Lennex and played footage from Officer Bigger's body camera which showed their initial interaction. The footage captured Lennex describe the male who pointed the gun at her and that he wore a blue shirt. Appellant

questioned Lennex about the certainty of her identification, referring to her prior testimony when she testified the person holding the gun wore a red shirt. Lennex was steadfast that Appellant was the person who pointed a gun at her, adding that she never forgets a face.

When Appellant indicated he had no other fact witnesses, the Court conducted a colloquy regarding his right to testify and call character witnesses. At the conclusion, Appellant informed the Court he wished to call one more fact witness, his mother, Keisha Wallace. During her very brief testimony, Wallace testified that on October 30, 2024, Appellant returned home from work around 2:00 p.m. Then around 2:50 p.m. Appellant was picked up by a red SUV, but Wallace did not see any of the occupants. On cross-examination, Wallace admitted she never told the police the Appellant was with her at the time of the robbery. Additionally, Wallace testified she obtained the Fusion 20 surveillance footage a week after the incident at the direction of Appellant's previous trial counsel. She did not provide it to the police.

The trial concluded with the Commonwealth calling Penn Hills Police Detective Bill Skewers on rebuttal. Relative to Appellant's alibi defense, Detective Skewers testified that it is approximately a twenty minute drive from East Pittsburgh, where the restaurant was located, to the robbery site in Penn Hills. Detective Skewers also stated that he was never contacted by any family member of Appellant or provided any video evidence prior to trial.

Trial Court 1925(a) Opinion, 4/29/2026, at 4-9 (internal citations and footnotes omitted).

At the conclusion of the bench trial, the trial court sentenced Appellant to a prison term of three to six years as to the robbery count; 1.5 to three years as to the conspiracy count; and 1.5 to three years as to the weapon possession count. The sentences for the conspiracy and weapon possession counts were sent to run concurrently with the sentence for the robbery count.

In a timely post-sentence motion, Appellant challenged the weight of the evidence, contending that the Commonwealth's witnesses were not

credible, and that his alibi evidence had established his innocence. Before the trial court ruled on the motion, trial counsel moved to withdraw from the case. The trial court denied the post sentence motion and granted trial counsel's motion to withdraw.

Appellate counsel was appointed, and with the aid of counsel, Appellant's 1925(b) statement of issues was filed along with timely notices of appeal. Not long after, appellate counsel filed with this Court a petition to withdraw from representation, and Appellant did not file a response. Appellant did not file a *pro se* brief, and he did not retain private counsel.

Before reviewing the merits of Appellant's weight of the evidence claim, we must first determine whether his appellate counsel sought leave to withdraw from representation in line with the requirements of ***Anders*** and ***Santiago***. ***See Commonwealth v. Bennett***, 124 A.3d 327, 333 (Pa. Super. 2015). If counsel met these requirements, then we must address the issues raised in the ***Anders*** brief and independently examine the record as to those issues. ***See id.***

If we determine those issues to be without merit, then we may both "grant counsel's request to withdraw and dismiss the appeal[.]" ***See Anders***, at 744. In doing so, "[this] Court is limited to examining only those issues raised and developed in the brief[; w]e do not act as, and are forbidden from acting as, appellant's counsel." ***See Bennett***, at 333.

Pursuant to ***Anders***, when counsel believes that an appeal is frivolous and wishes to withdraw from representation, she must:

(1) petition the court for leave to withdraw stating that after making a conscientious examination of the record and interviewing the defendant, counsel has determined the appeal would be frivolous[;] (2) file a brief referring to any issues in the record of arguable merit[;] and (3) furnish a copy of the brief to defendant and advise him of his right to retain new counsel or to raise any additional points that he deems worthy of the court's attention. The determination of whether the appeal is wholly frivolous remains with the court.

Commonwealth v. Burwell, 42 A.3d 1077, 1083 (Pa. Super. 2012) (citation omitted).

Additionally, our Supreme Court has explained that an ***Anders*** brief must:

(1) provide a summary of the procedural history and facts, with citations to the record; (2) refer to anything in the record that counsel believes arguably supports the appeal; (3) set forth counsel's conclusion that the appeal is frivolous; and (4) state counsel's reasons for concluding that the appeal is frivolous. Counsel should articulate the relevant facts of record, controlling case law, and/or statutes on point that have led to the conclusion that the appeal is frivolous.

Santiago, 978 A.2d at 361.

If this Court determines that counsel has satisfied the technical requirements of ***Anders*** and ***Santiago***, then it must “conduct a simple review of the record to ascertain if there appears on its face to be arguably meritorious issues that counsel, intentionally or not, missed or misstated.”

Commonwealth v. Dempster, 187 A.3d 266, 272 (Pa. Super. 2018) (en banc); ***see also Commonwealth v. Yorgey***, 188 A.3d 1190, 1197 (Pa. Super. 2018).

Here, we determine that appellate counsel has filed a brief and a motion to withdraw which comport with the technical requirements of **Anders** and **Santiago**. Counsel filed a motion for leave to withdraw after making a thorough review of the record, and Appellant was furnished with a copy of the motion. Appellate counsel also filed with this Court a brief outlining issues of arguable merit and giving the reasons why counsel believed the appeal to be frivolous; Appellant was again furnished with a copy. Further, Appellant was informed of his right to retain new counsel or to proceed *pro se*. As appellate counsel has complied with the above requirements for withdrawal, this Court must independently review the record to determine whether the issue presented in the **Ander's** brief was frivolous and if there are any other, non-frivolous, issues that he could raise. **See generally Yorgey**, 188 A.3d at 1197.

In the **Ander's** brief, it was contended, essentially, that the verdict was against the weight of the evidence because the victim was not credible, and Appellant's alibi evidence proved that he was not one of her assailants:

Whether the convictions at . . . CP-02-CR-08650-2022 [(No. 1618 WDA 2025)] are against the weight of the evidence regarding [Appellant's] participation in the commission of those offenses where: (1) the victim's description of the actor — purported to be [Appellant] — was present in her vehicle and held a gun to her head but she could not recall that actor's clothing, skin color, or location in the vehicle; (2) video evidence greatly impeached the victim's account in that regard; (3) [Appellant's] alibi defense placed him nearly 8 miles away from the robbery scene and with no means to travel there; (4) prosecution evidence showed [Appellant's] cell phone pairs/tethers with/to the victim's vehicle's entertainment system for the first time hours after, and at a GPS

location far away from, the robbery scene; and (5) the victim's vehicle's black box data recorder shows the impossibility of [Appellant's] involvement in those crimes based on the vehicle's location at the time those crimes were committed[.]

Ander's Brief, at 5 (numbering and suggested answer omitted).

"Issues of credibility are properly left to the trier of fact for resolution, and the finder of fact is free to believe all, part, or none of the evidence." **Commonwealth v. Chambers**, 599 A.2d 630, 642 (Pa. 1991). "An allegation that the verdict is against the weight of the evidence is addressed to the discretion of the trial court." **Commonwealth v. Widmer**, 744 A.2d 745, 751-52 (Pa. 2000) (citations omitted). A mere conflict in the evidence does not justify the grant of a new trial; nor does the possibility that a different trial judge would have found merit in a post-sentence weight of evidence claim. **See id.** "Trial judges, in reviewing a claim that the verdict is against the weight of the evidence[,], do not sit as the thirteenth juror. Rather, the role of the trial judge is to determine that 'notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.'" **Id.** (Citation omitted).

"Because the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge" when reviewing a weight claim. **Commonwealth v. Clay**, 64 A.3d 1049, 1055 (Pa. 2013). The trial court's duty in the first instance is to make a discretionary ruling on the issue, and on appeal, this Court's role is to review the trial court's exercise of that discretion. **See Widmer**, 744 A.2d at 753. In this capacity, we may not

review the trial court's determination as to the underlying question of whether the verdict is against the weight of the evidence. *Id.*; *see also Commonwealth v. Smith*, 985 A.2d 886, 897 (Pa. 2009) (same).

Here, the factual and legal grounds for the trial court's ruling on Appellant's post-sentence motion were outlined in the court's 1925(a) opinion:

Over the course of the three days of trial, the [trial court] had the opportunity to fairly assess the credibility of all the witnesses and evidence. This evidence was both direct and circumstantial, and established that Appellant and Co-Defendant Williams worked in concert to rob Debra Lennex of her vehicle on October 30, 2022.

The [trial court] was simply not persuaded by Appellant's efforts to discredit Lennex's identification of Appellant. The [trial court] found Lennex credible, particularly as it relates to identification. She confidently detailed where the incident occurred, the time of day, how Appellant and Williams entered the car and where they sat. Lennex's observations occurred as a result of spending minutes in close proximity of Appellant, as she drove around the area at Appellant's direction under gunpoint. Moreover, Lennex made an in-person identification of Appellant and Williams within hours of the robbery when she was brought to the North Versailles Police Department. Appellant's contention that Lennex described the t-shirt Appellant wore under his hoodie as blue and not red did not undermine her identification considering the significant amount of corroborative evidence. **This evidence included the flight of the vehicle, and the arrest of both Appellant and Williams within an hour of the robbery. Williams was seized inside the vehicle and Appellant was arrested after having fled from the driver's seat following crashing Lennex's vehicle into a retaining wall. Additionally, firearms consistent with those testified to by Lennex were recovered from inside her vehicle immediately after the crash.**

The [trial court] did not find the alibi evidence offered through the testimony of Dennis Ham, and Appellant's mother, Keisha Wallace, to be credible. **Furthermore, the testimony by Sean Langford, regarding the "black box" data of Lennex's**

vehicle, did not contradict the conclusion that Appellant was inside the vehicle at the time of the robbery. It only offered an alternative theory regarding when Appellant entered the vehicle as a means of corroborating the alibi witness testimony, which as stated above, the Court did not believe.

Trial Court Opinion, 4/29/2026, at 12-13 (emphasis added).

Having reviewed the record, we conclude that the trial court did not abuse its discretion in denying Appellant's weight of evidence claim in his post-sentence motion. As the finder of fact, it was the role of the trial court to assign weight to the evidence and resolve conflicts in witness testimony. **See Chambers**, 599 A.2d at 642. The trial court, sitting as the finder of fact, was free to believe all, part, or none of the evidence introduced at trial. **See id.** A mere conflict in testimonial evidence did not entitle Appellant to relief at the post-sentence stage. **See Widmer**, 744 A.2d at 753. This Court, in its reviewing capacity, must defer to the trial court's credibility determinations as long as they are supported by the record. **See Clay**, 64 A.3d at 1055.

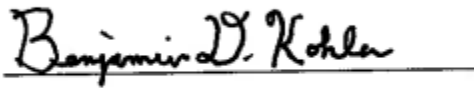
The trial court in the present case, having considered all of the evidence in the record, found that Appellant's identity as a perpetrator of the subject offenses was proven beyond a reasonable doubt. There was no dispute that both Appellant and his co-defendant were in the victim's vehicle within an hour of its theft, and that Appellant fled from the police on foot just prior to being apprehended. Moreover, Appellant's alibi evidence, even if believed, did not refute the evidence of his guilt. **See** Trial Court Opinion, 4/29/2026, at 13.

For these reasons, as well as the additional grounds stated in the trial court's 1925(a) opinion, it was reasonable, and within the trial court's

discretion, to find the Commonwealth's witnesses to be credible, and to reject Appellant's alibi evidence. Moreover, after a full examination of the record, we conclude that there are no non-frivolous claims that could be raised on Appellant's behalf on direct appeal. Thus, the trial court did not err in denying Appellant's post-sentence motion challenging the weight of the evidence, and the judgments of sentence must be upheld.

Application to withdraw granted. Judgments 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

10/1/2026