

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

WILLIAM A. NICHOLS, JR.

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 1847 WDA 2011

Appeal from the Judgment of Sentence October 25, 2011  
In the Court of Common Pleas of Venango County  
Criminal Division at No(s): CP-61-CR-0000628-2010

BEFORE: BOWES, J., DONOHUE, J., and MUNDY, J.

MEMORANDUM BY MUNDY, J.:

Filed: May 1, 2013

Appellant, William A. Nichols, Jr., appeals from the October 25, 2011 aggregate judgment of sentence of one to two years' imprisonment, to be followed by seven years' probation, imposed after a jury found him guilty of theft by deception, theft by failure to make required disposition of funds received, and seven counts of forgery.<sup>1</sup> Appellant was also ordered to make restitution to the victim in the amount of \$133,087.00. After careful review, we affirm the judgment of sentence.

The relevant facts and procedural history of this case may be summarized as follows. On September 1, 2010, Appellant was arrested and

---

<sup>1</sup> 18 Pa.C.S.A. §§ 3922, 3927, and 4101, respectively.

charged with the aforementioned offenses in connection with his forgery and endorsement of seven checks drawn on the money market account of the victim, a 95-year-old acquaintance of Appellant. N.T., 8/12/11, at 19, 24-38. The checks in question were written out to Appellant or companies associated with Appellant and totaled \$120,287.00. **Id.** The record further established that the victim wrote a check in the amount of \$12,800.00 to Appellant for her 2008 taxes, but that no tax return was ever filed. **Id.** On August 12, 2011, Appellant proceeded to a three-day jury trial. At trial, the Commonwealth presented the expert testimony of Sergeant Sandra Miller, an 18½-year veteran of the Pennsylvania State Police, who testified “to a reasonable degree of scientific certainty” as an expert in the field of handwriting analysis that the victim did not sign the checks. N.T., 8/15/11, at 46-50, 69.

At the conclusion of trial, Appellant was found guilty of theft by deception, theft by failure to make required disposition of funds received, and seven counts of forgery. As noted, on October 25, 2011, the trial court sentenced Appellant to an aggregate term of one to two years’ imprisonment, to be followed by seven years’ probation. **See** Trial Court Order, 10/25/11, at 5-6. Appellant was also ordered to make restitution to the victim in the amount of \$133,087.00. **Id.** at 2. Appellant did not file

any post-sentence motions. This timely appeal followed on November 22, 2011.<sup>2</sup>

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

1. Was [Appellant's] constitutional right to due process under the United States Constitution, the Pennsylvania Constitution and the Pennsylvania Rules of Evidence denied, as the trial court was constrained to follow a statute which governed the admission of expert testimony regarding handwriting analysis, 42 Pa.C.S.[A. §] 6111, which statute effectively removed the trial court's ability to exercise its discretion and conduct an analysis regarding the admission of said evidence at trial, following a challenge that handwriting analysis is not a science?
2. In the alternative, if 42 Pa.C.S.[A. §] 6111 did not prevent the trial court from conducting an independent analysis as to the admissibility of said challenged evidence, did the trial court err in failing to do so?
3. In the alternative, did the trial court err when it permitted the Commonwealth's witness to qualify her opinion evidence as to the subject handwriting to a reasonable degree of "scientific" certainty?

Appellant's Brief at 4. For the purposes of our review, we elect to address Appellant's claims in a slightly different order than presented in his appellate brief.

---

<sup>2</sup> Appellant and the trial court have complied with Pa.R.A.P. 1925.

In his first issue, Appellant argues that the trial court violated his due process rights under both the United States and Pennsylvania Constitutions by admitting the expert testimony of Sergeant Miller. *Id.* at 8. As noted, the Commonwealth offered Sergeant Miller as an expert in the field of handwriting analysis. N.T., 8/15/11, at 50. Appellant's counsel objected, stating as follows.

[COUNSEL FOR APPELLANT]: Your Honor, I certainly don't disagree that [Sergeant Miller] has the background and training that she says she's had, but we do object to the instruction of handwriting analysis testimony itself as something that is not reliable and it's not –

[COMMONWEALTH]: Your Honor, I am going to object to that.

[COUNSEL FOR APPELLANT]: It's not --

THE COURT: Hold on. You want a side bar on the objection?

[COMMONWEALTH]: Yes.

THE COURT: Okay. Side bar.

(At side bar.)

[COUNSEL FOR APPELLANT]: To complete my sentence, it is not accepted in the scientific community other than by other proponents of handwriting analysis and law enforcement.

[COMMONWEALTH]: That's ridiculous. They have been doing handwriting analysis since the 1800's. I'm pretty sure it is in any Tom Sawyer book along with the fingerprint which was also talked about in Tom Sawyer. It is accepted in the scientific community. He is making a speech.

THE COURT: Do you have any case law that references it is not acceptable in Pennsylvania?

[COUNSEL FOR APPELLANT]: Yes. The most recent is a United States Supreme Court case called U.S. v. Saelee, S-a-e-l-e-e.<sup>3</sup>

[COMMONWEALTH]: Most recent when? 1786?

[COUNSEL FOR APPELLANT]: It may be a little newer than that, Marie.

THE COURT: What is the case again?

[COUNSEL FOR APPELLANT]: S-a-e-l-e-e, Saelee.

THE COURT: Okay.

[COMMONWEALTH]: We have a statute titled 42 Section 6111 that talks about opinion evidence as to writing is admissible and relevant evidence as long as somebody had special experience with or pursued special study relating to documents and handwriting who is called as an expert, and that person is allowed to be questioned on comparison of handwriting. And it goes on and on and on. I didn't pull the case.

**Id.** at 50-52 (footnote added). Following this discussion, the trial court concluded that Sergeant Miller's testimony was admissible pursuant to 42

---

<sup>3</sup> We note that the case referenced by Appellant's counsel at trial is actually a United States District Court case, and the correct citation is **U.S. v. Saelee**, 162 F.Supp.2d 1097 (D. Alaska 2001). Thus, **Saelee** is non-precedential authority, and in any event, is both inapplicable in that it deals with the Federal Rules of Evidence, and is factually distinguishable from the instant matter.

Pa.C.S.A. § 6111, *discussed infra*, and overruled Appellant's objection. ***Id.*** at 52.

At this point, the record reflects that Appellant's counsel lodged no objection specifically with regard to the constitutionality of section 6111, and the direct examination of Sergeant Miller continued. This Court has long recognized that the "failure to offer a timely and **specific objection** results in waiver" of the claim. ***Commonwealth v. Bruce***, 916 A.2d 657, 671 (Pa. Super. 2007) (emphasis added), *appeal denied*, 932 A.2d 74 (Pa. 2007). Additionally, "issues not raised in the lower court are waived and cannot be raised for the first time on appeal." Pa.R.A.P. 302(a). Accordingly, we conclude that Appellant has waived his first claim by failing to make a timely and specific objection to the constitutionality of section 6111.

We next turn to Appellant's third claim that the trial court erred in permitting Sergeant Miller "to qualify her opinion evidence as to the subject handwriting to a reasonable degree of scientific certainty." Appellant's Brief at 40. Specifically, Sergeant Miller testified on direct examination as follows.

Q. As a result of your examination what was your conclusion?

A. By laying the foundation and as a result of my examination and comparison of [the victim's] known handwriting to the questioned signatures I concluded that [the victim] did not write those signatures appearing on my q-1 through 7 exhibits.

Q. And that opinion is held to a reasonable degree of scientific certainty?

A. Absolutely.

N.T., 8/15/11, at 69.

Again, the record reflects that Appellant's counsel failed to lodge an objection to this testimony. **Id.** Furthermore, Appellant's counsel also failed to object to both the admission of Sergeant Miller's *curriculum vitae*, and the printed copy of the comparison slide she utilized to highlight the differences between the victim's known signatures and the signatures that appeared on the seven checks in question. **Id.** at 70. At this point, the trial court recognized Sergeant Miller as an expert in handwriting analysis, and recessed for lunch. **Id.** at 71. Following the recess, Appellant's counsel began a lengthy cross-examination of Sergeant Miller, again without any objection to her opinion being held to a reasonable degree of scientific certainty. **Id.** at 73. Accordingly, we conclude Appellant has waived his claim that the trial court erred in permitting Sergeant Miller to opine to a reasonable degree of scientific certainty. **Bruce, supra; see also** Pa.R.E. 103(a)(1) (stating, "error may not be predicated upon a ruling that admits or excludes evidence unless ... a timely objection, motion to strike or motion *in limine* appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context[]").

Lastly, Appellant argues in his second issue that the trial court erred in admitting the testimony of Sergeant Miller, without conducting an independent analysis as to the admissibility of the handwriting sample

pursuant to Pennsylvania Rule of Evidence 702.<sup>4</sup> Appellant's Brief at 39. This claim is devoid of merit.

Questions concerning the admissibility of evidence, including expert testimony, are within "the sound discretion of the trial court, and its discretion will not be reversed absent a clear abuse of discretion." ***Commonwealth v. Selenski***, 18 A.3d 1229, 1232 (Pa. Super. 2011) (citation omitted); ***see also Commonwealth v. Bullock***, 948 A.2d 818, 827 (Pa. Super. 2008) (citation omitted), *appeal denied*, 968 A.2d. 1280 (Pa. 2009). "An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-

---

<sup>4</sup> Pennsylvania Rule of Evidence 702, as amended by 2013 PENNSYLVANIA COURT ORDER 0005, provides as follows.

Rule 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson;
- (b) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and
- (c) the expert's methodology is generally accepted in the relevant field.

Pa. Order 13-0005.



will or partiality, as shown by the evidence of record.” **Commonwealth v. Harris**, 884 A.2d 920, 924 (Pa. Super. 2005) (internal citations and quotation marks omitted), *appeal denied*, 928 A.2d 1289 (Pa. 2007).

Herein, as discussed, the trial court concluded that it possessed the statutory authority to admit the expert handwriting testimony of Sergeant Miller into evidence, pursuant to section 6111. N.T., 8/15/11, at 52; **see also** Trial Court Opinion, 1/30/12, at 2. Appellant has failed to cite to any statutory or case law of this Commonwealth as definitive legal authority that “call[s] into question the validity of [section] 6111[,]” or otherwise indicates the trial court was required “to conduct a Rule 702 analysis contemporaneously with said statute[.]” **See** Trial Court Opinion, 1/30/12, at 2; Appellant’s Brief at 39. On this basis alone, we could deem Appellant’s claim waived. **Commonwealth v. McLaurin**, 45 A.3d 1131, 1139 (Pa. Super. 2012).

Furthermore, the record establishes that the trial court was fully within its discretion in admitting said testimony. Section 6111 provides that the following persons may offer expert opinion testimony “[w]here there is a question as to any writing[.]”

- (1) The opinion of any person acquainted with the handwriting of the supposed writer.
- (2) The opinion of those who have had special experience with, or who have pursued special studies relating to, documents, handwriting, and alterations thereof, who are called experts in this section.

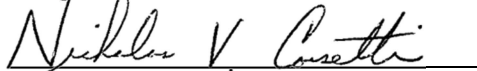
42 Pa.C.S.A. § 6111(a).

Even a cursory review of the record indicates that Sergeant Miller, who testified at great length regarding her extensive experience and training, was qualified under section 6111(a)(2) to offer her expert opinion with regard to handwriting analysis and identification. **See** N.T., 8/15/11, at 46-50. Furthermore, under section 6111(d), "the final determination as to whether any particular handwriting is genuine or simulated shall remain, as heretofore, a question for the jury on all the evidence submitted." 42 Pa.C.S.A. § 6111(d). Accordingly, Appellant's claim in this regard must fail.

For all the foregoing reasons, we conclude that Appellant's claims on appeal are either waived or devoid of merit. Therefore, we affirm the October 25, 2011 judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Consetti", is written over a horizontal line.

Deputy Prothonotary

Date: 5/1/2013

