

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

SANDRA L. MURPHY

Appellant

No. 1562 MDA 2013

Appeal from the Judgment of Sentence July 1, 2013
In the Court of Common Pleas of York County
Criminal Division at No(s): CP-67-CR-0003099-2012

BEFORE: GANTMAN, P.J., ALLEN, J., and LAZARUS, J.

MEMORANDUM BY LAZARUS, J.:

FILED APRIL 29, 2014

Sandra L. Murphy (“Murphy”) appeals from the judgment of sentence, imposed by the Court of Common Pleas of York County, after a jury convicted her of theft by unlawful taking,¹ theft by deception,² and forgery.³ Murphy challenges the trial court’s decision to exclude a document from evidence alleged to be an agreement between herself and the victim permitting Murphy to borrow the money at issue. Upon careful review, we affirm.

¹ 18 Pa.C.S. § 3921(a).

² 18 Pa.C.S. § 3922(a)(1).

³ 18 Pa.C.S. § 1401(a)(1).

Murphy and Genevieve M. Pradel ("Pradel") met in 2005 at a senior center and became friends. In 2009, Pradel grew estranged from her daughters and sought to dismiss them as her agents under a power of attorney. Thereafter, Pradel contacted her attorney and instructed him to amend the document to appoint Murphy and her niece, Jane Biesiadecki, as agents. Shortly before her death, Pradel and her daughters reconciled, and she again amended the document through her attorney, reinstating the daughters as agents

The Commonwealth alleges that after Murphy was removed as agent, she forged Pradel's signature on several checks, signed her own name on one of Murphy's checks, and cashed said checks. Murphy maintains she and Pradel had an agreement, memorialized in writing, permitting Murphy to borrow money in exchange for her services as agent. At trial, Murphy sought to introduce the written agreement into evidence. The Commonwealth objected, claiming the document was inauthentic, created by Murphy by photocopying Pradel's signature onto a fake agreement.

Following the Commonwealth's objection, the trial court allowed brief argument on the authenticity issue from both parties. The trial court described its concerns regarding the document, which included that: it was undated; Pradel's signature was at a 90-degree angle to the rest of the text; the document lacked a label or title; there were no signature blocks; and smiley faces were inexplicably included in the document. N.T. Trial, 5/13/14, at 11. The court also acknowledged Murphy and Pradel's legal

relationship and their levels of legal sophistication demonstrated by soliciting the services of an attorney to create past durable powers of attorney. *Id.* at 10-11. The court further noted that the content and “nebulous character” of the document was inconsistent with their legal knowledge. *Id.*

Following a mid-day break, the court held a hearing on the authenticity issue. Murphy called Douglas Gent, Esquire, who served as Pradel’s family attorney, to testify regarding Pradel’s usual practices in handling legal matters. Following Attorney Gent’s testimony, the court heard additional argument from both parties.

Upon completion of testimony and argument, the trial court ruled the document was not properly authenticated. *Id.* at 29. The case proceeded to trial and the jury convicted Murphy of all three charges. On count one, theft by unlawful taking, Murphy was sentenced to three to twenty-three months’ electronically monitored house arrest and \$5,785.31 restitution and court costs. On count two, theft by deception, she was sentenced to twelve months’ probation consecutive to the sentence in count one and \$5,785.31 restitution plus court costs. On count three, forgery, she was sentenced to twelve months’ probation, consecutive to the sentence in counts one, and two. Murphy was sentenced to pay all costs of prosecution and restitution and, after having paid those amounts, the probation ordered in counts two and three could be terminated. This timely appeal followed.

Our standard of review is as follows: “The admissibility of evidence is vested in the sound discretion of the [trial] court and an appellate court may

reverse only where there is an abuse of that discretion.” **Commonwealth v. Henry**, 706 A.2d 313, 319 (Pa. 1997) (citation omitted). An abuse of discretion occurs only where “a trial court, in reaching its conclusions, overrides or misapplies the law, or exercises judgment which is manifestly unreasonable, or the result of partiality, prejudice, bias, or ill will.” **Commonwealth v. Brown**, 839 A.2d 433, 435 (Pa. Super. 2003) (citation omitted).

Although the Commonwealth frames this appeal as a Best Evidence issue, the Rule is inapplicable in this scenario. Codified at Pa.R.E. 1002, the Best Evidence Rule states: “To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules, by other rules prescribed by the Supreme Court, or by statute.” Pa.R.E. 1002. Rule 1002 requires the original document be introduced “only if the Commonwealth must prove the contents of the writing, recording or photograph to establish the elements of its case.” **Commonwealth v. Fischer**, 764 A.2d 82, 88 (Pa. Super. 2000).

Here, the parties confirmed with the court there was no dispute as to the contents of the writing at trial. N.T. Trial, 5/13/13, at 10. Rather, the Commonwealth alleged Murphy created the document by photocopying together two separate documents.

Pennsylvania Rule of Evidence 1003 governs the use of duplicates. “A duplicate is admissible to the same extent as the original unless a genuine issue is raised about the original’s authenticity or the circumstances make it

unfair to admit the duplicate.” Pa.R.E. 1003. Regarding authenticity, Pennsylvania Rule of Evidence 901 provides, “to satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to supporting a finding that the item is what the proponent claims it is.” Pa.R.E. 901(a). Rule 901 also includes examples of acceptable methods of documentation such as, “a comparison [of the proffered evidence] with an authenticated specimen by an expert witness.” Pa.R.E. 901(b)(3). Where “a question [exists] as to the authenticity of an exhibit, the trier of fact will have to resolve the issue.” Pa.R.E. 901, comment. The trier of fact may do so by “comparing the exhibit to authenticated specimens.” *Id.* Therefore, where a party seeks to admit evidence using this method of authentication, “the court must decide whether the specimen used for comparison to the exhibit is authentic.” *Id.* If the court determines “there is sufficient evidence to support a finding that the specimen is authentic,” the trier of fact may then “compare the exhibit to the authenticated specimen.” *Id.*

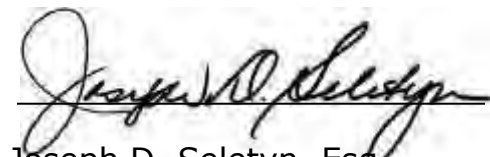
Here, the court resolved the issue of authenticity during a preliminary hearing, with the trial judge sitting as trier of fact. The court considered the evidence, including argument and testimony, regarding Pradel’s approach to handling legal matters, and determined the document was not properly authenticated. N.T. Trial, 5/13/14, at 29. In so holding, the trial court reasoned, “the victim had done handwritten documents in the past, but as the Commonwealth noted, even when they were handwritten, they were

notarized and then ultimately brought to the attention of the attorney.” **Id.** Furthermore, the agreement was “an undated document that would purport to allow Ms. Murphy to borrow an unspecified amount of money,” providing Murphy with “quite a blank check that is . . . not consistent with the practice that the victim had demonstrated previously where she would consult with counsel.” **Id.** Finally, the agreement “appear[ed] to be an incomplete document,” leading the trial court to determine the document was not authentic.

The court’s conclusion that the proffered evidence was inconsistent with Pradel’s practice of consulting an attorney when amending her estate planning documents and that insufficient evidence existed to authenticate the document was within its purview. **See** Pa.R.E. 901. Finding ample support for its determination in the record, we discern no abuse of discretion on the part of the trial court. **Brown, supra.** Accordingly, Murphy’s claim lacks merit and we deny her relief.

Judgment of sentence affirmed.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/29/2014