

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF
PENNSYLVANIA

Appellee

v.

DANIEL C. BAKER

Appellant

No. 828 WDA 2013

Appeal from the Judgment of Sentence of April 11, 2013
In the Court of Common Pleas of Washington County
Criminal Division at No.: CP-63-SA-0000320-2012

BEFORE: BOWES, J., WECHT, J., and STABILE, J.

MEMORANDUM BY WECHT, J.:

FILED JULY 2, 2014

Daniel C. Baker appeals from his April 11, 2013 judgment of sentence. For the reasons that follow, we affirm.

The trial court aptly summarized the factual history of this case in its supplemental opinion¹ pursuant to Pa.R.A.P. 1925(a), as follows:

On August 9, 2013, [Baker] was traveling on Ridge Road (also known as [T]ownship [R]oad 616) within Robinson Township in his employer's commercial truck. Officer Brian Farkas, a member of the Robinson Township Police Department . . ., testified that he observed [Baker] driving a commercial flat-bed truck carrying metal pipe on Ridge Road which appeared to be in violation of [local] ordinance weight restrictions.² After [Baker's] truck passed Officer Farkas, [he] followed [Baker] in his vehicle, turned on his police lights and successfully stopped [Baker] on Ridge Road to effectuate a weighing. When [Baker] stopped his

¹ **See** *infra* at 5.

[truck,] Officer Garkas informed him why he was stopped and that he was going to conduct a weighing.

² Officer Farkas testified with credibility that his training and experience taught him that the weight of [Baker's] truck alone would have been greater than the allowable limit[] of ten tons for Ridge Road.

Officer Farkas testified that he used two pairs of scales [in weighing Baker's truck. Officer Farkas] first weighed the rear [axel] of the truck, then the front, by having [Baker] move the truck either forward or backward onto each pair of scales while on level ground. Officer Farkas also testified that the scales were certified by the Department of General Services for the Commonwealth of Pennsylvania on March 28, 2012, and he produced written verification thereof. According to the scales, the gross weight of the truck was 69,900 pounds. Officer Farkas, testified, however, that he permitted a three[-]percent [downward] deviation to 67,803 pounds to allow for any margin of error.

After the weighing, Officer Farkas testified that he completed two Motor Carrier Enforcement Vehicle Weight Records (hereinafter known as "Record") and issued a citation because [Baker's] truck was over the weight limits.³ Officer Farkas testified that he handed [Baker] one of the two original Records and gave [Baker] a copy of the citation; the second original Record was retained by Officer Farkas for the police department's files. The citation noted that the vehicle was 47,803 pounds over the limit of 20,000 and the fine would be \$13,650, plus certain applicable costs. As a result, the total due was \$13,856.

³ The [Robinson Township Police Department] does not provide [Officer Farkas] with a portable photocopying machine when working in the field. As Officer Farkas testified, he must independently scribe a Record for the driver and Record for the police department.

Trial Court Opinion ("T.C.O."), 6/21/2013, at 2.

On September 17, 2012, a magisterial district judge found Baker guilty of violating the weight limits² applicable to Ridge Road. Baker was ordered to pay “the sentence of fines, costs and restitution” imposed by the original citation. Time Payment Order, 9/17/2012, at 1. Specifically, Baker was found to be in violation of Robinson Township Ordinance No. 02.09-2009,³ which provides as follows:

An Ordinance Setting Forth Weight and Size Restrictions on Roadways and/or Parts of Roadways Located in Robinson Township.

WHEREAS, the Second Class Township Code, provides that Robinson Township can establish weight and size restrictions on roadways located in the Township; and

WHEREAS, the Board of Supervisors of Robinson Township have caused Engineering surveys to be made for purposes of this Ordinance and the same are available for inspection at the Township Municipal Offices; and

WHEREAS, the Board of Supervisors have deemed that it is in the best interest of a Township to establish weight and size restrictions on roadways for Robinson Township pursuant to the aforesaid surveys;

NOW THEREFORE, the Robinson Township Board of Supervisors, in lawful session meeting, hereby ORDAIN AND ENACT as follows:

² **See** 75 Pa.C.S. § 4902(a)(1) (“[L]ocal authorities with respect to highways and bridges under their jurisdictions may prohibit the operation of vehicles and may impose restrictions as to the weight . . . of vehicles operated upon a highway . . .”).

³ The ordinance was signed, taking immediate effect, on April 14, 2009.

SECTION 1. The weight and size restriction roadway surveys prepared by K2 Engineering, Inc. in January of 2009 and on file at the Robinson Township Municipal Offices located at 8400 Noblestown Road[,] McDonald, PA[,] 15057[,] are hereby incorporated into this Ordinance.

SECTION 2. The location distances and weight restrictions set forth in the K2 Engineering, Inc. weight and size restriction roadway surveys are hereby adopted on the following roadways:

* * *

Ridge Road T-616, distance 0.86 miles

* * *

SECTION 3. The Township will post the aforesaid roadways with signage indicating the weight restrictions and locations on said roadways for purposes of this Ordinance.

SECTION 4. Any person [who] violates any provisions of this Ordinance shall be prosecuted under the applicable sections of the Pennsylvania Motor Vehicle Code including but not limited to Section 4902 and all sub parts thereof and upon conviction shall be sentenced to pay a fine of \$300.00 plus \$150.00 for each five hundred (500) pounds or part thereof, in excess of two-thousand (2,000) over the maximum allowable weight plus costs of prosecution and attorney’s fees incurred by the township in enforcing this Ordinance.

See Commonwealth’s Exhibit A, at 1-2 (unnumbered).⁴

The weight and size restriction survey regarding Ridge Road (hereinafter, “survey”), which became part of the instant ordinance by incorporation, was conducted on or about January 2, 2009. **Id.** at 6. The survey noted that existing signage on Ridge Road already limited vehicles to

⁴ Commonwealth’s Exhibit A comprises a copy of the at-issue Robinson Township ordinance and a copy of the survey conducted upon Ridge Road.

a maximum weight of ten tons, or 20,000 pounds. *Id.* at 4. Based upon the overall condition of Ridge Road, the survey stated that “the current posting should be maintained to prevent additional damage to the roadway and shoulders.” *Id.* at 6.

On September 25, 2012, Baker filed a notice of appeal from his summary conviction. On April 11, 2013, Baker’s *de novo* summary trial was held in the Washington County Court of Common Pleas. On April 13, 2013, the court affirmed Baker’s conviction and imposed a sentence identical to that of the magisterial district court.

On May 10, 2013, Baker filed a notice of appeal. On May 14, 2013, the trial court directed Baker to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). On June 3, 2013, Baker timely complied. On June 14, 2013, the trial court issued a Rule 1925(a) opinion. However, on June 21, 2013, the trial court issued a supplemental Rule 1925(a) opinion, explaining that its earlier opinion was issued before the production of trial transcripts. The supplement contained “minor corrections and modifications for the benefit of the Superior Court.” T.C.O. at 1.

Baker has presented a single issue for our consideration: “Whether [the] conviction of [Baker] should stand when the evidence presented by the Commonwealth cannot be authenticated.” Baker’s Brief at 7. The most complete statement of Baker’s argument is as follows:

This case is rife with issues regarding the authenticity of the documentary evidence offered as the basis for the underlying

citation and eventual conviction of [Baker. Officer Farkas] testified before the Court that the Motor Carrier Enforcement Vehicle Weight Record (which was [the Commonwealth's] Exhibit C at trial) and that was filed with the court, was the underlying document that formed the basis for the issuance of the citation given to [Baker]. The document that was testified to by [Officer Farkas] was not the same document given to [Baker] and had different information on it.

[Baker] pointed out on the record six (6) differences between the document he was given (and had to defend), and the document that was accepted by the Court and marked as Exhibit C. The differences included:

1. Different handwriting on the top left portion of the document;
2. Weight of Axle three (3) was different amount;
3. Weight of Axle four (4) had two different amount[s];
4. The appearance of -3% on the [copy of the citation submitted to the trial court] was actually 3% on Baker's copy;
5. The regulation state number on [the copy of the citation submitted to the trial court] had the following: "K5IN[," while] the same number was 1232156IN on [Baker's] copy;
6. The "parts" numbers were different on both documents.

Baker's Brief at 9-10. Thus, Baker argues that the evidence adduced by the Commonwealth (to wit, the police department's copy of Baker's citation) was not sufficiently authenticated.

Our standard of review from an appeal of a summary conviction heard *de novo* by the trial court is limited to a determination of whether an error of law has been committed and whether the findings of fact are supported by

competent evidence. ***Commonwealth v. Marizzaldi***, 814 A.2d 249, 251 (Pa. Super. 2002) (citing ***Commonwealth v. Lutes***, 793 A.2d 949, 958 (Pa. Super. 2002)). The adjudication of the trial court will not be disturbed on appeal absent a manifest abuse of discretion. ***Commonwealth v. Parks***, 768 A.2d 1168, 1171 (Pa. Super. 2001) (citing ***Commonwealth v. Askins***, 761 A.2d 601, 603 (Pa. Super. 2000)). “An abuse of discretion exists when the trial court has rendered a judgment that is manifestly unreasonable, arbitrary, or capricious, has failed to apply the law, or was motivated by partiality, prejudice, bias, or ill will.” ***Id.***

The Pennsylvania Rules of Evidence provide, in relevant part, as follows with regard to the authentication of evidence:

Rule 901. Authenticating or Identifying Evidence

(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

(b) Examples. The following are examples only—not a complete list—of evidence that satisfies the requirement:

(1) *Testimony of a Witness with Knowledge.* Testimony that an item is what it is claimed to be.

* * *

(7) *Evidence about Public Records.* Evidence that:

(A) a document was recorded or filed in a public office as authorized by law; or

(B) a purported public record or statement is from the office where items of this kind are kept.

Pa.R.E. 901. The Pennsylvania Supreme Court has opined upon the authentication of evidence, as follows:

[T]here is no requirement that the Commonwealth establish the sanctity of its exhibits beyond a moral certainty. **Commonwealth v. Pedano**, 405 A.2d 525, 528 (Pa. Super. 1979); **Commonwealth v. Proctor**, 385 A.2d 383, (Pa. Super. 1978). Every hypothetical possibility of tampering need not be eliminated; it is sufficient that the evidence, direct or circumstantial, establishes a reasonable inference that the identity and condition of the exhibit remain unimpaired until it was surrendered to the trial court. **Id.**; see **Commonwealth v. Miller**, 339 A.2d 573 (Pa. Super. 1975).

Commonwealth v. Hudson, 414 A.2d 1381, 1387 (Pa. 1980) (internal citations modified). This Court has discussed the types of circumstantial evidence that may be used for authentication purposes, as follows:

[A] writing can be authenticated by circumstantial evidence that may take a number of forms, and that tends to show that the writing is what it purports to be. . . . [S]uch evidence may, depending upon the facts at issue, include proof of: the timing and method of delivery of the document, information in the contents of the writing that is known by the purported sender and the recipient, events preceding or following the execution or delivery of the writing, other communications by the purported sender prior to or following the execution or delivery of the document, the appearance of the purported sender's name or letterhead on the document, the handwriting technique, or the style of expression used in the language of the writing.

Commonwealth v. Brooks, 508 A.2d 316, 319-20 (Pa. Super. 1986).

Additionally, we note that the authenticity of a document is, ultimately, a question that rests with the fact-finder:

[T]he ultimate determination of authenticity is for the [fact-finder]. A proponent of a document need only present a *prima*

facie case of *some* evidence of genuineness in order to put the issue of authenticity before the fact[-]finders.

* * *

The court makes the preliminary determination of whether or not a *prima facie* case exists to warrant its submission to the finders of fact, but the jury itself considers the evidence and weighs it against that offered by the opposing party.

Id. at 320 (emphasis in original).

Baker argues that the inconsistencies between the two versions of the citation written by Officer Farkas, **see supra** at 6, served to undermine the authenticity of the copy adduced by the Commonwealth. In its supplemental 1925(a) opinion, the trial court has thoroughly discussed these alleged claims of inauthenticity with citations to Officer Farkas' testimony at the *de novo* trial. Specifically, the trial court concludes, upon the basis of Officer Farkas' credible testimony, that the inconsistencies complained of by Baker are the result of inadvertent transcription errors that Officer Farkas made in filling out the two separate versions of the citation. **See supra** at 2. Upon the basis of Officer Farkas' testimony, **see** Notes of Testimony ("N.T"), 4/11/2013, at 7-45, the trial court concluded that there was no error in permitting Officer Farkas to rely upon the police department's copy of the citation while testifying: "[Officer Farkas] had personal first-hand knowledge of the weighing of [Baker's] vehicle and, therefore, could authenticate the police department's Record pursuant to Pa.R.E. 901(b)(1) and 901(b)(7)." T.C.O. at 4.

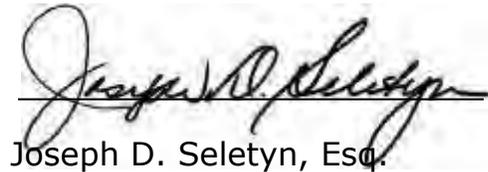
We have reviewed the certified record, and the governing legal standards attendant to the authentication of evidence. We agree with the trial court's conclusion that the Commonwealth sufficiently authenticated the at-issue evidence by way of Officer Farkas' testimony, and we will adopt the trial court's discussion as our own. A copy of its opinion is attached to this memorandum.

In addition to his claim that the Commonwealth failed to properly authenticate the police department's version of the citation, Baker has appended an alternative argument at the end of his brief asserting that the trial court should have excluded the police department's copy of the citation as unduly prejudicial. Baker's Brief at 13 ("[T]he simple fact that [Officer Farkas] acknowledged[] that the two [citations] in question differed raises the specter that the prejudicial effect of the evidence outweighs its probative value."). Additionally, Baker asserts that the Commonwealth failed to establish that Ridge Road was, in fact, weight-limited. *Id.* at 14. Assuming, *arguendo*, that these bald claims are not waived by Baker's failure to cite supporting legal authorities, *see* Pa.R.A.P. 2119, Baker has failed to include these claims in his statement of the questions presented. *See* Pa.R.A.P. 2116(a). To the extent that Baker relies upon these claims for relief, they are waived. *See Commonwealth v. Bryant*, 57 A.3d 191, 196 n.7 (Pa. Super. 2012) (finding appellant's issues waived for failure to include them in his Rule 2116 statement of the questions).

Consequently, we conclude that the trial court did not commit an error of law. The trial court's conclusion that the Commonwealth properly authenticated the police department's copy of Baker's citation is supported by the evidence of record. Moreover, nothing in Baker's argument indicates that the trial court's conclusion manifested an abuse of discretion.

Judgment of sentence affirmed.

Judgment Entered.

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

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/2/2014

Att. James Jeffries

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY,
PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF
PENNSYLVANIA,

vs.

DANIEL C. BAKER,

Defendant.

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No. SA 320 of 2012

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SUPPLEMENTAL 1925(A) OPINION

Subsequent to the trial court filing its 1925(A) opinion, the appellant, Daniel C. Baker, provided a deposit to the court stenographer. As a result, a transcript of the hearing became available. The trial court, therefore, issues the within Supplemental Opinion which includes citations to the 1925(A) opinion as well as some minor corrections and modifications for the benefit of the Superior Court.

The appellant filed an appeal on May 10, 2013 after being found guilty of a summary offense by the trial court on April 11, 2013, for violating ordinance 02.09-2009 of Robinson Township, Washington County, Pennsylvania. R.R. #11 & 13. Said ordinance placed vehicular weight limits on certain public roads in Robinson Township.¹

To be convicted of a summary offense, the Commonwealth has the burden of proving beyond a reasonable doubt that defendant committed each element the alleged crime. *Commonwealth v. Hibert*, 476 Pa. 288, 297, 382 A.2d 724, 729 (1978). The Superior Court's scope of review from such of a conviction by the trial court is limited to determining whether

¹ Section 2 of the ordinance provides the roads subject to weight restrictions and Ridge Road is one of those roads. Envelope of Exhibits, Exhibit A, p. 1. Section 4 of the ordinance states that any person who violates a provision of the ordinance "shall be prosecuted under the applicable sections of the Pennsylvania Motor Vehicle Code including sections of [75 Pa. C.S.A.] Section 4902 and all subparts thereof and upon conviction shall be sentenced to pay a fine of \$300.00 plus \$150.00 for each five hundred (500) pounds or part thereof, in excess of two-thousand (2,000) pounds over the maximum allowable weight plus cost of prosecution and attorney's fees incurred by the Township in enforcing this ordinance." *Id.* at p. 2. The weight limit on Ridge Road was ten tons. *Id.* at p. 4.

there was an error of law or whether the findings of the trial court cannot be supported by competent evidence. *Commonwealth v. Marizzaldi*, 814 A.2d 249, 250 (Pa. Super. 2002).

On August 9, 2013, appellant was traveling on Ridge Road (also known as township road 616) within Robinson Township in his employer's commercial truck. R.R. #19, p. 10. Officer Brian Farkas, a member of the Robinson Township Police Department (hereinafter "police department"), testified he observed appellant driving a commercial flat-bed truck carrying metal pipe on Ridge Road which appeared to be in violation of the ordinance weight restrictions.² *Id.* at p. 11. After appellant's truck passed Officer Farkas, Officer Farkas followed appellant in his vehicle, turned on his police lights and successfully stopped the appellant on Ridge Road to effectuate a weighing. When appellant stopped his vehicle, Officer Farkas informed him why he was stopped and that he was going to conduct a weighing. *Id.* at p. 10-11.

Officer Farkas testified that he used two pairs of scales. He first weighed the rear of the truck, then the front, by having appellant move the truck either forward or backward onto each pair of scales while on level ground. *Id.* at p. 12-13, 37. Officer Farkas also testified that the scales were certified by the Department of General Services for the Commonwealth of Pennsylvania on March 28, 2012, and he produced written verification thereof. *Id.* at p. 13-14, 19; Envelope of Exhibits, Exhibit B. According to the scales, the gross weight of the truck was 69,900 pounds. *Id.* at p. 19; Envelope of Exhibits, Exhibit C. Officer Farkas testified, however, that he permitted a three percent deviation to 67,803 pounds to allow for any margin of error. *Id.*

After the weighing, Officer Farkas testified he completed two Motor Carrier Enforcement Vehicle Weight Records (hereinafter known as "Record") and issued a citation because appellant's truck was over the weight limits.³ Officer Farkas testified he handed appellant one of the two original Records and gave him a copy of the citation; the second original Record was retained by Officer Farkas for the police department's files. R.R. #19, p. 32; Envelope of Exhibits, Exhibit C. The citation noted that the vehicle was 47,803 pounds over the limit of 20,000 and the fine would be \$13,650, plus certain applicable costs. As a result, the total due was \$13,856. R.R. #8, p.3; Envelope of Exhibits, Exhibit D.

² Officer Farkas testified with credibility that his training and experience taught him that the weight of the truck alone would have been greater than the allowable limits of ten tons for Ridge Road.

³ The police department does not provide him with a portable photocopying machine when working in the field. As Officer Farkas testified, he must independently scribe a Record for the driver and a Record for the police department. R.R. #19, p. 32, 34-35.

Appellant's concise statement of matter's complained raise eight alleged errors committed by the trial court. R.R. # 17. They, however, can be boiled down to four errors, which are as follows:

1. The Record provided to appellant and the Record retained by the police department were materially different and, therefore, it was improper for the trial court to base its findings upon the police department's Record;
2. Officer Farkas should not have been able to rely upon the police department's record when he testified because same was a violation of Pa. R.E. 901(b)(1) and 901(b)(7);
3. The Commonwealth did not verify that Ridge Road was posted to warn drivers that it was a weight restricted road;
4. Appellant was permitted to handle the scales used to weigh his vehicle and collect data, which compromised the integrity of the scales.

The trial court will address the first two alleged errors simultaneously since they are closely related. As an introduction to these issues, the trial court must emphasize that only one exhibit regarding the Record was entered into evidence.⁴ R.R. #19, p. 30. The Record entered into evidence was the one retained by the police department and the one upon which Officer Farkas relied to testify. *Id.*; Envelope of Exhibits, Exhibit C. That Record had two numbers that were different than the Record given to appellant, but they were corrected by Officer Farkas to match those on appellant's Record. *Id.* at p. 35. The numbers in question were the numbers populated in the box for "Tolerance" of "Axle No. 3" and "Axle No. 4." Appellant's original contained the numbers "425" and "536" respectively; the police department's originally had the numbers "1,425" and "1536" respectively. R.R. #19, p. 18, 30-31. Officer Farkas testified with credibility that he realized he made these errors when completing his copy of the Record. Consequently, he scratched out the number "1" in the "Axle No. 3" box and "1536" in the "Axle No. 4" box and inserted "536." R.R. #19, p. 34. Consequently, the citation was based upon the same information in both Records.

It is crucial to be aware that the numbers "425" and "536" are a reflection of and correspond to a specific calculation. That calculation is the 3% deviation of the "Total Weight"

⁴ Appellant did not testify at the hearing.

for the axle being weighed.⁵ *Id.* at p. 19; Envelope of Exhibits, Exhibit C. In this particular case, axle no. 3 weighed 14,150 pounds and axle no. 4 weighed 17,850 pounds; three percent of these numbers are 425 and 536, respectively. Both original Records contained an axle weight of 14,150 pounds for axle no. 3 and 17,850 pounds for axle no. 4; those numbers were not in dispute at trial. Further, the numbers populated in the "Axle Weight Less 3%" boxes for "Axle No. 3" and "Axle No. 4" for both appellant's Record and the police department Record were not in dispute at trial; both appellant's and the police department's numbers matched. Those numbers were "13,725" and "17,314" respectively. Consequently, it was not material that the police department's Record initially reflected incorrect "Tolerance" numbers which did not correspond with the appellant's Record.⁶

For all of these reasons, the trial court found no error for permitting Officer Farkas to testify about the weight of appellant's vehicle and to rely upon the police department's Record. He had personal first-hand knowledge of the weighing of appellant's vehicle and, therefore, could authenticate the police department's Record pursuant to Pa. R.E. 901(b)(1) and 901(b)(7).⁷

The second alleged error is that the Commonwealth failed to verify that there was a posting on Ridge Road indicating it was a weight restricted road. On direct examination, Officer Farkas testified with credibility on direct examination and cross examination that Ridge Road was posted as a weight restricted. R.R. #19, p. 11, 44. The Officer testified there was a ten ton weight limit posting. *Id.* at p. 12. Further, the Commonwealth introduced exhibit A, the enabling legislation adopting Ordinance 02.09-2009. Section 3 therein states, "The Township will post the aforesaid roadways with signage indicating the weight restrictions and locations on said roadways for purposes of this Ordinance." Envelope of exhibits, Exhibit A, Page 2.

The third alleged error was that appellant was allowed to handle the scales, which compromises their accuracy. It is true that Officer Farkas permitted appellant to handle the scales. However, this was after the weighing of appellant's vehicle and after Officer Farkas took the measurements from the scale to complete the Records; the weight of appellant's vehicle had already been established. After the weighing and recording, Officer Farkas testified that he did

⁵ This is a standard deviation permitted by the Commonwealth.

⁶ The "Tolerance" box is merely the difference between between "Total Weight" box and "Axle Weight Less 3% box."

⁷ Pa. R.E. 901 concerns the authentication and identification of evidence. Pa. R.E. 901(b)(1) states, "Testimony that a matter is what it is claimed to be." Pa. R.E. 901 (b)(7) states, "Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report statement, or data compilation, in any form, is from the public office where items of this nature are kept."

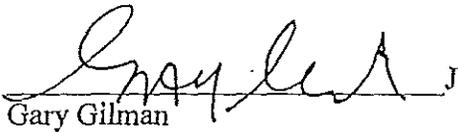
not ask appellant to help him put the scales back into his police vehicle; unsolicited, appellant independently picked up the scales to place them in Officer Farkas' vehicle. R.R. #19, p. 43. Moreover, Officer Farkas testified that appellant handled the scales properly and was not charged with "tampering with evidence." *Id.* at p. 43. Therefore, the trial court determined that the accuracy of the scales was not compromised and that Officer Farkas could testify about the measurements derived therefrom.

For the above-mentioned reasons, the trial court respectfully requests that the Superior Court sustain the trial court's findings and dismiss appellant's appeal.

BY THE COURT:

Date: _____

6/21/13


Gary Gilman J.