

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1452-2005  
vs. : CR-1509-2005  
: CR-1627-2005  
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:  
:  
:  
ARON C. HOYT, : 1925(a) Opinion  
Defendant

**OPINION IN SUPPORT OF ORDER IN  
COMPLIANCE WITH RULE 1925(a) OF  
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's Order docketed June 2, 2009, granting in part and denying in part Defendant's post sentence motion. The Court notes that issues raised in this appeal are the same issues Defendant raised in his post sentence motion. Therefore, the Court adopts and incorporates by reference the Opinion that accompanied the Order docketed June 2, 2009. However, with respect to issue c in Defendant's statement of matters complained of on appeal, the Court will supplement its previous Opinion.

Issue c states: "The Defendant avers the trial court erred by permitting the Commonwealth to introduce undisclosed hearsay evidence without any foundation at trial through a witness who pulled a letter out of her purse at trial." This issue arose during the testimony of Kim Sampsell, who was an employee at the Muncy branch of Citizens and Northern bank. See N.T., July 1, 2008, at pp. 20-24. Defense counsel's categorization of the letter as "undisclosed" hearsay is not entirely accurate. It is true that Ms. Sampsell brought copies of bank documents with her to trial and she was pulling her copies out of her bag during her testimony. One of the documents was a letter sent by bank personnel to

Defendant to inform him that the check he opened his account with was no good and to give him a ten day window of opportunity to repay the \$1650 he withdraw from the account before the bank contacted the authorities. The letter was Commonwealth Exhibit #3 and defense counsel, at page 21, line 19, admitted she had a copy of it.<sup>1</sup>

The Court also does not believe the letter was hearsay. Rule 803(6) of the Rules of Evidence provides the following statements are not excluded by the hearsay rule: “(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of act, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of the that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness....” Pa.R.E. 803(6). The Court finds the letter met this hearsay exception.<sup>2</sup> Ms. Sampsell testified that, although she did not write the letter, she had opened the account and when it was discovered that the check with which the account was opened was drawn on a closed account Ms. Sampsell conferred with the Linda Gordner, who was assistant cashier and the acting manager at that time, about sending some form of notice to Defendant, which resulted in the letter being written by Ms. Gordner and sent to Defendant. N.T., July 1, 2008, at p. 23. Ms. Sampsell also testified that the letter was something that Ms. Gordner would do in the regular course of business for the bank and it was part of the typical bank procedure in a situation like this. *Id.* at pp. 22-23.

The account was opened on July 13, 2005 with a check in the amount of

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<sup>1</sup> Defense counsel complained that the letter was not signed and there was no envelope with a postmark. The original of the letter was sent to Defendant. Thus, Defendant, not the bank, would have had the original letter and the postmarked envelope.

\$1,862 at the Muncy branch of Citizens and Northern Bank. The next day, Defendant went to the Williamsport bank of the bank and withdrew \$1,650. The check Defendant used to open the account was returned to Citizens and Northern Bank with a notation that the account the check was written on was a closed account. The letter Ms. Gordner wrote to Defendant was dated July 20, 2005. Thus, it is clear from the records and Ms. Sampsell's testimony that the letter was made in the regular course of business at or near the time by a person with knowledge.

The admission of evidence is within the sound discretion of the trial court. *Commonwealth v. Collins*, 598 Pa. 397, 444, 957 A.2d 237, 265 (Pa. 2008). Given the facts and circumstances of this case, the Court does not believe it abused its discretion in admitting the letter dated July 20, 2005.

DATE: \_\_\_\_\_

By The Court,

\_\_\_\_\_  
Kenneth D. Brown, President Judge

cc: Melissa Rosenkilde Kalas, Esquire (ADA)  
Jeana Longo, Esquire (APD)  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)  
File CR-1452-2005  
File CR-1509-2005

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<sup>2</sup> The Court also believes the letter was admissible under 42 Pa.C.S. §6108.