

2010 WL 2675231 (Ky.) (Appellate Brief)  
Supreme Court of Kentucky.

Caryn Renee ROACH, Appellant,  
v.  
COMMONWEALTH OF KENTUCKY, Appellee.

No. 2009-SC-000058-MR.  
January 21, 2010.

Appeal from Daviess Circuit Court Hon. Henry M. Griffin, Judge Cir. No. 08-CR-00223

### Reply Brief for Appellant

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#### **\*I PURPOSE**

The purpose of this reply brief is to respond to the Appellee's arguments that require a response. The failure to address a particular issue should not be taken as a reflection that Appellant believes the issue has no merit or less merit than issues that have been addressed in this reply brief.

#### **\*1 1. DETECTIVE DUVALL'S TESTIMONY WAS INADMISSIBLE UNDER [KRE 701](#) AND [702](#), AND ERROR WAS NOT HARMLESS.**

The reason Detective Duvall's testimony was not lay witness testimony is because the Commonwealth did not introduce this line of questioning by asking if Detective Duvall was familiar with Mrs. Wilson's signature. Rather the Commonwealth adduced testimony about Duvall's college classes involving handwriting analysis, and then, when Duvall rendered his opinion, he told the jury about "patterns," "consistencies," spiked and rounded letters, and flat versus curled letters. VR No. 2 11/14/08 10:17:20. Yet Detective Duvall clearly was not an expert witness in the area of handwriting analysis. He was not even familiar with Mrs. Wilson's handwriting except by virtue of working on this criminal case. Of course [KRE 901\(b\)\(2\)](#) bars lay opinion testimony when familiarity is "acquired for the purposes of litigation."

This case is not like the case the Attorney General hangs his hat on-- *Hampton v. Commonwealth*, 133 S.W.3d 438 (Ky.2004). In that case, Ms. Goins-- who was not acting as a member of law enforcement in rendering her testimony-- compared the decedent's driver's license with the allegedly forged loan papers and testified the signatures did not look the same. The driver's license of the decedent was certainly a known sample as opposed to the exemplars used in this case which were checks that may or may not have been written by Mrs. Wilson. Wendell Wilson said the signature on one of the checks (a check to a physician) ultimately used as an exemplar did not look like his mother's. VR No. 1 11/12/08 2:38:00. Indeed, he readily admitted her signature changed from check to check. *Id.*, 3:03:28-3:06:05. Furthermore, Jean Wilson testified the handwriting on the check to a hairdresser "kind of" looked like her own handwriting; this check was also used by Duvall as a specimen of Mrs. Wilson's writing. *Id.*, 4:17:52. \*2 The fact that Duvall did not seek out a more official sample of Mrs. Wilson's handwriting, like a driver's license, goes to his lack of expertise as well.

While the Commonwealth argues that Duvall's testimony was cumulative, and thus harmless, Appellant believes that is the crux of the problem. The jury had already heard Wendell Wilson opine that the handwriting on the Roach/Goatee checks did not look like his mother's handwriting at the point Detective Duvall took the stand. VR No. 1 11/12/08 2:32:21. Duvall's testimony

was not cumulative evidence--it was bolstering evidence. It bolstered Wendell Wilson's lay opinion, and it did so under the inference that Duvall must have some knowledge of handwriting analysis because of his training. Duvall's testimony was not just that the signatures looked different; it was the signatures look different, and here is why, using technical terms designed to impress the jury. This was highly prejudicial.

This opinion testimony, whether it be called lay opinion or expert opinion, was improper. It directly refuted--without any basis--Ms. Roach's defense that Mrs. Wilson wrote the checks. While Wendell Wilson testified the handwriting seemed to be different on the Roach/Goatee checks, the jury undoubtedly placed more credence in Duvall's testimony since he was a police officer who had "studied" handwriting analysis. In addition, Duvall had no bias as opposed to Wendell Wilson who was an heir to his mother, and would stand to benefit from a conviction in this case. TR 76. This error was not harmless, and reversal is required.

## **2. INSUFFICIENT EVIDENCE OF ADULT EXPLOITATION.**

The Appellee argues that the fact that Ms. Roach was hired as in home help \*3 shows physical dysfunction indicating Mrs. Wilson was in need of protective services. Appellee's Brief 13. Certainly, Mrs. Wilson may have needed an extra pair of hands around the house, just like other physically disabled individuals may need some assistance. However just because one is physically handicapped does not mean one cannot manage her **financial** affairs. There are a lot of individuals with severe physical limitations who suffer no **mental impairment**, and would no doubt take umbrage at the suggestion that they need special protection from **financial** exploitation.

Because of the **financial** nature of this "exploitation" case, the Commonwealth needed to introduce proof that Mrs. Wilson could not manage her own resources. [KRS 209.020\(4\)](#). There was simply no evidence of that. The wool was not pulled over the Wilson family's eyes because of Mrs. Wilson's frail nature or her inability to manage affairs, but because this family, apparently, did not keep up to date with the goings on in their bank accounts, or communicate with one another clearly. Of course, there is still the unanswered question of why Mrs. Wilson did not prosecute this matter herself since she did not pass away until over 6 months after the **financial** irregularities were discovered.

The crime of adult exploitation was not proven by the Commonwealth. This is because this is not a case the General Assembly intended to be prosecuted under the exploitation statute. Rather it is a straight forged instrument case. Yet Ms. Roach is now serving a 20 year sentence, not a 10 year sentence. This conviction must be vacated.

## **3. PALPABLE ERROR OCCURRED WHERE MS. ROACH WAS UNABLE TO CONFRONT MRS. WILSON AFTER HER STATEMENTS CAME IN AT TRIAL.**

The Commonwealth ignores the fact that Ms. Roach's Confrontation Clause rights were violated in this case by the insertion into evidence--five times--of Mrs. \*4 Wilson's statements. The statements that were admitted were accusing towards Ms. Roach. Because Mrs. Wilson was unavailable as a witness, Ms. Roach could not "explore the witness' credibility, challenge the witness' recollection of events, and expose any 'possible biases, prejudices, or ulterior motives of the witness as they may relate directly to issues or personalities in the case at hand.'" *Davis v. Alaska*, 415 U.S. 308, 316 (1974). The jury was unable to hear exactly what Mrs. Wilson's thoughts were-- did she give some of the checks to Ms. Roach; might she have implied they were a gift; was she not completely honest with her son because of fear of hurting his feelings; why exactly was she not a happy camper, etc. The jury heard what the Commonwealth wanted it to hear without Ms. Roach being able to confront Mrs. Wilson.

Because of the Confrontation Clause violation, this error was palpable, and manifest injustice has resulted. [RCr 10.26](#); [KRE 103\(e\)](#); *Page v. Commonwealth*, 149 S.W.3d 416, 422 (Ky.2004). Reversal is required.

## **CONCLUSION**

For the foregoing reasons, and those stated in the original brief, Ms. Caryn Renee Roach requests this Court vacate her convictions and sentence, and remand the case for a new trial. Alternatively, she requests the Court to grant her any appropriate relief to which she may appear entitled.

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