

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
YULEK STEVEN DEC	:	
	:	
Appellant	:	No. 1380 WDA 2025

Appeal from the Judgment of Sentence Entered October 9, 2025
In the Court of Common Pleas of Butler County Criminal Division at
No(s): CP-10-CR-0001578-2023

BEFORE: SULLIVAN, J., NEUMAN, J., and STEVENS, P.J.E.*

MEMORANDUM BY STEVENS, P.J.E.: **FILED: August 18, 2026**

Appellant, Yulek Steven Dec, appeals from the judgment of sentence entered October 9, 2025, in the Court of Common Pleas of Butler County following a non-jury trial after which Appellant was convicted of one count Neglect of Animal¹, graded as a summary offense. After careful review, we affirm in part and vacate in part.

On September 3, 2023, around midday, Appellant parked his vehicle outside the Butler Farm Market in Butler County, Pennsylvania, and left his approximately three-month-old puppy in the vehicle.

Some time thereafter, one Jessie Pierce and his wife were alerted by a woman shouting in alarm as they left said market. Upon approaching the vehicle, Mr. Pierce noted that the ambient temperature in the parking lot was

* Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S. § 5532.

between 80 and 90 degrees, the vehicle in which the puppy had been left was parked in direct sunlight, its windows were completely closed, the windows were hot to the touch, the vehicle was turned off, and there was no water available to the animal within. Mr. Pierce testified he saw the puppy lying on the seat of the vehicle appearing lethargic and struggling to bark. As Mr. Pierce was unable to find the owner of the vehicle, and had confirmed the doors of the vehicle were locked, he broke the vehicle's passenger side window with a crowbar and retrieved the animal. Water was provided to the puppy, who immediately "wolfed down the water as fast as it possibly could and then just laid there." N.T. at 8.

Shortly thereafter, Pennsylvania State Police Trooper Brandon Marshall was dispatched to the scene. Upon arrival the Trooper spoke with Appellant, who confirmed the puppy and the vehicle in which it was found belonged to him and that the vehicle was turned off when Appellant left it parked. Trooper Marshall observed that the puppy indeed appeared lethargic,² and he concluded, based upon his investigation, that the animal had been left in the vehicle for approximately 12 to 15 minutes. N.T. at 37.

² At trial, upon being prompted by Appellant's counsel during cross-examination, Trooper Marshall testified that, although he did not come prepared to discuss any specialized training he had undergone concerning dogs, he indeed did have significant training and experience in caring for dogs generally, and for pitbulls specifically. ***Id.*** Indeed, Trooper Marshall was a lifelong volunteer at various animal shelters. ***Id.***

Appellant was charged with, *inter alia*, the summary offense of Neglect of an Animal, and the matter proceeded to a non-jury trial on August 6, 2025.

At trial, Appellant called, among other witnesses, his veterinarian, Dr. Linda Shelton. Appellant provided notice to the Commonwealth only that Dr. Shelton would testify as a fact witness concerning her examination of the puppy, both prior to and following the incident at issue. However, during her testimony, Appellant's counsel attempted to question Dr. Shelton about the characteristics of blue nosed pitbulls as a breed, specifically their propensity to either bark or not bark under certain conditions. The Commonwealth objected that Dr. Shelton was proffered as a fact witness only whereas counsel's questions clearly called for expert testimony. Trial counsel disagreed and contended that the proposed testimony would not constitute an opinion but rather would be "a factual statement." N.T. at 94. The Commonwealth's objection was sustained, and Dr. Shelton was precluded from testifying to breed characteristics.

Appellant was subsequently convicted of the aforementioned summary offense and sentenced to pay a fine of \$200.00 plus costs of prosecution and to perform 25 hours of community service within 6 months of the day sentence was imposed. Appellant's sentence included no term of probation or incarceration.

Appellant timely appealed, and raises three issues for this Court's review:

1. The Verdict Is [*sic*] Contrary to the Weight and/or Sufficiency of the Evidence.
2. The Trial Court Erred by Refusing to Allow a Veterinarian to Testify Regarding [Appellant's] Dog's Characteristics.
3. The Court's Community Service Sentence Is [*sic*] an Illegal Sentence.

Appellant's Brief at 2.

We begin our analysis of Appellant's first issue by clarifying that a challenge to the weight of the Commonwealth's evidence is not interchangeable with a challenge to the sufficiency of the evidence. ***Commonwealth v. Widmer***, 744 A.2d 745 (Pa. 2000). This distinction is critical, as conflation of challenges to the weight with challenges to the sufficiency of the evidence may lead to waiver of the former. ***Commonwealth v. Birdseye***, 432 Pa. Super. 167, 637 A.2d 1036, 1039-40 (Pa. Super. 1994).

Regarding challenges to the weight of the evidence, this Court has observed that:

A motion for new trial on the grounds that the verdict is contrary to the weight of the evidence ***concedes that there is sufficient evidence to sustain the verdict***. Thus, the trial court is under no obligation to view the evidence in the light most favorable to the verdict winner. An allegation that the verdict is against the weight of the evidence ***is addressed to the discretion of the trial court***.

Commonwealth v. Juray, 2022 PA Super 83, 275 A.3d 1037, 1046-47 (Pa. Super. 2022)(***emphasis added***)(quoting ***Commonwealth v. Widmer***, 560 Pa. 308, 319-20, 744 A.2d 745, 751-52 (2000)).

Indeed, "one of the least assailable reasons for granting or denying a new trial is the lower court's conviction that the verdict was or was not against the weight of the evidence and that a new trial should be granted in the interest of justice." ***Commonwealth v. Best***, 2015 PA Super 151, 120 A.3d 329, 345 (Pa. Super. 2015). Thus, when reviewing such a claim:

An appellate court's standard of review when presented with a weight of the evidence claim is distinct from the standard of review applied by the trial court. Appellate review of a weight claim is ***a review of the exercise of discretion***, not of the underlying question of whether the verdict is against the weight of the evidence.

Commonwealth v. Windslowe, 2017 PA Super 82, 158 A.3d 698, 712 (Pa. Super. 2017) (citations omitted, ***emphasis added***).

Whereas, when examining a challenge to the *sufficiency* of evidence, this Court employs the following, entirely distinct, standard or review:

As a general matter, our standard of review of sufficiency claims requires that we evaluate the record in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Nevertheless, the Commonwealth need not establish guilt to a mathematical certainty. Any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances.

The Commonwealth may sustain its burden by means of wholly circumstantial evidence. Accordingly, the fact that the evidence establishing a defendant's participation in a crime is circumstantial does not preclude a conviction where the evidence coupled with the reasonable inferences drawn therefrom overcomes the presumption of innocence. Significantly, we may not substitute

our judgment for that of the fact finder; thus, so long as the evidence adduced, accepted in the light most favorable to the Commonwealth, demonstrates the respective elements of a defendant's crimes beyond a reasonable doubt, the appellant's convictions will be upheld.

Commonwealth v. Sebolka, 2019 PA Super 58, 205 A.3d 329, 336-37 (Pa. Super. 2019) (quoting ***Commonwealth v. Franklin***, 2013 PA Super 153, 69 A.3d 719, 722-23 (Pa. Super. 2013)).

Appellant's brief does not demonstrate a clear understanding of the distinction between these challenges. In his statement of the standard of review, he cites only to authority establishing the standard of review relative to sufficiency of the evidence. Nowhere in this section of his brief does he cite to any authority concerning challenges to the weight of the evidence, nor does Appellant address any argument to the discretion of the lower court in ruling on any previous challenge to the weight of the evidence. As such, we find this issue to be waived, and we proceed to assess only the sufficiency of the Commonwealth's evidence. ***Birdseye***, *supra*.

The offense of Neglect of an Animal is defined as follows:

- (a) ***Offense defined.*** — A person commits an offense if the person fails to provide for the basic needs of each animal to which the person has a duty of care, whether belonging to himself or otherwise, including any of the following:
 - (1) Necessary sustenance and potable water.
 - (2) Access to clean and sanitary shelter and protection from the weather. The shelter must be sufficient to permit the animal to retain body heat and keep the animal dry.

(3) Necessary veterinary care.

18 Pa. C.S. § 5532

Although non-precedential, this Court has previously held that the words of §5532 are clear and free from all ambiguity, and that “protection from the weather” certainly includes protection from excessive heat. **Commonwealth v. Arthur**, 304 A.3d 783 (Pa. Super. 2023)(unpublished memorandum³, sentence vacated on other grounds).

Here, the evidence adduced against Appellant, viewed in the light most favorable to the Commonwealth as the verdict winner, is sufficient to establish all necessary elements of the offense. The evidence shows that the animal in question belonged to Appellant, that he placed the animal in his vehicle, parked his vehicle in direct sunlight in a parking lot where the ambient temperature exceeded 80 degrees, left the vehicle’s windows closed, left the air conditioning off, and left the animal without any water. The interior of the vehicle was thus heated to the degree that the window of the vehicle became hot to the touch and the puppy inside was rendered nearly unconscious and struggling to move or to bark. It is therefore abundantly clear that Appellant failed to provide for the basic needs of the animal to which he owed a duty of care, including potable water and shelter from the weather. As such,

³ Pursuant to Pa.R.A.P. 126(b), reliance on non-precedential opinions filed after May 1, 2019, for persuasive value is permissible. We find **Arthur** to be persuasive in this matter.

Appellant's challenge to the sufficiency of the evidence fails, and his first issue merits no relief.

Appellant's second issue challenges the trial court's refusal to allow Appellant's veterinarian, Dr. Shelton, to testify as to the general characteristics and mannerisms of blue nose pitbulls as she was proffered only as a fact witness, and counsel did not seek to qualify Dr. Shelton as an expert witness.

"When we review a ruling on the admission or exclusion of evidence, including the testimony of an expert witness, our standard is well-established and very narrow. These matters are within the sound discretion of the trial court, and we may reverse only upon a showing of abuse of discretion or error of law. An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous. In addition, [t]o constitute reversible error, an evidentiary ruling must not only be erroneous, but also harmful or prejudicial to the complaining party."

McFeeley v. Shah (In re Estate of McFeeley), 226 A.3d 582, 596 (Pa. Super. 2020).

Although Appellant contends that Dr. Shelton ought to have been permitted to testify on this topic in order to rebut the testimony of Trooper Marshall, his argument and the authority he relies upon is inapposite. Under the Pennsylvania Rules of Evidence, a witness may only offer an opinion based upon specialized knowledge if they are qualified as an expert by "knowledge, skill, experience, training, or education." Pa.R.E. 701 & 702. The purpose of

the proffered testimony does not overcome the requirements of Rules 701 and 702.

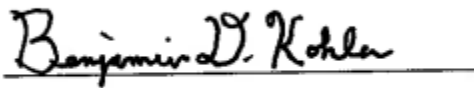
Here, we find that the general behavior and characteristics of blue nosed pitbulls as a breed is certainly not, as Appellant contends, a matter of “common knowledge.” Appellant’s Brief at 15. Thus, to testify as to whether a dog of this breed, at a particular age, under particular circumstances, should or should not be expected to bark is precisely the kind of opinion that would require specialized knowledge as contemplated by Rules 701 and 702, and thus may only be offered by a witness who has been properly qualified as an expert on the subject at issue at trial. As counsel never argued that Dr. Shelton was an expert on the characteristics or mannerisms of blue nosed pitbulls as a breed at trial, there is no basis upon which we may find that the trial court erred or abused its discretion in precluding Dr. Shelton from offering an opinion which clearly called for this specialized knowledge. Thus, Appellant’s second issue merits no relief.

Appellant’s third issue challenges the imposition of community service as a standalone term of a non-probation sentence. As both the trial court and Commonwealth have acknowledged, to do so renders Appellant’s sentence illegal. ***See Commonwealth v. Fisher***, 303 A.3d 1078, 1085 (Pa. Super. 2023). In light of the trial court’s request that we remand for resentencing, and thus “[m]indful that [vacating this term of Appellant’s sentence] may

disturb the overall sentencing scheme, we vacate the entire sentence and remand for resentencing.” ***Id.***

Thus, for the foregoing reasons, we affirm in part, vacate Appellant’s sentence, and remand for resentencing. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

8/18/2026