

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	
v.	
ELEANOR MARIE CLIFFORD,	
Appellant	No. 901 WDA 2012

Appeal from the Judgment of Sentence Entered May 9, 2012
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-SA-0000378-2012

BEFORE: BENDER, J., GANTMAN, J., and OLSON, J.
MEMORANDUM BY BENDER, J. FILED: June 6, 2013

Eleanor Marie Clifford (Appellant) appeals *pro se* from the judgment of sentence imposing a fine of \$1,100 plus costs after she was found guilty of 22 counts of the summary offense of cruelty to animals. We affirm.

The trial court set forth the following facts it gleaned from the testimony provided at the *de novo* hearing held on May 9, 2012:

At the *de novo* hearing, Pittsburgh Police Officer Christine Luffey testified that she was notified by a Pittsburgh Housing authority employee that there was an overwhelming odor of cat urine emanating from [Appellant's] home. Officer Luffey went to [Appellant's] home and confirmed the presence of a terrible odor of cat urine coming from the home. [Appellant] was living in the home, but there was no gas or water service in the residence. Officer Luffey and Kathy Hecker from Animal Friends had to enter the home in hazmat suits.

Officer Luffey and Ms. Hecker removed many cats who were extremely listless and cold. They were unable to remove all of the cats from the home because they could not catch all of them.

Ms. Hecker later returned to [Appellant's] home to feed the cats. The odor was so strong that even with the respirator on, it was necessary for Ms. Hecker to take frequent breaks. [Appellant] continued to refuse to give up the cats and simply released many of the animals from their cages so that they could not be found.

Animal Friends has provided medical treatment to the cats at a cost of approximately \$40,000. Doctor Georgia Nakovich, a veterinarian from Animal Friends, testified that the cats that she treated had not had basic care. They had infections and feline immune disease which compromised their ability to fight disease. Medical treatment of the cats removed from [Appellant's] home continued through the time of the hearing.

[Appellant] testified that the 3 witnesses for the Commonwealth lied. She maintained that the testimony of Officer Luffey, Ms. Hecker and Dr. Nakovich was false. The Court, however, found the testimony of Officer Luffey, Ms. Hecker and Dr. Nakovich credible.

Trial Court Opinion, 8/13/12, at 1-2 (unnumbered).

At the close of the hearing, Appellant was found guilty of 22 counts of cruelty to animals, 18 Pa.C.S. § 5511, and the court imposed the \$1,100 fine (\$50 for each violation). Appellant filed a timely appeal to this Court and timely responded to the trial court's order requiring the submission of a Pa.R.A.P. 1925(b) statement of errors complained of on appeal.

In her brief, Appellant raises the following two issues for our review:

1. Did the court of Common Pleas err in finding the testimony of Officer Luffey, Ms. Hecker and Dr. Nakovich credible?
2. Was the Common Pleas Judge Mazur bias [sic] in hearing the case and giving a guilty verdict?

Appellant's brief at 3.¹

Where a trial court has heard a case *de novo*, our standard of review is limited to a determination of whether the court "committed an error of law or abuse of discretion, and whether the findings of the trial court are supported by competent evidence."

Commonwealth v. Tomey, 884 A.2d 291, 293 (Pa. Super. 2005) (quoting ***Commonwealth v. Simpson***, 832 A.2d 496, 498 (Pa. Super. 2003)).

Although Appellant phrases her first issue as an attack on the credibility of the witnesses, she appears to be asserting a lack of sufficiency of the Commonwealth's evidence to convict her of cruelty to animals.²

¹ We are compelled to comment that Appellant has failed to comply with Pa.R.A.P. 2119(a), which states:

The argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part—in distinctive type or in type distinctively displayed—the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent. (Emphasis added).

Appellant has not included any citations in her brief to support the arguments she presents. Neither does Appellant include some of the other required sections identified in Pa.R.A.P. 2111 and, therefore, we could conclude that she has waived all issues. ***See Commonwealth v. McDonald***, 17 A.3d 1282, 1286 (Pa. Super. 2011). However, despite these omissions, we are able to discern Appellant's position and will address the merits of her claims.

² If this Court considered Appellant's first issue as a weight claim, we would be compelled to find it waived in that Appellant failed to raise it initially before the trial court by either an oral or written motion before sentencing or (*Footnote Continued Next Page*)

In reviewing a sufficiency of the evidence claim, we must determine whether the evidence admitted at trial, as well as all reasonable inferences drawn therefrom, when viewed in the light most favorable to the verdict winner, are sufficient to support all elements of the offense. **Commonwealth v. Moreno**, 14 A.3d 133 (Pa. Super. 2011). Additionally, we may not reweigh the evidence or substitute our own judgment for that of the fact finder. **Commonwealth v. Hartzell**, 988 A.2d 141 (Pa. Super. 2009). The evidence may be entirely circumstantial as long as it links the accused to the crime beyond a reasonable doubt. **Moreno, supra** at 136.

Commonwealth v. Koch, 39 A.3d 996, 1001 (Pa. Super. 2011). Moreover, “the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.” **Commonwealth v. Hunzer**, 868 A.2d 498, 505 (Pa. Super. 2005).

As noted, Appellant’s argument relates to her conviction for cruelty to animals. The pertinent statutory language is contained in 18 Pa.C.S. § 5511(c), which provides:

(c) Cruelty to animals.—A person commits a summary offense if he wantonly or cruelly illtreats, overloads, beats, otherwise abuses any animal, or neglects any animal as to which he has a duty of care, whether belonging to himself or otherwise, or abandons any animal, or deprives any animal of necessary sustenance, drink, shelter or veterinary care, or access to clean and sanitary shelter which will protect the animal against inclement weather and preserve the animal's body heat and keep it dry. This subsection shall not apply to activity undertaken in normal agricultural operation. (Emphasis added.)

(Footnote Continued) —————

in a post-sentence motion. **See Commonwealth v. Gillard**, 850 A.2d 1273, 1277 (Pa. Super. 2004).

After considering the record in the light most favorable to the Commonwealth as the verdict winner, we conclude that the evidence was sufficient to sustain the convictions. Appellant suggests that testimony alone without some documentation, such as photographs, medical records, costs statements, or "odor meter readings," is an insufficient basis upon which she could be found guilty. Appellant also attempts to bolster her position by arguing that because a local television station covered the events when Ms. Hecker and Officer Luffey were entering her home, she would have had proof that the witnesses against her were lying. Appellant claims that she has "not been able thus far to get a copy of what was aired and entire footage which would prove they were lying about euthanizing 6 cats...." Appellant's brief at 6.

These arguments simply do not counter the testimony presented at the hearing by Ms. Hecker, Officer Luffey, and Dr. Nakovich, which was believed by the trial court. Their testimony revealed that the cats were extremely listless and cold, crowding around very small electric space heaters, were dirty with excrement, and appeared not to have received basic care. Many were not spayed or neutered, and some had infections and feline immune disease. The testimony also revealed that the living conditions were deplorable in that the home had no running water or central gas heat. Taken together this testimony is more than sufficient to prove beyond a reasonable doubt that Appellant violated the cruelty to animals statute. Thus, her first issue is without merit.

In her second issue, Appellant argues that the trial judge was biased against her. She bases this claim on the court's statement at the end of the hearing after Appellant had been found guilty and the fines were imposed. The notes of testimony reveal that the following exchange took place:

MS. CLIFFORD: They are making all of this stuff up. And they do it under oath and perjure all of this stuff.

THE COURT: I'm sure you have some nice cats.

MS. CLIFFORD: I have wonderful cats and I work to take care of them. They were my companions. I had animals all of my life. Since this happened - -

THE COURT: I have been to houses like this.

MS. CLIFFORD: Ask Judge Costa. He came to my house.

THE COURT: I have been a Judge for a number of years and I can remember going to a house in Plum Borough where the lady moved out of the house and lived in the shed because the cats took over the house. And it was deplorable and smelly.

MS. CLIFFORD: I had all of my stuff in bins.

THE COURT: I found you guilty. That's the end of this. You have 30 days to file an appeal. It's \$50 on each citation. You can make payments.

(Hearing concludes.)

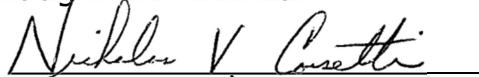
N.T., 5/9/12, at 13-14. Notably, however, our review of the record reveals that Appellant did not object to the court's statement; nor did she file a motion asserting bias and requesting the court to recuse.

Initially, we recognize that "[a]n appellate court presumes judges are fair and competent, and reviews the denial of a recusal motion for an abuse of discretion." *In re Lokuta*, 11 A.3d 427, 435 (Pa. 2011). However, to

preserve the issue of judicial bias for appeal, Appellant had to make a timely, specific objection at trial and raise that issue in a post-trial motion. **See *Dennis v. Southeastern Pennsylvania Transportation Authority***, 833 A.2d 348, 352 (Pa. Cmwlth. 2003) (citing ***Reilly by Reilly v. Southeastern Pennsylvania Transportation Authority***, 489 A.2d 1291 (Pa. 1985)). “Issues not preserved for appellate review cannot be considered by an appellate court even though the alleged error involves a basic or fundamental error.” ***Id.*** Arguing the trial court’s bias without having first raised it before the trial court forecloses that court’s ability to rectify any alleged error. ***Id.*** Although Appellant waived her bias claim, even if we were to consider it, we would conclude that the court’s statement did not show bias. Accordingly, Appellant’s second claim of error does not provide relief.

Judgment of sentence affirmed.

Judgment Entered.



Deputy Prothonotary

Date: 6/6/2013

