

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :
 :
 v. : No. 1757 C.D. 2024
 : Argued: June 16, 2026
 Amber Michelle Green, :
 Appellant :

BEFORE: HONORABLE PATRICIA A. McCULLOUGH, Judge
 HONORABLE MATTHEW S. WOLF, Judge
 HONORABLE MARY HANNAH LEAVITT, Senior Judge

OPINION

BY SENIOR JUDGE LEAVITT

FILED: August 27, 2026

Amber Michelle Green (Defendant) appeals her conviction for the summary offense of harboring a dangerous dog in violation of Section 502-A(a.2)(2)(i) of the act entitled the “Dog Law.”¹ Defendant contends that the Commonwealth of Pennsylvania (Commonwealth) did not prove beyond a reasonable doubt that her dog “inflicted severe injury without provocation on a human being,” *id.*, and, thus, did not establish a summary offense. For the reasons to follow, we affirm.

Background

Defendant is the owner of an Akita breed dog, named “Kuma,” that attacked Rhea Corso (Victim) on May 5, 2024. On that day, Victim and her teenage daughter attended a party at their neighbor’s house, where the two encountered Defendant, with Kuma on a leash. Victim petted Kuma on his head and neck, as did her daughter, when, suddenly, Kuma attacked Victim, biting her right arm and left

¹ Act of December 7, 1982, P.L. 784, *as amended*, added by the Act of October 23, 2023, P.L. 114, 3 P.S. §459-502-A(a.2)(2)(i). The text of Section 502-A(a.2)(2)(i) of the Dog Law is found in the opinion, *infra*.

hand. That same day, Defendant was cited for failing to control a dog and for harboring a dangerous dog, in violation of Sections 305(a)(3) and 502-A(a.2)(2)(i) of the Dog Law, 3 P.S. §§459-305(a)(3), 459-502-A(a.2)(2)(i). On August 6, 2024, Defendant was convicted on both charges by the Magisterial District Judge.

Defendant appealed her conviction to the Court of Common Pleas of Allegheny County (trial court). On November 18, 2024, the trial court held a *de novo* hearing at which the Commonwealth presented documentary and testimonial evidence in support of Defendant's summary offense.

Victim testified that on May 5, 2024, she and her daughter walked to a party at a neighbor's house and met Defendant, with Kuma on a leash, in the neighbor's driveway. Victim bent over to pet Kuma, explaining that she was standing to the "side of the dog" as she petted the dog. Notes of Testimony, 11/18/2024, at 7 (N.T. __); Reproduced Record at 13a (R.R. __). As her daughter reached out to pet Kuma, Kuma "jumped up and bit" Victim's right arm. N.T. 8; R.R. 14a. When Victim tried to free herself with her left hand, she received another bite. Victim testified that because Defendant did not pull Kuma off her, the dog "kind of dragged" her to the street. N.T. 9; R.R. 15a.

The Commonwealth introduced a video of the incident, approximately 30 seconds in length, which was admitted. After viewing the video, Victim testified that because Kuma welcomed her physical contact, the attack was "[v]ery unexpected." N.T. 28; R.R. 34a. Victim testified that the dog's bite to her left hand required surgery to repair the tendons. Her left hand cannot make a fist, and her ring finger cannot fully straighten.

On cross-examination, Defendant's counsel went through the video frame-by-frame, asking Victim questions. In response, Victim testified that while

“stooping down” to pet Kuma, her face was not “at the height of the dog’s eyes and face.” N.T. 20; R.R. 26a. However, Victim agreed that this claim could not be verified by the video because her position was blocked from the camera’s view at the moment of the attack. Victim also agreed that Defendant had Kuma on a leash and that the video showed Defendant “pulling the dog” after the attack. N.T. 23; R.R. 29a. Victim explained that she does “not get eye level” with any dog because of the uncertainty of its response. N.T. 24; R.R. 30a. She acknowledged that the Akita breed is known to attack and that she had never petted Kuma before that day. Victim confirmed that Kuma was on a leash; she knew Kuma prior to the incident; she stooped down to pet Kuma; and she was lower than her daughter at the moment of the attack.

Steven Stoehr, a state dog warden, with 18 years of experience and training, testified. He found Victim’s approach as shown in the video to be “very relaxed[.]” N.T. 31; R.R. 37a. There were no abrupt movements, and Kuma’s initial response was “very playful, wanting to interact with other people.” *Id.* Victim bent down and had “both hands on [the] side of the dog’s face[.]” while petting him, and this attention was accepted by the dog. *Id.* Kuma then walked past Victim to greet her daughter. Stoehr explained that, in the video, he saw Victim “crouch down further” but explained that this action “should be non-threatening to an animal.” N.T. 32; R.R. 38a. Next, Kuma “turns and lunges.” *Id.* Stoehr testified that he did not see anything in the video that “would be provoking[.]” *Id.*

Stoehr explained that if a dog is “startled[,], scared[,], timid, [or] hesitant,” it will be seen in the dog’s ears, or the dog may snarl, bark, or growl. N.T. 32-33; R.R. 38a-39a. “Worse [sic] case scenario, what a dog should do if it is frightened, if it does bite, it should bite and release, back off, because that’s a

warning.” N.T. 33; R.R. 39a. However, Kuma “grabs, holds and continues all the way to the sidewalk.” *Id.* Even after Victim was able to escape Kuma’s bite, Kuma remained “very intent on her” and was jumping. N.T. 34; R.R. 40a. Stoechr testified that this was not normal or expected behavior for a dog. Stoechr testified that on the basis of the video, he cited Defendant for harboring a dangerous dog under Section 502-A(a.2)(2)(i) of the Dog Law because her dog “inflicted severe injury without provocation on a human being on public or private property.” 3 P.S. §459-502-A(a.2)(2)(i). He also cited Defendant under Section 305(a)(3) of the Dog Law,² for failing to keep her dog under reasonable control.

Defendant also testified. She explained that she brought Kuma to the party because her neighbor cared for Kuma at times, and all the neighbors knew Kuma. Defendant testified that as she was taking Kuma home, she met Victim and her daughter in the middle of the driveway. Victim was the first to pet Kuma, followed by her daughter. Victim “crouched down” to pet Kuma for a second time, “put[ting] her hands on his cheeks” and “grab[bing] his face.” N.T. 49; R.R. 55a. “[T]hat’s when [Kuma] exploded upwards.” N.T. 48; R.R. 54a.

On cross-examination, Defendant acknowledged that she did not tell Victim not to pet Kuma. She also agreed that during the first few seconds of his

² Section 305(a) of the Dog Law states as follows:

(a) Confinement and control.—*It shall be unlawful for the owner or keeper of any dog to fail to keep at all times the dog in any of the following manners:*

- (1) confined within the premises of the owner;
- (2) firmly secured by means of a collar and chain or other device so that it cannot stray beyond the premises on which it is secured; or
- (3) *under the reasonable control of some person*, or when engaged in lawful hunting, exhibition, performance events or field training.

3 P.S. §459-305(a) (emphasis added).

interaction with Victim, Kuma “welcomed the physical contact[.]” N.T. 50; R.R. 56a.

The trial court held that the Commonwealth did not establish that Defendant failed to provide reasonable control of Kuma because the video showed that Kuma was leashed at all times, but it did prove beyond a reasonable doubt that there was no provocation for Kuma’s attack, which inflicted a severe injury on Victim. Thus, the trial court adjudicated Defendant guilty of a violation of Section 502-A(a.2)(2)(i) of the Dog Law and ordered her to pay a \$500 fine. Defendant appealed.

On January 6, 2025, the trial court ordered Defendant to file a concise statement of errors complained of on appeal pursuant to Pennsylvania Rule of Appellate Procedure 1925(b)³ within 21 days. On February 18, 2025, the trial court issued a Pa.R.A.P. 1925(a) opinion holding that because Defendant did not file a 1925(b) Statement, all issues on appeal were waived. Trial Court Pa.R.A.P. 1925(a) Op., 2/18/2025, at 2. On April 10, 2025, this Court remanded the matter to the trial court for a hearing. The order explained that Defendant had filed a 1925(b) Statement with this Court, and the certificate of service indicated that the Statement had been served “on the trial court judge, the Office of the District Attorney, and the Allegheny County Criminal Court Administrator via PACFile and United States mail ‘on or about January 27, 2025.’” Order, 4/10/2025, at 1. Nevertheless, the 1925(b)

³ It states, in relevant part, as follows:

(b) Direction to File Statement of Errors Complained of on Appeal; Instructions to the Appellant and the Trial Court. If the judge entering the order giving rise to the notice of appeal (“judge”) desires clarification of the errors complained of on appeal, the judge may enter an order directing the appellant to file of record in the trial court and serve on the judge a concise Pa.R.A.P. 1925(b) statement of errors complained of on appeal (“Statement”).

Pa.R.A.P. 1925(b).

Statement did not appear in the trial court’s original record or in the online docket entries for this case.

On remand, the trial court conducted a hearing and determined that Defendant’s 1925(b) Statement was not filed with the Allegheny County Department of Court Records. However, Defendant made a “good faith effort to serve [the trial court judge] with a copy of the Statement filed in the Commonwealth Court.” Trial Court Pa.R.A.P. 1925(a) Supplemental Op., 5/27/2025, at 2. Accordingly, the trial court issued a supplemental 1925(a) Opinion that addressed the merits of Defendant’s issues on appeal.

Thereafter, by Order of July 28, 2025, this Court instructed the parties to address in their briefs whether, as a matter of law, issues for appellate review are preserved where a good faith effort to serve the trial court judge has been made but the 1925(b) Statement is not filed with the “trial court’s Department of Records.” Order, 7/28/2025, at 2.

Appeal

On appeal,⁴ Defendant raises three issues:

- (1) Whether the evidence was insufficient as a matter of law to establish the elements of Dangerous Dog – Inflicts Severe Harm to Human Beings without Provocation.
- (2) Whether the [Trial] Court erred in its factual finding that the dog attacked or inflicted serious bodily injury to a human being without provocation.

⁴ Our review of a trial court’s conviction for a summary offense following a trial *de novo* determines whether the trial court’s findings are supported by substantial evidence, whether the trial court erred as a matter of law, or whether the trial court abused its discretion. *Commonwealth v. Hake*, 738 A.2d 46, 47 n.4 (Pa. Cmwlth. 1999). When evaluating the sufficiency of the evidence, this Court’s standard of review is whether “the trier of fact could have found that each element of the offense charged was supported by evidence and inferences sufficient in law to prove guilt beyond a reasonable doubt.” *Commonwealth v. Austin*, 846 A.2d 798, 800 n.2 (Pa. Cmwlth. 2004).

- (3) Whether [Defendant's] good faith effort at serving the trial court judge with a copy of the 1925(b) Statement but not filing the 1925(b) Statement with the trial court's Department of Court Records, was sufficient for purposes of preserving issues for appellate review.

Defendant Brief at 2-3. For ease of disposition, we combine issues one and two and first address issue three.

Analysis

I. Waiver of Issues Under Pa.R.A.P. 1925(b)

We begin with the threshold question of whether Defendant has preserved the issues she raises on appeal. Defendant acknowledges that she did not file a copy of her 1925(b) Statement with the Allegheny County Department of Court Records. However, her 1925(b) Statement was filed with this Court. Defendant explains that under the Judicial Code, an “appeal or other matter” not filed in the proper court shall be transferred and treated as if presented to the transferee court. 42 Pa. C.S. §5103(a).⁵ Defendant also served a copy of the 1925(b) Statement upon

⁵ It states, in relevant part:

(a) General rule.--*If an appeal or other matter is taken to or brought in a court or magisterial district of this Commonwealth which does not have jurisdiction of the appeal or other matter, the court or magisterial district judge shall not quash such appeal or dismiss the matter, but shall transfer the record thereof to the proper tribunal of this Commonwealth, where the appeal or other matter shall be treated as if originally filed in the transferee tribunal on the date when the appeal or other matter was first filed in a court or magisterial district of this Commonwealth. A matter which is within the exclusive jurisdiction of a court or magisterial district judge of this Commonwealth but which is commenced in any other tribunal of this Commonwealth shall be transferred by the other tribunal to the proper court or magisterial district of this Commonwealth where it shall be treated as if originally filed in the transferee court or magisterial district of this Commonwealth on the date when first filed in the other tribunal.*

42 Pa. C.S. §5103(a) (emphasis added).

the trial court judge. Defendant contends that she fully complied with Pennsylvania Rule of Appellate Procedure 1925(b), and the Commonwealth agrees.

The Pennsylvania Rules of Appellate Procedure authorize a trial court judge, whose order has been appealed, to direct the appellant to identify the errors complained of on appeal. Pa.R.A.P. 1925(b). With regard to the requirements of the trial court's order, the Rules state as follow:

(3) *Contents of order. The judge's order directing the filing and service of a Statement shall specify:*

. . . .

(iii) *that the Statement shall be served on the judge pursuant to paragraph (b)(1) and both the place the appellant can serve the Statement in person and the address to which the appellant can mail the Statement.* In addition, the judge may provide an email, facsimile, or other alternative means for the appellant to serve the Statement on the judge[.]

. . . .

Pa.R.A.P. 1925(b)(3)(iii) (emphasis added).

Here, the trial court's 1925(b) order stated as follows:

In accordance with Rule 1925 (b) of the Pennsylvania Rules of Appellate Procedures, it is hereby ORDERED that *Appellant file of record* and serve on the Judge a Concise Statement of the Errors Complained of on the Appeal no later than 21 days after entry of this Order.

A copy of your Concise Statement of the Errors Complained of on the Appeal MUST also be filed with our Chambers at 313 Courthouse, with the Department of Court Records - Criminal Division at Room 114 of the Courthouse, and with Ronald Wabby, Deputy District Attorney, at the address listed below.

Appellant is notified, pursuant to Rule 1925 (b)(2) of the Pennsylvania Rules of Appellate Procedure, that any issue not properly included in the Statement timely filed and served,

pursuant to the Rule, shall be considered waived for purposes of appeal. Furthermore, failure to file a Rule 1925 (b) Statement will result in a waiver of all appellate claims.

Trial Court Order, 1/6/2025, at 1; Original Record (O.R.), Item No. 6 at 2 (emphasis added). The contents of this order do not provide a mailing address for the judge.⁶ Where the trial court's order does not comply with the content requirements of Pa.R.A.P. 1925(b)(3), there is no waiver. *Mojica v. SCI-Mahanoy Security*, 224 A.3d 811, 814-15 (Pa. Cmwlth. 2020). However, the trial court judge did provide the mailing address on the attachment to the order, albeit not in the order itself. In any case, the trial court found that Defendant's counsel "made a good faith effort to serve [the trial court judge] with a copy of the [concise s]tatement[.]" Trial Court Pa.R.A.P. 1925(a) Supplemental Op., 5/27/2025, at 2. Further, the certificate of service filed with this Court stated that the 1925(b) Statement was served on the trial court judge. See Defendant's 1925(b) Statement at 4. In short, service on the trial court judge is not disputed and cannot support a conclusion that Defendant waived her issues on appeal.

That leaves the question of whether Defendant's filing of her 1925(b) Statement with this Court within the 21-day deadline set by the trial court, but not with the Allegheny County Department of Court Records, as ordered, resulted in a waiver of issues on appeal. The Superior Court has addressed the specific issue and concluded that filing a 1925(b) Statement with the appellate court does not result in a waiver of all issues on appeal.

⁶ The attachment to the trial court's 1925(b) order lists the address for the judge as "705 City-County Building, 414 Grant Street, Pittsburgh, PA 15219." O.R., Item No. 6 at 1. This was the address shown on Defendant's Certificate of Service filed with this Court with her 1925(b) Statement. R.R. 81a. It is not clear why the trial court did not make a finding more definitive than "good faith effort" at service on the trial judge. Trial Court Pa.R.A.P. 1925(a) Supplemental Op., 5/27/2025, at 2.

In *Reverse Mortgage Funding, LLC v. Russo* (Pa. Super., No. 919 EDA 2020, filed October 5, 2020) (unpublished, non-precedential decision),⁷ the trial court ordered the appellant to file a Rule 1925(b) Statement. The appellant filed his Statement with the Superior Court but not with the trial court, and he did not serve the trial judge. Because the trial court's order did not provide the address for service on the trial judge, the Superior Court held that failure to serve the trial judge did not effect a waiver. It explained that filing of the 1925(b) Statement with the Superior Court documented its timely filing. It reasoned as follows:

[T]he trial court ordered Appellant to “file of record” his statement “pursuant to the Pennsylvania Rules of Appellate Procedure” and neither specified where Appellant was required to file nor advised him of the Rule of Appellate Procedure that instructed where the statement must be filed. While this language complied with the requirements for a Rule 1925(b) order, [the a]ppellant's filing in this Court is a filing “of record” and documented that the statement was timely filed. A filing in the wrong court is to be transferred to the proper court, not

⁷ Unpublished non-precedential memorandum decisions of the Superior Court filed after May 1, 2019, may be cited for their persuasive value. Pa.R.A.P. 126(b). Superior Court decisions provide this Court with persuasive authority where they address issues analogous to those before us. *Neu v. Millcreek Township Board of School Directors*, 349 A.3d 1070, 1079 n.13 (Pa. Cmwlth. 2025).

disregarded. *See* Pa.R.A.P. 751,^[8] 905(a)(4).^[9] Indeed, the trial court was aware that the statement had been filed.

Reverse Mortgage Funding, LLC, slip op. at 6 (emphasis in original); *see also Commonwealth v. Alvin* (Pa. Super., No. 1526 EDA 2021, filed August 8, 2022) (unpublished, non-precedential decision).

Yanka v. Leithbridge Company (Pa. Super., No. 839 EDA 2021, filed March 22, 2022) (unpublished, non-precedential decision), reached the same conclusion on slightly different facts. In that case, there was no omission in the trial court's 1925(b) order. Even so, the Superior Court held that "[a] filing in a wrong court is to be transferred to the proper court, not disregarded." *Yanka*, slip op. at 6.

We are persuaded by the Superior Court holdings in *Reverse Mortgage Funding, LLC* and *Yanka*. Where "an appeal or other matter" is filed in a court that lacks jurisdiction," it must be transferred to the "proper court." Pa.R.A.P. 751; *see also* 42 Pa. C.S. §5103(a). Accordingly, because Defendant timely filed her 1925(b)

⁸ Rule 751 states:

(a) General rule. If an appeal or other matter is taken to or brought in a court or magisterial district which does not have jurisdiction of the appeal or other matter, the court or magisterial district judge shall not quash such appeal or dismiss the matter, but shall transfer the record thereof to the proper court of this Commonwealth, where the appeal or other matter shall be treated as if originally filed in transferee court on the date first filed in a court or magisterial district.

(b) Transfers by prothonotaries. An appeal or other matter may be transferred from a court to another court under this rule by order of court or by order of the prothonotary of any appellate court affected.

Pa.R.A.P. 751 (emphasis added).

⁹ Rule 905(a)(4) states:

If a notice of appeal is mistakenly filed in an appellate court, or is otherwise filed in an incorrect office within the unified judicial system, the clerk shall immediately stamp it with the date of receipt and transmit it to the clerk of the court which entered the order appealed from, and upon payment of an additional filing fee the notice of appeal shall be deemed filed in the trial court on the date originally filed.

Pa.R.A.P. 905(a)(4).

Statement with this Court and made a good faith effort to serve the trial court judge with her 1925(b) Statement, her issues on appeal have been preserved.

II. Whether the Commonwealth's Evidence Proved Beyond a Reasonable Doubt that Defendant Harbored a Dangerous Dog

Defendant contends that the trial court erred in convicting her of harboring a dangerous dog. The trial court explained its holding as follows:

Victim, who lived a few doors away from the dog, had a friendly relationship with it before the day of the attack; the dog's body language as it and Victim approached each other on the day of the attack was playful and non-threatening and indeed, it indicated an apparent desire to greet Victim; seconds before the attack[,] Victim and then her daughter had pet the dog without any adverse reaction from the dog; the attack occurred on a neighbor's driveway, not on the property of its owner, where a dog may become territorial; neither Victim nor her daughter made any threatening gesture during the brief incident. *This vicious attack could not have been reasonably expected. It was therefore not provoked.*

Trial Court Pa.R.A.P. 1925(a) Supplemental Op., 5/27/2025, at 7 (emphasis added). Defendant contends that the trial court erred because the Commonwealth's evidence did not show that Kuma's attack was unprovoked. The Commonwealth responds that the evidence is clear that Victim did not provoke the attack.

In a summary offense proceeding, the trier of fact must find sufficient evidence for each element of the offense beyond a reasonable doubt. *Commonwealth v. Burkholder*, 333 A.3d 739, 751 (Pa. Cmwlth. 2025) (quotation omitted). On review, this Court "may not reweigh the evidence and substitute our judgment for that of the fact-finder." *Commonwealth v. Hoffman*, 938 A.2d 1157, 1160 n.10 (Pa. Cmwlth. 2007). The trial court has exclusive authority over "matters of credibility

and evidentiary weight.” *Burkholder*, 333 A.3d at 751 (quoting *Carr v. State Board of Pharmacy*, 409 A.2d 941, 944 (Pa. Cmwlth. 1980)).

Section 502-A(a.2) of the Dog Law establishes the offense of harboring a dangerous dog. It states as follows:

(a.2) Summary offense of harboring a dangerous dog.--

(1) A State dog warden or the local police officer may file a complaint before a magisterial district judge, charging the owner or keeper of the dog with harboring a dangerous dog on behalf of:

(i) A person, including the person’s legal guardian or personal representative, who has been attacked by one or more dogs.

(ii) A person whose domestic animal, dog or cat has been killed or injured by a dog.

(2) *The owner or keeper of the dog shall be guilty of the summary offense of harboring a dangerous dog if the magisterial district judge finds beyond a reasonable doubt that the dog has done any of the following:*

(i) *Inflicted severe injury without provocation on a human being on public or private property.*

(ii) Killed or inflicted severe injury without provocation on a domestic animal, dog or cat while off the owner’s property.

(iii) Attacked a human being without provocation.

(iv) Been used in the commission of a crime.

(v) Has a history of attacking, without provocation, a human being, domestic animal, dog or cat.

3 P.S. §459-502-A(a.2) (emphasis added). In short, the Commonwealth’s evidence must be sufficient to prove: (1) the defendant is “the owner or keeper of a dangerous dog” and (2) the dog has, *inter alia*, “[i]nflicted severe injury without provocation

on a human being on public or private property.” Section 502-A(a.2)(2)(i) of the Dog Law, 3 P.S. §459-502-A(a.2)(2)(i).

Here, the parties agree that Defendant is the owner of Kuma and that Kuma inflicted severe injury on Victim while on private property with the permission of the property owner. The only question is whether Kuma’s attack was “without provocation.” Section 502-A(a.2)(2)(i) of the Dog Law, 3 P.S. §459-502-A(a.2)(2)(i).

Defendant argues that provocation does not require intentional conduct on the part of the victim. Provocation can occur where a person, even a person familiar to the dog, does something that the dog interprets as a threatening gesture. Defendant Brief at 14. Here, Kuma attended a gathering of neighbors without incident. It was only when Victim stooped, placing herself in a position lower than her daughter’s position, and put her hands on the sides of Kuma’s face that he lunged. Defendant contends that “[t]his is clearly the kind of gesture a dog would interpret as threatening.” Defendant Brief at 16.

The Dog Law does not define “provocation,” but case law has addressed its meaning. The leading case is *Eritano v. Commonwealth*, 690 A.2d 705 (Pa. 1997). It concerned a dog attack on a five-year-old child eating a piece of chicken, for which the dog lunged, biting the child in her face and neck. Relying on a dictionary definition, the Supreme Court stated that “provocation” means “to incite to anger” and “to stir up purposely.” *Id.* at 709. The Supreme Court concluded that “attempting to eat a piece of chicken clearly does not” constitute a provocation within the meaning of *former* Section 502-A(a) of the Dog Law. *Id.*¹⁰

¹⁰ Although it concluded that the dog attacked the child without provocation, the Supreme Court also held that there was no evidence that the dog had a history of, or propensity to, attack and, thus, the Commonwealth did not establish a violation of *former* Section 502-A(a) of the Dog Law, 3

More recently, in *Commonwealth v. Bucher* (Pa. Cmwlth., No. 641 C.D. 2018, filed August 15, 2019) (unreported),¹¹ this Court considered whether the defendant, who was injured while attempting to break up a fight between her two dogs, was harboring a dangerous dog. The central issue was whether the dog bite was without provocation, prompting our review of the case law precedent. In addition to *Eritano*, 690 A.2d at 709, we considered *Commonwealth v. Baldwin*, 767 A.2d 644, 646-47 (Pa. Cmwlth. 2001), which held that a victim backing away from a dog in the street did not provoke the attack. We also considered *Aegis Security Insurance Company v. Pennsylvania Insurance Department (Aegis)*, 798 A.2d 330, 332 (Pa. Cmwlth. 2002), which concerned the cancellation of a homeowners' insurance policy for the stated reason that there had been a "substantial change or increase in hazard" when the homeowner's dog attacked a state trooper walking on the homeowner's property. Relying on Dog Law cases, this Court concluded in *Aegis* that the dog was provoked because the state trooper was trespassing. It was irrelevant that the state trooper and the dog had previously interacted without incident. Using the analysis in *Eritano*, *Baldwin*, and *Aegis*, this Court held in *Bucher* that the defendant was not harboring a dangerous dog. There was no evidence that the dog would have attacked but for the defendant's entering the fray between her two dogs.

In this case, the trial court found that Kuma's attack was unprovoked. The initial interactions between Victim, her daughter, and Kuma were friendly. Both petted Kuma with no "adverse reaction from the dog." Trial Court Pa.R.A.P. 1925(a)

P.S. §459-502-A(a), deleted by the Act of October 23, 2023, P.L. 114. The current version of the Dog Law does not require proof of a history of, or propensity to, attack.

¹¹ Under Section 414(a) of this Court's Internal Operating Procedures, an unreported opinion issued after January 15, 2008, may be cited for its persuasive value. 210 Pa. Code §69.414(a).

Supplemental Op., 5/27/2025, at 7. The video showed Victim bending over and touching Kuma's head, to which the dog did not react aggressively. Kuma then walked over to Victim's daughter, who petted him. Neither Victim nor her daughter made any threatening gesture during this brief interaction, when, suddenly, Kuma "viciously attacked" Victim. *Id.* at 3.

Relying on *Bucher*, Defendant asserts that but for Victim's crouching down and touching both sides of the dog's face, Kuma would not have attacked. She contends that Victim's gesture was one that "a dog would interpret as threatening." Defendant Brief at 16. Further, Victim was not a passive actor in the encounter as was the victim in *Eritano*. The fact that Victim and Kuma had previously interacted without incident was irrelevant, as it was irrelevant in *Aegis*.

The trial court rejected Defendant's argument. It reasoned that when an "animal attacks a human, there is always a reason. Dogs often act instinctively in response to stimuli." Trial Court Pa.R.A.P. 1925(a) Supplemental Op., 5/27/2025, at 6. Nevertheless, an "incitement does not always constitute provocation within the meaning of the statute." *Id.* The trial court concluded that "the Commonwealth proves lack of provocation when the court finds that it was not reasonably foreseeable that the dog would attack, taking into account all the facts and circumstances surrounding the incident." *Id.* at 6-7. Stated otherwise, provocation under the Dog Law is an act that is reasonably foreseeable by the victim to prompt an attack by an animal. In *Bucher*, for example, it was reasonably foreseeable that an attempt to separate two fighting dogs could trigger one of the dogs to bite. We find the trial court's rationale persuasive and adopt it here.

Defendant did not present evidence to show that crouching and touching a dog's face are inherently threatening gestures. To the contrary, when

Victim bent down the first time to pet Kuma, there was no reaction. In his testimony, Stoehr rejected the Defendant's theory that stooping to pet a dog on its face is provoking. Rather, Stoehr explained that Victim's "crouch[ing] down" "should be non-threatening" to Kuma because Victim was on Kuma's side and not obstructing his vision. N.T. 32; R.R. 38a. Defendant correctly notes that Victim's stance at the moment of the attack cannot be seen on the video. However, the trial court credited Victim's testimony on this point. The trial court has the responsibility to weigh the evidence presented and to make the credibility determinations necessary to establishing the elements of the offense.

We conclude that the trial court's factual findings are fully supported by the evidence of record and that the trial court properly applied the term "without provocation" in Section 502-A(a.2)(2)(i) of the Dog Law to the evidence.

Conclusion

We hold that Defendant's 1925(b) Statement was timely filed, notwithstanding the fact that it was filed with this Court and not with the Allegheny County Department of Court Records. Therefore, Defendant's issues on appeal have been preserved.

We further hold that to prove that a dog has inflicted injury upon a human being without provocation, the Commonwealth must establish that "it was not reasonably foreseeable that the dog would attack, taking into account all the facts and circumstances surrounding the incident." Trial Court Pa.R.A.P. 1925(a) Supplemental Op., 5/27/2025, at 6-7. Here, the Commonwealth's evidence demonstrated that it was not reasonably foreseeable to Victim that Kuma would attack. Neither Victim nor her daughter made a gesture that could reasonably be understood as likely to provoke an attack during their brief interaction, when,

suddenly, Kuma turned on Victim. Thus, the Commonwealth established, beyond a reasonable doubt, that Kuma's attack of Victim was "without provocation." Section 502-A(a.2)(2)(i) of the Dog Law, 3 P.S. §459-502-A(a.2)(2)(i).

Accordingly, we affirm the trial court's order finding Defendant guilty of the summary offense of harboring a dangerous dog in violation of Section 502-A(a.2)(2)(i) of the Dog Law.

MARY HANNAH LEAVITT, President Judge Emerita

Judge McCullough concurs in the result only.

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania	:	
	:	
v.	:	No. 1757 C.D. 2024
	:	
Amber Michelle Green,	:	
Appellant	:	

ORDER

AND NOW, this 27th day of August, 2026, the order of the Court of Common Pleas of Allegheny County, in the above-captioned matter, dated November 18, 2024, is AFFIRMED.

MARY HANNAH LEAVITT, President Judge Emerita