

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

PAIGE KISER AND TY KISER

Appellants

v.

DESIMONE AUTO GROUP, JONSTEVE
ENRIQUEZ, AND CAPITAL ONE AUTO
FINANCE

: IN THE SUPERIOR COURT OF
: PENNSYLVANIA
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No. 2428 EDA 2025

Appeal from the Judgment Entered December 22, 2025
In the Court of Common Pleas of Philadelphia County Civil Division at
No(s): 230403002

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

MEMORANDUM BY STEVENS, P.J.E.:

FILED AUGUST 27, 2026

Paige and Ty Kiser (hereinafter "Appellants"), appeal from the granting of the Desimone Auto Group's (hereinafter "Appellees" or "DeSimone"), motion for a compulsory nonsuit in their action brought pursuant to Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), as well as various claims including breach of contract, fraudulent misrepresentation, negligence, negligent misrepresentation, and breach of implied and express warranties predicated on allegedly undisclosed damage to a vehicle purchased from Appellees. After careful review, we affirm.

In October of 2020, DeSimone purchased a 2019 Jeep Compass (hereinafter "the Jeep") through Manheim auction. N.T. Jury Trial 4/29/2025,

* Former Justice specially assigned to the Superior Court.

at page 79, 84. The Jeep was at that time sold in a “damaged condition,” such that the bumper, front left fender, and front left headlight needed to be replaced prior to re-sale. **Id.** at 79-80, 92-93. There is no indication that any structural damage was noted by Manheim prior to sale at auction, and as such the Jeep was sold under a “green light,” which indicated that the vehicle would be permitted to be returned through Manheim should any problem be discovered later. **Id.** at 89, 171. While the specific cause of the aforementioned damage was not made known to Appellees, a Carfax report was obtained for the Jeep which described the vehicle as having sustained “minor damage.” **Id.** at 80-82. The aforementioned repairs to the headlight, bumper, and front left fender were made in-house by Appellees, and the Jeep subsequently passed state inspection and was listed for sale. **Id.** at 158, 169.

On June 14, 2021, Appellants purchased the Jeep from Appellees. **Id.** at 79. Throughout the sale process, Appellants signed a number of documents including, *inter alia*, the Carfax report indicating the vehicle had previously sustained damage, a warranty stating the vehicle was being sold as-is, and a “used vehicle disclosure” form (hereinafter “UVD”). N.T. Jury Trial 5/2/2025 at 20-21, 22, 27-28.

Approximately two weeks after purchasing the Jeep, Appellants experienced an issue with one of the headlights, and the vehicle was taken to Reedman Toll, a Jeep Dealership in Springfield, whereupon the headlight was replaced without incident. **Id.** at 64-65. Further, the vehicle passed at least one additional state inspection *after* the June 2021 purchase, and there is no

indication any structural damage was discovered during either the replacement of the headlight or the inspection. **Id.** at 85-86, 173.

After owning and driving the vehicle without issue for more than one year, on August 23, 2022, Appellant Paige Kiser rear-ended a Jetta sedan (hereinafter “the Jetta”) while traveling through Valley Forge Park after said Jetta made an abrupt stop to accommodate an ambulance passing through its lane of travel. **Id.** at 32. Ms. Kiser described the visible damage resulting from that collision as follows: “[o]n my vehicle the left fender was dislodged. There was gap between the hood of my car and the left fender. On [the Jetta] there was some paint transfer from my left tow hook and the left center of his back bumper.” **Id.** Ms. Kiser described this impact as her “tapping” the left front corner of her vehicle against the Jetta’s rear bumper. **Id.** at 92.

At the direction of Appellants’ insurance carrier, the Jeep was subsequently taken to a body shop to be seen by an adjuster, and Appellants chose Caliber Collision from among the options provided. **Id.** at 51. The vehicle was there inspected by one Adam Strobel, general manager of Caliber Collision, as well as one employee working under Mr. Strobel. N.T. Jury Trial 4/30/2025 at 23-24. Mr. Strobel would go on to testify that, during Caliber’s inspection of the vehicle, damage was discovered which did not match the “facts of loss” as provided to him upon receipt of the vehicle. **Id.** at 24. Mr. Strobel explained that “facts of loss” constitute the “facts that are provided to insurance companies and given [to Caliber] as guidelines to know what to repair and not to repair.” **Id.** In this matter, Mr. Strobel was advised only of

“minor front end damage,” to the Jeep, yet found significant damage to the vehicle’s front impact bar. ***Id.*** at 37. Appellants were informed that as the damage to the Jeep exceeded the facts of loss Caliber had been provided, they would not affect repairs on the vehicle. ***Id.*** Although not qualified as an expert witness, only having been called to testify as to what he had seen during his inspection, Mr. Strobel formed the belief that the damage to the Jeep’s front impact bar could not have been caused by the August 23, 2022, collision. ***Id.*** at 51-54.

After speaking with Mr. Strobel, Appellants thereafter concluded that the damage to the front impact bar must have been sustained prior to their purchasing the vehicle from Appellees, and as such filed the underlying suit raising the aforementioned claims. Prior to trial, Appellees filed a preliminary objection in the nature of a demurer, which was granted in part dismissing Appellants’ express warranty claims.

Of note, Appellants retained an expert in automotive damage appraisal, Robert Salmon, who initially opined that the damage to the Jeep’s front impact bar could not have been caused by the August 23, 2022, collision. However at trial Appellants’ expert agreed that his initial opinion had been based entirely on details provided by Appellants’ attorney, that he had been told that Mrs. Kiser had merely “tapped” the Jetta, and, furthermore, he had formed his opinion without having inspected or received any damage reports concerning the Jetta. ***Id.*** at 189-190. Further, on cross-examination, Mr. Salmon admitted that the damage to the impact bar may indeed have been

caused by the Jeep's front end impacting the rear end of another vehicle and that *he could not exclude the August 23, 2022, collision as the source of the damage to the Jeep's impact bar. **Id.*** Additionally, Mr. Salmon confirmed that a vehicle with a crushed impact bar should not pass state inspection, despite the Jeep's having done so *after* the June 2021 sale to Appellants. **Id.** at 193.

After a four-day trial, at the conclusion of Appellants' case in chief, Appellees moved for Nonsuit, which the trial court granted. Said the trial court:

The court granted Appellee's Motion for Nonsuit at the close of Plaintiff's case in chief after counsel failed to establish any right to relief based on the evidence presented over four days of trial. Appellant's counsel struggled throughout their entire case in chief to articulate a coherent narrative or present sufficient evidence to sustain any counts of the Appellant's Complaint. To date, the Court is unclear what relief the Appellants even sought[.]

Trial Court Opinion filed December 3, 2025 (hereinafter "Trial Court Opinion") at 5.

Appellants timely filed their notice of appeal and both Appellants and the trial court have complied with Pa.R.A.P. 1925.¹

¹ We note that Appellants' brief technically fails to comply with Pa.R.A.P. 2135, which states:

(a) Unless otherwise ordered by an appellate court:

- (1) A principal brief shall not exceed 14,000 words and a reply brief shall not exceed 7,000 words, except as stated in subparagraphs (a)(2)-(4). A party shall file a certificate of compliance with the word count limit if the principal brief is longer than 30 pages or the reply

(Footnote Continued Next Page)

Appellants raises the following issues for our review.

1. Should this Court find that the Honorable Trial Court committed an error of law when it entered a Nonsuit where there was overwhelming evidence in support of the claims?

Suggested Answer: YES

2. Should this Court find that the Honorable Trial Court committed an error of law in denying a Motion in Limine to preclude evidence and argument related to the standardized Used Vehicle Disclosure form?

Suggested Answer: YES

3. Should this Court find that the Honorable Trial Court committed an error of law in precluding full questioning of General Manager, Elvin Colon's false swearing in the *res gestae* and

brief is longer than 15 pages when prepared on a word processor or typewriter.

- (d) Certification of compliance. Any brief in excess of the stated page limits shall include a certification that the brief complies with the word count limits. The certificate may be based on the word count of the word processing system used to prepare the brief.

Appellants' brief exceeds the permissible uncertified length and did not *include* the required certification of word count outlined in paragraph (d), above, to which Appellees objected in their brief. While Appellants' reply brief correctly indicates that a certificate of compliance was filed on January 12, 2026, the same day their Appellants' brief was filed, the rule does specify that the brief is to *include* the certificate of compliance, not to be *accompanied* by a certificate filed as a separate document. Further, the certificate filed reads "[t]he word processing program used to draft said brief indicates that it contains ? [sic] words." We admonish counsel to ensure future certificates of compliance are included within his brief and are completed so as to avoid any confusion going forward.

chain of events in the subject transaction related to Title Ownership transfer?

Suggested Answer: YES

4. Should this Court find that the Honorable Trial Court committed an error of law in precluding full questioning of Colon regarding missing service and inspection and trade appraisal records in violation of two Orders to Compel?

Suggested Answer: YES

5. Should this Court find that the Honorable Trial Court committed an error of law in dismissing express warranties claims, where express warranties need not be written pursuant to 13 Pa. C. S.A. § 2313 and 37 Pa.C. § 301.4(9)?

Suggested Answer: YES

Appellants' Brief at 5-6.

Regarding Appellants' first issue, we observe:

In reviewing the entry of a nonsuit, our standard of review is well-established: we reverse only if, after giving appellant the benefit of all reasonable inferences of fact, we find that the factfinder could not reasonably conclude that the essential elements of the cause of action were established. Indeed, when a nonsuit is entered, the lack of evidence to sustain the action must be so clear that it admits no room for fair and reasonable disagreement. The fact-finder, however, cannot be permitted to reach a decision on the basis of speculation or conjecture.

* * * * *

On appeal, entry of a compulsory nonsuit is affirmed only if no liability exists based on the relevant facts and circumstances, with appellant receiving the benefit of every reasonable inference and resolving all evidentiary conflicts in [appellants'] favor. The compulsory nonsuit is otherwise properly removed and the matter remanded for a new trial. . . . The appellate court must review the evidence to determine whether the trial court abused its discretion or made an error of law.

Corey v. Wilkes-Barre Hospital Company, LLC, 307 A.3d 701, 708 (Pa. Super. 2023) (*en banc*).

While Appellants contends they “produced overwhelming evidence, much of it admitted, showing that [DeSimone] misrepresented the subject vehicle's history and condition and did so knowingly,” after careful review of the record, we disagree.² Appellants’ Brief at 38.

Each of Appellants’ claims in the underlying suit are predicated on the assertion that the Jeep’s impact bar was damaged prior to Appellants’ purchasing the vehicle from DeSimone in June of 2021. Appellants’ Brief at 38-57. In the interest of judicial economy, this Court will not outline the various elements of each and every one of Appellants’ claims where the foundational theory of the case is predicated entirely on the conjecture that the Jeep’s impact bar must have been damaged prior to the June 14, 2021, sale. After careful review of the record, giving Appellants the benefit of all *reasonable* inferences of fact, there is no reason to conclude this is true beyond Mr. Strobel’s naked speculation and conjecture.³

² It hardly needs to be said that “evidence not admitted at trial is not part of the cognizable trial record,” and therefore cannot be considered by this Court. **Commonwealth v. D'Alonzo**, 566 A.2d 1211, 1213 (Pa. Super. 1989). To that end, any and all portion of the evidence counsel suggests exists but was not admitted is of no moment.

³ Again, Mr. Strobel was not tendered or qualified as an expert witness, and so his opinion that the structural damage to the Jeep must have been caused prior to the August collision was based only on the representations made to him by Appellants and his inspection of the vehicle following the said collision. (*Footnote Continued Next Page*)

Appellants drove the Jeep extensively without issue for well over one year prior to the August 22, 2023, collision. Appellant Paige Kiser testified herself that the vehicle was seen and worked on several times by various professionals over the roughly fourteen months following the purchase of the Jeep but preceding the collision, and no structural damage was noted during that time. Indeed, the Jeep passed state inspection twice, by two separate licensed state inspectors, once prior to and once after the sale, and Appellants' own expert testified that a vehicle with a damaged impact bar should not pass inspection.

Rather, the damage was only discovered *after* Ms. Kiser rear-ended another vehicle, and Appellants' expert Mr. Salmon conceded at trial that the August collision could very well have caused the damage to the impact bar and that his initial opinion to the contrary was based on incomplete information. In light of this evidence, it would indeed be unreasonable to conclude that the damage to the impact bar must have been sustained prior to the June 14, 2021 sale, notwithstanding the lay opinion formed by Mr. Strobel.

Strobel further volunteered that when he initially called Appellants to inform them of the damage to the front impact bar, he "didn't know if they knew the damage," had been there and clarified that "[i]t's not unreasonable or unheard of for a customer to report a loss trying to get something fixed that maybe is not covered by the insurance company." *Id.* at 43. Thus, even after physically inspecting the Jeep and being informed of the details of the accident, Mr. Strobel was not sure when or how the Jeep had sustained the damage to the impact bar. Therefore, any conclusion he drew or belief he formed that the damage predated the July 14, 2021, sale of the vehicle is not more than conjecture or speculation.

Thus, the evidence of record simply does not merit submission to the jury, and as such the trial court did not abuse its discretion in granting the non-suit as to all causes of action. Appellants' first issue therefore merits no relief.

Appellants' second issue challenges the trial court's denial of their March 19, 2025, motion *in limine* to preclude defendants from offering "any evidence related to the unlawful forms," referring here to the UVD presented to and signed by Appellants at time of purchase. We note that Appellants' motion *in limine* sought only to preclude *the defense* from offering any "evidence, arguments or defenses" based on the form, while explicitly allowing Appellants to introduce the form in their own case in chief and present arguments based thereupon. **See** Appellants' Motion at 36, para. 91 ("It must also be noted and Claimants are asking for a holding that there may be no 'opening of the door.' For Claimants intend to use the form against Respondents [as] compelling evidence of their state of mind and standardized practices to defraud customers.")

In reviewing a trial court's ruling on motions *in limine*, we observe:

A motion in *limine* is used before trial to obtain a ruling on the admissibility of evidence. It gives the trial judge the opportunity to weigh potentially prejudicial and harmful evidence before the trial occurs, thus preventing the evidence from ever reaching the jury. A trial court's decision to grant or deny a motion in *limine* is subject to an evidentiary abuse of discretion standard of review.

Questions concerning the admissibility of evidence lie within the sound discretion of the trial court, and we will not reverse the court's decision absent a clear abuse of discretion. An abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support so as to be clearly erroneous.

Parr v. Ford Motor Co., 109 A.3d 682, 690 (Pa. Super. 2014) (internal citations and quotations omitted).

While Appellants' brief is rife with citations to, and discussion of, precedent related broadly to the legality and function of UVD forms, they have failed to cite any authority which addresses admissibility, and thus Appellants have utterly failed to develop any argument as to why the lower court abused its discretion by failing to grant Appellants' motion *in limine* seeking admissibility of the document for Appellants yet preclusion for Appellees.

"It is beyond cavil that, where an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim is waived."

B.S.G. v. D.M.C., 255 A.3d 528 (Pa. Super. 2021)(citing **In re W.H.**, 2011 PA Super 119, 25 A.3d 330, 339 n.3 (Pa. Super. 2011); Pa.R.A.P. 2119(a) (argument section of appellate brief shall contain discussion of issues raised therein and citation to pertinent legal authorities)).

We therefore find that Appellants' second issue is waived.

Appellants' third and fourth issues address evidentiary rulings made by the trial court. "This Court reviews rulings on the admissibility of evidence

under an abuse of discretion standard.” **Kunkel v. Abington Memorial Hospital**, 328 A.3d 1150, 1156 (Pa. Super. 2024).

Appellants’ third issue concerns the trial court’s precluding counsel from questioning Mr. Elvin Colon, DeSimone’s general manager, about the legality of certain discrepancies between the actual date of sale, which the parties agreed occurred on June 14, 2021, and certain paperwork concerning the transfer of title, which lists the date of sale as October 20, 2021. N.T. Jury Trial 4/29/2025 at 79, 160.

Appellants contend that the alleged illegality⁴ of this discrepancy is evidence of Colon’s “false swearing” and thus ought to have been admitted pursuant to Pa.R.E. 404(B)(2) as *res gestae*⁵. However, Appellants do not do

⁴ Notably, Appellant does not develop any argument or provide any citation concerning why this discrepancy is evidence of fraudulent or otherwise illegal behavior; rather, they baldly claim that the only explanation of the discrepancy is that Colon was attempting “to avoid the sanction that may come from submitting the paperwork to the Commonwealth beyond the required 20 days.” Appellants’ Brief at 63.

⁵ We have previously explained that Pa.R.E. 404(B)(2) and *res gestae* are often-confused but distinct exceptions to the Rule 404(b) prohibition of using prior acts “to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” **Commonwealth v. Green**, 76 A.3d 575, 585 (Pa. Super. 2013)(“[E]vidence of motive’ or ‘absence of mistake’ are not the basis for the application of *res gestae* exception, which is properly applied only when the bad acts are part of the same transaction involving the charged crime. It is, perhaps, the frequency with which these different exceptions apply simultaneously that has led to confusion regarding the applicability of the *res gestae* exception.”)(internal citations omitted). To the extent Appellant intended to rely on a case cited to as “Com v. Reid, 770 A.2d 771 (Pa. Super. 2001), this Court can find no such case in existence. Rather, the citation provided leads (Footnote Continued Next Page)

more than conclude as much in their brief. See Appellants' Brief at 63-65. While Appellants invoke the following list of permitted uses of evidence of prior wrongs or acts, claiming, "the act is probative of the defendants' states of mind, motive, intent, notice, knowledge, preparation, plan, scheme, and absence of mistake or accident," they offer no explanation as to how listing the incorrect date on paperwork concerning the transfer of title is in any way related to their claim that DeSimone fraudulently sold them a car with undisclosed structural damage, nor how the trial court's ruling on questions to this effect constituted an abuse of discretion. As this section of Appellants' brief is underdeveloped, and supported in part by non-existent or unlocatable precedent, we find the issue presented therein is waived.

Appellants' fourth issue challenges the lower court's limitation of counsel's ability to question Mr. Colon regarding Appellees' alleged failure to produce certain documents, which Appellants contend violated two orders to

this Court to ***Commonwealth v. Burton***, 770 A.2d 771 (Pa. Super. 1999). As ***Burton*** does not address either Pa.R.E. 404(B)(2) or *res gestae*, and as Appellants do not provide any discussion of "Com v. Reid," this Court's review of Appellants' argument to this point is substantially impaired. Further, in light of this unlocatable precedent, "this Court is left to guess whether this counterfeit authority is the product of a chatbot, or if there is a more nefarious explanation for the misinformation." ***Commonwealth v. Shie***, 307 A.3d 668, 2023 WL 6878610, at *7 n.7 (Pa. Super. 2023)(unpublished); **see also *Sanders v. United States***, 176 Fed.Cl. 163, 169 (Fed. Cl. 2025)(observing "[i]t is no secret that generative AI programs are known to 'hallucinate' nonexistent cases, and with the advent of AI, courts have seen a rash of cases in which both counsel and *pro se* litigants have cited such fake, hallucinated cases in their briefs" (internal citation omitted)).

compel production. However, Appellants did not file motions for sanctions, and as such, there was no determination made by the trial court that a discovery violation had in fact occurred. Trial Court Opinion at 8. Rather, Appellants waited until after trial had begun to bring the alleged failure to produce these documents to the attention of the trial court, which the trial court held rendered the alleged discovery violations a “dead issue.” N.T. Jury Trial 5/2/2025 at 114.

On Appeal, Appellants contend that:

The Orders should have been admitted and/or counsel permitted to question the defense witnesses fully. There is no authority that requires a party to pursue a Motion for Sanctions. To the contrary, any Court has authority to enforce the Pennsylvania Rules of Civil Procedure. See , Pa.R.C.P. 4019; Troup v. Tri-County Confinement Svs. , 708 A. 2d 825 (Pa. Super. 1998); Dukes v. Walker Mem. Training Ctr., 2006 Phila. Ct. Com. PI. LEXIS 187 (April 7, 2006).

Not only should Plaintiff-Appellants have been permitted to put the Orders to Compel before the jury and/or question the witnesses fully, they should have been entitled to judgment and/or a missing evidence instruction.

Appellants’ Brief at 66.

However, Appellants do not cite to any point at trial at which they moved to admit the lower court’s orders to compel into evidence, nor requested any of the cited jury instructions, nor raised any adverse inference to which they contend they were entitled as a basis for either judgment in their favor or denial of the non-suit. See Pa.R.A.P. 302(a)(“Issues not raised in the trial court are waived and cannot be raised for the first time on appeal.”); Pa.R.P.

2119(c) ("If reference is made to the pleadings, evidence, charge, opinion or order, or any other matter appearing in the record, the argument must set forth, in immediate connection therewith, or in a footnote thereto, a reference to the place in the record where the matter referred to appears."). Thus, the only issue discussed in this section of Appellants' brief properly before this Court is whether the trial court's ruling limiting the scope of counsel's questioning of Colon concerning the allegedly missing documents constituted an abuse of discretion. To this end, Appellants do not explain how any of the precedent cited in this section of their brief applies to that issue. After review, we find no authority cited is instructive, as none address the admissibility of testimony concerning documents not produced in response to a party's discovery obligations.⁶

⁶ We find Appellants' misattribution of the following language demonstrative of counsel's apparent failure to carefully review the cases cited in his brief:

To quote the Honorable Justice Antonin Scalia: "The trier of fact can reasonably infer from the falsity of the explanation that the ["employer," which Appellants replace with "defendant"] is dissembling to cover up a ["discriminatory," which Appellants replaced with "unlawful"] purpose. Such an inference is consistent with the general principle of evidence law that the factfinder is entitled to consider a party's dishonesty about a material fact as 'affirmative evidence' of guilt."

Appellants' Brief at 69 citing **Reeves v. Sanderson Plumbing Prods, Inc.**, 530 U.S. 133, 147, 120 S.Ct. 2097, 2118 (2000).

In reality, the majority opinion cited by Appellants was delivered by the Honorable Justice Sandra Day O'Connor, not Justice Scalia. This mistake
(Footnote Continued Next Page)

Thus, we find Appellants' fourth issue to be waived for failure to support the argument presented with citation to and discussion of relevant authority.

Appellants' fifth issue challenges the lower court's dismissal of Appellants' express warranties claims, however, Appellants' argument on this issue is woefully underdeveloped. Appellants fail to cite any case law from within this Commonwealth and instead rely entirely on out-of-state precedent interpreting the law of those other states regarding express warranties in support of their position. Furthermore, the Appellants have not offered an argument as to how or why this Court should adopt any rulings or reasoning found in any of the out-of-state precedent cited, and thus functionally do no more than submit their conclusion that certain statements constituted express warranties for which Appellees were responsible. Appellants' Brief at 69-71. Again, the precedent cited by Appellants must be *relevant* to their claim, which we remind counsel was brought pursuant to the law of *this* Commonwealth. ***See B.S.G., supra.***

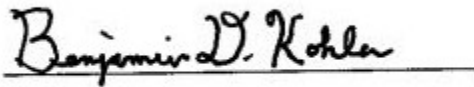
We thus find that Appellants' fifth issue is waived.

is difficult to reconcile with counsel's careful review of citations. Furthermore, Appellants make no argument as to how **Reeves** applies to the instant case. That an employer who has been shown to have presented a false explanation for an adverse employment action may be inferred to be dissembling to cover up a discriminatory purpose has no bearing on whether a trial court errs by limiting a plaintiff's questioning of a witness about documents allegedly not produced in discovery. It is a *non sequitur*.

Therefore, as Appellant has failed to present any argument meriting relief, we affirm the judgment of the lower court.

Judgment affirmed.

Judgment Entered.

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

Benjamin D. Kohler, Esq.
Prothonotary

Date: 8/27/2026