

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1956-2014
vs. :
TIMOTHY KUHNS, : CRIMINAL DIVISION
Appellant :
: 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this court's order dated November 9, 2015. The reasons for the court's denial of Appellant's petition for return of property are set forth in the opinion accompanying that order.

Although the court found that the evidence presented at Appellant's criminal trial was insufficient for a jury to find beyond a reasonable doubt that Appellant willfully and maliciously maimed, mutilated, tortured or disfigured the puppy in violation of 18 Pa.C.S. §5511 (2.1)(i)(A), the evidence presented in opposition to his motion for return of property was sufficient to establish by a preponderance of the evidence that Appellant was aware that the puppy was injured and in need of immediate veterinary care.

The puppy could not put any weight on his right front leg and he would not stop whimpering and crying. Appellant's girlfriend realized that the puppy was seriously injured. She tried to get Appellant to immediately take the puppy for veterinary care, but Appellant refused to do so. The puppy suffered throughout the night. The puppy had a broken leg that required the surgical insertion of pins and a screw to stabilize his leg and

allow the broken bone to heal. Appellant's failure to immediately seek necessary veterinary care was a violation of 18 Pa.C.S. § 5511(c)(1). As the puppy was being held in violation of the statute, it was derivative contraband. Therefore, the SPCA was not required to return the puppy to Appellant.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Melissa Kalas, Esquire (ADA)
Joshua Bower, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)