

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

No. 2021-0087

State of New Hampshire

v.

Kevin Butler

APPEAL PURSUANT TO RULE 7 FROM A JUDGMENT OF THE
SEVENTH CIRCUIT COURT – DISTRICT DIVISION - ROCHESTER

BRIEF FOR THE STATE OF NEW HAMPSHIRE

THE STATE OF NEW HAMPSHIRE

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(3JX oral argument requested)

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ISSUES PRESENTED

Whether the evidence of criminal negligence was sufficient where the defendant left a husky in a car in 92-degree weather for over 30 minutes and explained this act by testifying that he eight-year-old son was responsible for the husky's welfare.

STATEMENT OF THE CASE

On February 12, 2021, the Seventh Circuit – District Division – Rochester (*Pendleton*, J.) tried the defendant, Kevin Butler, on two complaints alleging mistreatment of a dog. *See* SA 29-30;¹ *see also* RSA 644:8, III; 644:8-aa. The complaint charging RSA 644:8, III alleged that the defendant “negligently deprived any animal ... necessary care, sustenance or shelter.” SA 30 The complaint charging violation of RSA 644:8-aa alleged that the defendant “confine[d] a dog in a motor vehicle, in which the temperature was so high as to cause serious harm to the animal.” SA 29.

The court found the defendant guilty of both charges. T 109-10. On February 16, 2021, the court imposed concurrent sentences on both charges. DBA 13-14. The court sentenced the defendant to a fine of \$1,200, of which \$600 was suspended, and a statutory penalty assessment of \$288, of which \$144 was suspended. DBA 13. The court also ordered restitution of \$4,437.88, payable to the City of Rochester. DBA 13. Finally, the court imposed a suspended sentence with a requirement of good behavior for two years, with the special condition that the defendant should complete the “pet ownership course through the SPCA or similar agency within 60 days with proof to the State.” DBA 14.

This appeal followed.

¹ “DB _” refers to the defendant’s brief and page number. “DBA _” refers to the appendix to the defendant’s brief and page number. “SA _” refers to the appendix to the State’s brief and page number. “T _” refers to the trial transcript and page number. “ST” refers to the sentencing transcript and page number.

STATEMENT OF FACTS

A. The State's Case

On July 20, 2020, Jessica Bougie, who lived at 7 Sawyer Street in Rochester, New Hampshire, saw a dog in a Honda Civic in the parking lot of her apartment house. T 5-6. Bougie did not know the defendant, who lived upstairs in the same apartment building. T 11-12. She left to run an errand in Somersworth and, when she returned, about 45 minutes to an hour later, the dog was still in the car. T 9-10. The day was hot and the dog was “scratching at the windows and the door,” so she called the Rochester Police Department. T 10.

Rochester Police Department Animal Control Officer Sue Paradis arrived at 7 Sawyer Street after 3:00 p.m. T 16. She saw the dog in the car and, as she parked, the dog slid off the seat and go underneath the steering wheel. T 17. The car was unlocked, and when Paradis opened the door, she was “hit with heat in the face. It was hotter inside the car than outside.” T 18. The dog was “panting heavily and unaware.” T 17. The dog was “attached by a leash inside the vehicle, so [Paradis] unattached the leash and scooped the dog out.” T 17-18. The dog was a husky and weighed “about 35, 40 pounds,” but she was “able to scoop him up” and bring him to her truck which had air conditioning. T 18.

After Paradis got the dog in the truck, the husky was still “totally unresponsive” and “panting heavily.” T 18. She brought the husky to the Animal Health Center on Lowell Street. T 24. She contacted the center and explained that she had an overheated dog. T 24. Once there, she carried the husky to the veterinarian's surgery and placed him on the table.

T 24-25. Four technicians “started oxygen on the dog and cooling him down, putting cold packs around his body and wet towels.” T 25. After a half-an-hour, the husky’s temperature returned to normal. T 28.

The center was going to be closed for the evening, so Paradis brought the husky to the emergency veterinary clinic in Portsmouth. T 29. As she drove, the husky was lying in the passenger seat, up against the passenger door. T 29-30. He was not sitting up, which she found “[a]bnormal for any young dog generally in a vehicle.” T 30.

Paradis picked the husky up the following day and brought him to the Rochester Veterinary Clinic, which was the police department’s holding facility. T 31. As of the day of trial, the husky was still there. T 31.

Paradis went with Officer Plumb to the defendant’s apartment to see if he would surrender the husky. T 43-44. She “told him the dog wasn’t going to be returned. [The police would be] holding [the husky] as evidence.” T 47. She later learned that the defendant was not the owner of the husky; the husky belonged to the defendant’s separated wife. T 44.

On July 20, 2020, Officer Jonathan Labosier also responded to 7 Sawyer Street. T 62-63. He took photographs of the car that appeared to show “claw marks and possibly a bite mark along the right side of that door panel” of the car. T 65. He recalled that the car was parked “in direct sunlight” and there were “no trees nearby; nothing that could provide it shade.” T 66. Labosier looked at his Apple watch and saw that the temperature was 92 degrees. T 66.

Labosier contacted the defendant, who was the registered owner of the car. T 67. Labosier asked the defendant where his dog was and the defendant “responded, oh, with an expletive word.” T67. The defendant

called his son and asked where his dog was. T 67. The officer “heard a little voice inside say, I don’t know.” T 67. The defendant then told the officer that “the dog might still be in the car.” T 67.

Labosier went downstairs with the defendant and, as they went down the stairs, Labosier explained that the husky had been seized. T 68. The defendant allowed Labosier to take pictures of the interior of the car and, when Labosier opened the door, he was “hit with an extreme wave of heat from inside.” T 68.

The defendant told Labosier that “he’d been out on some errands. His arms were full so he’d asked his 8-year-old son, Nathan, to bring the dog in.” T 69. He said that the husky had been left in the car for about an hour. T 69.

Dr. Jan Allard was an associate veterinarian at the Animal Health Center. T 54. When the husky arrived at the center, he was “laterally recumbent,” “[p]anting excessively. Really was not aware of anything that was going on. Obviously, distressed and in shock.” T 55. His temperature was “not readable,” which meant that it was over 105 degrees. T 55. The center gave the husky some valium because “there was some possible focal seizure activity occurring,” which she defined as small tremors. T 56.

B. The Defendant’s Case

The defendant testified. He said that he did not work because he was 100 percent disabled for PTSD from his service in the United States Army. T 85-86. He said that he was married and that his wife, who worked in road construction, was working in Vermont in July 2020. T 86.

The defendant said that he had “often crossed paths” with Jennifer Bougie. T 91.

The defendant’s wife had bought the husky. T 93. The family had owned the dog since October 2019. T 93. The defendant trained the dog and his son, Nathan, helped him. T 94. It was Nathan’s “responsibility to make sure that he got fed twice a day; to make sure that the dog had water. And he was also responsible for bringing [the dog] out on his daily bathroom breaks, as well as getting him in and out of the car on most days.” T 94.

On July 20, 2020, the defendant drove to Dunkin’ Donuts and the Monster Gas Station with his two children and the husky in the car. T 92. When they arrived home, the defendant’s “hands were full.” T 95. He “went upstairs” and “put the groceries away.” T 95. A.J., the defendant’s other son, “was being very hyper.” T 95. A.J. was “was running around,” was “very loud,” and was “sprinting” from “one side of the house to the other and jumping on the couch.” T 95-96. The defendant talked to A.J. to calm him down. T 96.

At that point, the defendant “received a phone call.” T 96. He explained:

I had been waiting almost six months for the Veterans Law Project to contact me to discuss a possible divorce with my wife. So when I saw them call out of the blue, you know, I took the call. At that time, A.J. was still kind of running around and being loud but he wasn’t being dangerous, so I stepped into the bedroom so I could actually hear the phone call, and I closed the door.

T 96. He was on the telephone for about 30 to 35 minutes and then he heard Nathan “yelling” and the defendant concluded the telephone call and went into the living room. T 96-97. At that point, the police knocked on the door. T 97.

When the defendant went to the door, the police asked him where his dog was. T 97. The defendant said, “[F]uck, he must still be in the car.” T 97. Once he learned that the husky had been taken to a clinic, the defendant asked if he could go to see the husky. T 98. The officer said that he did not see why he could not, but added that the defendant “was just looking at probably a thousand dollar fine for leaving the dog in the vehicle.” T 99. At about 3:00 p.m., on the following day, the defendant received a call from Paradis who asked if he was “willing to relinquish the dog.” T 101.

On cross-examination, the defendant said that his eight-year-old son Nathan “made a mistake.” T 105. But he also acknowledged that he was responsible for both Nathan and the husky. T 106.

C. The Motion for a Judgment of Acquittal and Closing Arguments

At the close of the State’s case, the defendant moved for a judgment of acquittal. T 78. The defense contended that the State had to prove “criminal negligence.” T 78. It contended that the standard meant that the conduct had to be “extreme when compared to ordinary negligence. There has to be gross negligence.” T 78. Defense counsel contended that, when the defendant learned that the husky was still in the car, “[h]e immediately became concerned.” T 79. Defense counsel told the court that the officers threatened him with a cost of thousands of dollars if he did not relinquish

the husky. T 79-80. Defense counsel characterized this as “[a]ll this guilt and shaming” for a mistake. T 80.

The State responded that the cruelty to animals statute was “pretty straightforward.” T 80. The State contended that the defendant’s negligence constituted a “gross deviation from the normal standard.” T 81. The defendant “knew he brought that dog out - to the store that day. He knew the dog was in the car.” T 81.

The court responded: “I think that there’s sufficient evidence, certainly, taken in the light most favorable to the State.” T 82.

After the defendant testified, both sides gave closing arguments. The defendant contended that the State had not proven that the defendant’s negligence constituted “a gross deviation [from] the standard.” T 107. The defense contended that “[t]his is not a case where this family should be punished because he trusted his eight-year-old that had shown him all sorts of responsibility in the past.” T 107. The defense argued that there was “nothing so egregious about this case, especially when the dog is taken, and within 30 minutes by both the officer and the vet, he’s back to normal.” T 107.

In response, the State contended that its case was “stronger from his testimony. He has admitted that it was very hot. He admitted the dog was in there between a half an hour and an hour.” T 109. The State continued: “No reasonable person would think it was okay not to make sure that dog came out of that vehicle on that day. Clearly a gross deviation from the standard of care that any reasonable person would do.” T 109.

The court then ruled:

I think that the State did prove the case. However, I don't have any reason to believe the Defendant shouldn't have his dog returned to him or is otherwise incapable of caring for pets. There was no explanation to that, and I'm not sure what the statutes say in regards to that. And I don't know what the statutes say in regards to sentencing issues.

Let's do this, before we talk about that. It's only a civil fine, but I don't know about restitution. So I'm assuming the State wants to be heard on that. ... So I am going to find you guilty.

T 109-10.

D. Sentencing

On February 16, 2021, the court sentenced the defendant. ST 1. The State recommended a \$1,200 fine, plus the penalty assessment, and restitution of \$4,437.88. ST 6. The State explained that restitution included "the Rochester Veterinarian Clinic, as well as the Animal Health Clinic veterinary bills, as well as boarding and care since the animal was seized from the Defendant. " ST 7. The State further recommended that the defendant should surrender the husky to the Pope Memorial Humane Society. ST 7. The State asked the court to order that the defendant should have "no ownership, possession, or care of animals for at least two years. And that prior to any such ownership, possession, or care, he be required to take the responsible pet ownership course which is put on through the New Hampshire SPCA. And we would ask that proof be provided to the State upon completion of that course." ST 7.

The State contended that, during the trial, the defendant had tried to blame his eight-year-old son for leaving the husky in the car. ST 9. The

State told the court: “I think it goes without saying that the Defendant is or should have been a responsible adult and should not and cannot rely on an eight-year-old to ensure the safety of anyone or anything.” ST 9.

The court asked: “[W]hat authority do I have to remove someone’s right to own a pet?” The State responded that under RSA 644:80-IV(b), the court could “prohibit any person convicted of a misdemeanor offense of animal cruelty under 644:8 from having future ownership or custody of, or residing with other animals for any period of time the court deems reasonable.” ST 11.

The defense contended that, when the defendant learned that the dog had been left in the car, “he was shocked.” ST 15. The defendant was “actually coerced” by the police officers. ST 16. The defense pointed out that the defendant had no criminal record and suggested that the State had no proof to suggest that this would ever happen again. ST 16-17. The defense reminded the court that the defendant was arrested at 10:00 p.m., “in front of a six and an eight-year-old.” ST 17. That “was punishment.” ST 17. A condition of bail required the defendant to find homes for - or to relinquish - his other pets: a guinea pig and three cats. ST 19.

The court then imposed sentence:

I am going to impose a 1,200 dollar fine, 600 dollars suspended, upon condition that the Defendant, within the next 60 days, take the Safe Pet Owner Program... I am likely to return the pet. I think that the evidence shows that on the date in question, the Defendant was grossly negligent; no doubt about it.

And sir, if this was a child, you would have been [charged] with manslaughter, at the minimum. And this is a child to you. This is an eight-month-old puppy. And you can never –

it's dangerous to take a dog like that on errands in that kind of temperature, regardless.

And the idea that he did that and then didn't make sure that dog was removed safely is horrendous and shows really a lack of responsibility.

So the other condition is, until you've completed that course, your wife is required to care for the dog.

And it is hugely important that this never happen again. This never happen again with any pet, regardless of whether it was negligence or something else. If it does happen again, you're going to be charged with a felony.

So there are a lot of things that go through people's heads. But if you can't safely care for a dog under those circumstances, you shouldn't have a dog. And the State's perfectly reasonable to ask for no return of the dog. However, they have no other evidence of any maltreatment of the pet prior to this. And they have no other evidence of any other criminal conduct which shows maltreatment of the children or anything else. And under those circumstances, I don't think it's appropriate to remove the pet from the family, but the wife has to care for the dog.

The other thing that I want you to understand is that it is never appropriate to use a pet to train your kids unless you're 100 percent responsible. Do you know how many families say we want to bring a pet into the family to teach kids responsibility? And how many adults, then, end up caring for the pet because eight-year-olds don't have the responsibility, don't have the brain development, don't have the ability to care without a parent's oversight for a pet like that.

This is like a Ferrari for animals. Those dogs have unique needs, especially in 90-degree temperatures. Huskies are not good pets in general for an apartment, in the first place,

because they need to be run regularly. And having a kid take the dog out to the back yard is not doing that Husky any good. A Husky ought to be out running with somebody every day. That's what a Husky needs.

T 25-28.

SUMMARY OF THE ARGUMENT

The evidence was sufficient to show that the defendant was criminally negligent for leaving the ten-month-old husky in a car in 92-degree weather for up to an hour. Criminal negligence requires “some serious blameworthiness in the conduct that caused it.” *State v. Littlefield*, 152 N.H. 331, 350 (2005).

The police officers’ testimony, combined with that of the veterinarian, established that this kind of negligence is dangerous to the health of an animal and may very well be fatal. The defendant admitted that he recognized the danger to the husky, but claimed that he was distracted and that it was his eight-year-old son’s responsibility to take care of the dog, even though he also testified that his son had ADHD. Vesting full care for a ten-month-old puppy with an eight-year-old child with ADHD constitutes criminal negligence. Therefore, the evidence was sufficient to support the verdict of guilty.

Further, the defendant’s testimony established that he created the risk by putting the dog in the car, was aware of the potential danger, and was negligent in failing to make sure that the husky puppy was taken out of the car. The circuit court committed no error in finding the defendant guilty on this record.

ARGUMENT

THE EVIDENCE OF CRIMINAL NEGLIGENCE WAS SUFFICIENT.

In reviewing the sufficiency of the evidence, this Court will examine each evidentiary item in the context of all the evidence, and not in isolation. *State v. Craig*, 167 N.H. 361, 369 (2015). Because a challenge to the sufficiency of the evidence raises a claim of legal error, the standard of review is *de novo*. *Id.* at 370. This Court considers “all the evidence and all reasonable inferences drawn therefrom in the light most favorable to the State.” *State v. Folley*, 172 N.H. 760, 766 (2020) (citation omitted). In order to prevail, the defendant must show that no reasonable trier of fact could have found him guilty beyond a reasonable doubt of the crime. *State v. Cable*, 168 N.H. 673, 677 (2016).

Under RSA 644:8, III(a), a person is guilty of misdemeanor if he: “negligently deprives or causes to be deprived any animal in his possession or custody necessary care, sustenance or shelter.” A person charged with criminal negligence “may not be convicted on evidence that establishes only ordinary negligence.” *State v. Littlefield*, 152 N.H. 331, 350 (2005). “[T]he carelessness required for criminal negligence is appreciably more serious than that for ordinary civil negligence, and ... must be such that its seriousness would be apparent to anyone who shares the community’s general sense of right and wrong.” *Id.* (quotation omitted).

“Criminal negligence requires not only the failure to perceive a more than ordinary risk, but also some serious blameworthiness in the conduct

that caused it.” *State v. Shepard*, 158 N.H. 743, 746 (2009). This Court applies “an objective test to determine whether the defendant failed to become aware of a substantial and unjustifiable risk.” *State v. Saintil-Brown*, 172 N.H. 110, 124 (2019) (citing *Shepard*, 158 N.H. at 746).

The defendant contends that the State failed to provide evidence sufficient to prove criminal negligence. DB 8.² He contends that “[n]ot every act of carelessness that results in a death or serious bodily injury entails criminal negligence, however, and a person charged with criminal negligence may not be convicted on evidence that establishes only ordinary negligence.” DB 8 (citing *Shepard*, 158 N.H. at 756).

The defendant contends that the defendant “failed to become aware of a substantial and unjustifiable risk—in this case, that risk is that the dog will overheat in the hot car.” DB 10. He states that “*criminal* negligence requires us to ask *why* he failed to become aware” of the risk. DB 10 (emphasis in original). He contends that the State “did not offer any evidence or argument on that other than the Defendant’s statement to Labosier, which revealed nothing more than pure absentmindedness.” DB 10. He dismisses this thirty-minute to one-hour failure to check on the husky’s location as “momentary inattention.” DB 10.

This argument misunderstands the legal definition of criminal negligence. As this Court has observed: “Whether the defendant failed to become aware of a substantial and unjustifiable risk is determined by an objective test, not by reference to the defendant’s subjective perception.” *State v. Ebinger*, 135 N.H. 264, 265 (1992). The defendant

² The defendant apparent does not contest his conviction under RSA 644:8-aa.

relies on his “subjective perception,” *i.e.*, that he was distracted, and not on the fact that a reasonable person would realize that the husky’s life would be at risk if left in a hot car.

Lack of attention is simply not a defense. For example, in *Littlefield*, this Court considered a number of factors in determining that the defendant had been criminally negligent. *Littlefield*, 152 N.H. at 353. These factors included the defendant’s “lack of attention” in piloting the boat. *Shepard*, 158 N.H. at 747 (citing *Littlefield*, 152 N.H. at 353).

In *State v. Pittera*, 139 N.H. 257, 261 (1994), the defendant drove a motor boat too close to swimmers, striking and killing a boy. This Court again noted inattention was a factor, writing that “the defendant had turned away from his direction of travel, pointing to property on the shore, prior to the accident.” *Id.* Again, in *Ebinger*, 135 N.H. at 265, the defendant, who had consumed alcohol, strayed over the fog line, killing a bicyclist. This Court observed that a jury could properly conclude that “a reasonable person, in the defendant’s place, would have seen [the victim] and avoided hitting her.” *Id.* at 265.

In contrast, in *Shepard*, this Court wrote:

At most, the evidence shows that his car inexplicably drifted over the double yellow line and into oncoming traffic for no more than two seconds. The defendant’s two-second failure to keep his car in its lane may constitute civil negligence, but, without more, it does not constitute criminal negligence as a matter of law.

Shepard, 158 N.H. at 747. The defendant in *Shepard* made a two-second error with terrible consequences. In *Littlefield*, *Pittera*, and *Ebinger*, in contrast, “the proof established not only that the defendant failed to

perceive the risk, but also that his conduct wrongfully caused it.” *Shepard*, 158 N.H. at 747.

In this case, the defendant understood that there was a risk. If the State had only introduced the testimony of Labosier, combined with the fact that the dog was left in the car, the evidence of negligence would have been sufficient. This is because the defendant told the officer that he thought that his eight-year-old son had brought the dog in. As the court pointed out to the defendant, the parent of a child is “100 percent responsible” for the child’s pets. T 26. And the defendant’s admission to Labosier demonstrated that he was negligent when he did not make sure that all of the occupants of the car had not be delivered from the heat of the car and the day to the shelter of the apartment.

Significantly, the defendant elected to testify and, therefore, this Court may consider that testimony in determining sufficiency of the evidence. *See State v. Dion*, 164 N.H. 544, 548 (2013). In that regard, his testimony is clear that he actually caused the risk. He told the court: “Before I had gone to the store, I had brought the dog out to go to the bathroom. And I had pre-started my car to let the air conditioner cool off the inside before we left to go to the store.” T 92. The defendant continued: “My children were still upstairs getting dressed. So after I had put the dog in the car, once I had determined that it was cool enough, I went upstairs to get the children.” T 92. This testimony alone is sufficient to prove that the defendant, by putting the husky in the car, created the risk.

In his testimony, the defendant mostly blamed his eight-year-old son. *See* T 92 (“I said to Nathan, you know, can you bring Maxie out [?]”); T 93 (“I said to Nathan, you know, can you bring Maxie out, as he always

does.”); 93 (It was Nathan’s responsibility to “make sure that [the husky] got fed twice a day; to make sure that the dog had water. And he was also responsible for bringing him out on his daily bathroom breaks, as well as getting him in and out of the car on most days.”); T 94 (After eight months of owning the dog, “I left the responsibility to [Nathan].”); T 97 (Defendant: “[O]h, shit, Nathan, where’s the dog?”). *See also* T 95:

Every day, when we would get home, I would tell Nathan to grab the dog. He would grab the leash. He would bring the dog over to the side yard that you could see in one of those photos that we looked at. He would typically hook him up to the tie-down that we have in the yard. He would play outside for 20 to 25 minutes, maybe a little bit longer. And then he would switch the dog back over to the leash and he would bring him upstairs.

The trial court was rightly critical of the defendant’s reliance on his eight-year-old son to take full responsibility for the husky puppy. *Cf. State v. Osgood*, 2017 WL 3141177, *2 (June 23, 2017) (noting that the person who owned the barn where the defendant’s horses were boarded was “elderly” and “had substantial health problems”).

The defendant’s reliance on an eight-year-old to take care of the husky alone is questionable. But, according to the defendant, this eight-year-old had attention deficit issues. As the defendant told the court: “Both of my kids have ADHD so they’re extremely hyperactive.” T 96.

The defendant’s other excuses were several: (1) his other son was hyperactive and distracted him, T 95-96; (2) his “hands were full” as he had “a gallon of milk, two bottles of soda, and a couple of Monster drinks” to put away,” T 92; and (3) he received a telephone

call for which he had been waiting, T 96. The defendant even seemed to blame his neighbor for calling the police and not coming to see him. *See* T 87 (stating that he had not had any trouble with Bougie); T 87 (“During the couple of weeks that she was staying with her mother, she saw him on a daily basis. My children played with her children. Her kids played with my dog. She pet my dog. They were all familiar with each other.”); T 91 (agreeing that Bougie could have just come upstairs); T 91 (stating that he “[n]ever” gave her any reason to be afraid of him). None of these excuses, however, counters the obvious: that he was criminally negligent in not responding to a risk that he had created.

Although the defendant characterizes this failure to take the dog out of the car as failure to perceive a risk, DB 10, this is not entirely the case. The defendant understood the risk of leaving a dog in a car, with the windows closed, on a 92-degree day, for an hour. His response to Labosier, T 67, is inconsistent with the assertion that the defendant did not comprehend the risk of leaving the husky in the car for an hour. The length of time alone undercuts his assertion that this case is similar to *Shepard*. In *Shepard*, the car went over the line for two seconds; in this case, the husky was left in the car long enough to require emergency medical care.

Moreover, this was not the first time that he had taken the husky in the car. According to the defendant, the husky “loved to go on car rides” and went with them “[m]ultiple times a day.” T 94. But, according to the defendant, “if I went somewhere like, you know, the grocery store or to an appointment, you know, I would leave [the husky] at home.” T 94. The fact that he did not take the husky on trips that would last longer is added

proof that that he was aware of the risk of leaving the husky in the car in 92-degree weather.

The defendant's view of criminal negligence would make it impossible to prosecute a person under the statute. Very few, if any, people would deliberately leave an animal in a car so that it would need medical attention from the excessive heat. But that kind of deliberate cruelty is not required in a statute charging negligent animal cruelty. *See, e.g., City of Beechwood v. Pearl*, 111 N.E.2d 620, 624 (Ohio Ct. App. 2018) (upholding conviction for cruelty to companion animals where the defendant left two dogs in a car, when the temperature was 84 degrees, for 40 minutes while the defendant went to an appointment); *Commonwealth v. Arcelay*, 190 A.3d 609, 611 (Pa. Super. 2018) (leaving two puppies in a car for two hours in 90-degree heat was reckless for purposes of the statute).

In short, the evidence was sufficient to show that the defendant was criminally negligent when he left the husky in a car, for almost an hour, with closed windows on a 92-degree day. The judgment of the circuit court should be affirmed.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Honorable Court affirm the judgment below.

The State requests a 3JX oral argument.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I, Elizabeth C. Woodcock_, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 5198 words, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

January 24, 2022

/s/Elizabeth C. Woodcock

CERTIFICATE OF SERVICE

I, Elizabeth C. Woodcock, hereby certify that a copy of the State's brief shall be served on Jared Bedrick, counsel for the defendant, through the New Hampshire Supreme Court's electronic filing system.

January 24, 2022

s/Elizabeth C. Woodcock

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NEW HAMPSHIRE CIRCUIT COURT
7TH Circuit-District Division- Rochester
76 NORTH MAIN STREET
ROCHESTER, NH 03867
1-855-212-1234

Susan W. Ashley, Judge
Mellissa C. Countway, Judge
John T. Pendleton, Judge

Cheryll Ann Andrews, Clerk

State vs. Kevin Butler Docket # 471-2020-CR-1363

Defendant's Mailing Address: 7 Sawyer Ave Apt. #D
Rochester, NH. 03867

Phone # (931) 551-6809

Victim Name & Address : CITY OF ROCHESTER

Restitution Amount: \$ 4437.88 Phone # _____

You are placed on probation with the New Hampshire Department of Corrections. You must report immediately **in person** for further reporting instructions:

Dover Probation / Parole Office
259 County Farm Road, Suite 104
Dover, NH. 03820
(603) 740-1037
Hours are Monday – Friday 8AM – 4PM

You have been ordered to pay restitution only through the New Hampshire Department of Corrections. You must immediately contact that department's Dover District office to make arrangements to pay that obligation. You are directed to report **in person** and provide the information needed to establish a payment plan. If no one is in the office when you report you may call and leave a voice message with your name, address and phone number. You will be contacted for the needed information provided. Make sure YOUR phone can receive voice mail when called.

Please do not hesitate to contact the Court if you have any questions 1-855-212-1234

^{Mailed}
COPY GIVEN IN HAND TO DEFENDANT BY: Nicole DATE 2/16/21
PLEASE ATTACH A COPY OF THE COURTS ORDER TO THE DEFENDANT'S COPY

Copy faxed to Probation.

^{Mailed}
 Copy given to defendant

***** WHAT GET'S COPIED/ FAXED COPY OF COVER LETTER, COMPLAINT, AND THE SENTENCING ORDER. *****

The State of New Hampshire COMPLAINT

Case Number: 471-20-CR-1363

Charge ID: 1764803c

SIN# 00920002000001349001

<input type="checkbox"/> VIOLATION	MISDEMEANOR	<input type="checkbox"/> CLASS A	<input checked="" type="checkbox"/> CLASS B	<input type="checkbox"/> UNCLASSIFIED (non-person)
	FELONY	<input type="checkbox"/> CLASS A	<input type="checkbox"/> CLASS B	<input type="checkbox"/> SPECIAL

You are to appear at the: **7th Circuit District Division Rochester** Court,
 Address: **76 NORTH MAIN ST , Rochester, NH** County: **STRAFFORD**
 Time: **8:00 AM** Date: **08/31/2020**

Under penalty of law to answer to a complaint charging you with the following offense:

THE UNDERSIGNED COMPLAINS THAT : PLEASE PRINT

BUTLER		KEVIN			
Last Name		First Name		Middle	
7 SAWYER AVE Apt. #D		ROCHESTER		NH	03867
Address		City		State	Zip
M	W	6'02	220	HAZEL	BROWN
Sex	Race	Height	Weight	Eye Color	Hair Color
06/26/84		06BRK84261		NH	

DOB License #: OP License State
 COMM. VEH. COMM. DR. LIC. HAZ. MAT. 16+PASSENGER

AT: 7 SAWYER AVE, ROCHESTER NH
 On 07/20/2020 at 3:20 PM in STRAFFORD County NH, did commit the offense of:
 RSA Name: Animals in Motor Vehicles
 Contrary to RSA: 644:8-aa
 Inchoate:
 (Sentence Enhancer):

And the laws of New Hampshire for which the defendant should be held to answer, in that the defendant did:
 did confine a dog in a motor vehicle, in which the temperature was so high as to cause serious harm to the animal.

7th CIRCUIT COURT
 JUL 24 2020
 Rochester

against the peace and dignity of the State.

SERVED IN HAND

Complainant Signature	Ptl Officer Jonathan B Labosier	Rochester PD
	Complainant Printed Name	Complainant Dept.

Making a false statement on this complaint may result in criminal prosecution.

Oath below not required for police officers unless complaint charges class A misdemeanor or felony (RSA 592-A:7.I).
 Personally appeared the above named complainant and made oath that the above complaint by him/her subscribed is, in his/her belief, true.

Date _____ Justice of the Peace _____
 NHJB-2962-D (6/27/2016)

Case Number:
Charge ID:

The State of New Hampshire COMPLAINT

Case Number: 471-20-CR-1363

Charge ID: 1764805c

SIN# 00920002000001349002

<input type="checkbox"/> VIOLATION	MISDEMEANOR	<input type="checkbox"/> CLASS A	<input checked="" type="checkbox"/> CLASS B	<input type="checkbox"/> UNCLASSIFIED (non-person)
	FELONY	<input type="checkbox"/> CLASS A	<input type="checkbox"/> CLASS B	<input type="checkbox"/> SPECIAL

You are to appear at the: **7th Circuit District Division Rochester** Court,
 Address: **76 NORTH MAIN ST , Rochester, NH** County: **STRAFFORD**
 Time: **8:00 AM** Date: **08/31/2020**

Under penalty of law to answer to a complaint charging you with the following offense:

THE UNDERSIGNED COMPLAINS THAT : PLEASE PRINT

BUTLER		KEVIN			
Last Name		First Name		Middle	
7 SAWYER AVE Apt. #D		ROCHESTER		NH	03867
Address		City		State	Zip
M	W	6 0 2	2 2 0	HAZEL	BROWN
Sex	Race	Height	Weight	Eye Color	Hair Color
06/26/84		06BRK84261		NH	
DOB		License #:		OP License State	
<input type="checkbox"/> COMM. VEH.	<input type="checkbox"/> COMM. DR. LIC.	<input type="checkbox"/> HAZ. MAT.	<input type="checkbox"/> 16+PASSENGER		

AT: 7 SAWYER AVE, ROCHESTER NH

On 07/20/2020 at 12:00 AM in STRAFFORD County NH, did commit the offense of:

RSA Name: Cruelty to Animals; Negligent

Contrary to RSA: 644:8,III

Inchoate:

(Sentence Enhancer):

And the laws of New Hampshire for which the defendant should be held to answer, in that the defendant did:

did without lawful authority negligently deprived any animal, in his possession or custody necessary care, sustenance or shelter

7th CIRCUIT COURT

JUL 24 2020

Rochester

against the peace and dignity of the State.

SERVED IN HAND

Complainant Signature	Ptl Officer Jonathan B Labosier	Rochester PD
	Complainant Printed Name	Complainant Dept.

Making a false statement on this complaint may result in criminal prosecution.

Oath below not required for police officers unless complaint charges class A misdemeanor or felony (RSA 592-A:7.I).

Personally appeared the above named complainant and made oath that the above complaint by him/her subscribed is, in his/her belief, true.

Date

Justice of the Peace

Case Number:

Charge ID:

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: 7th Circuit - District Division - Rochester

Case Name: State v. Kevin Buttler

Case Number: 471- 2020-CR-1363 Charge ID Number: 1764803c
(if known) 1764805C

DISPOSITION AND SENTENCING FORM

PLEA: Guilty Not Guilty No Contest No Plea
 Change Plea To: No Contest Guilty

FINDING: Guilty Not Guilty Dismissed

Complaint placed on file With finding Without finding

and not to be brought forward after _____ on the below conditions of this order.

PROBABLE CAUSE: Found Not Found Hearing Waived _____ (date)

Bail \$ _____ Committed See attached bail order

SENTENCE:

FINE

The defendant is fined \$ 1200, plus statutory penalty assessment of \$ 288
\$ 600 of the fine is: suspended deferred for 2 months years
\$ 144 of the statutory penalty assessment is:
 suspended deferred for 2 months years

The defendant shall perform _____ hours of community service to satisfy the fine.

This is a domestic violence conviction under RSA 631:3 reckless conduct, or RSA 633:3-a interference with freedom – stalking, requiring the mandatory imposition of a \$50.00 fine which may not be reduced, suspended or discharged by imprisonment.

COMMITMENT

The defendant is sentenced to the House of Corrections for a period of _____ days months

Pretrial confinement credit: _____ days.

This sentence is to be served as follows:

Stand committed Commencing _____

_____ days months of the sentence are suspended deferred to _____ (date) on the below conditions.

The commitment is consecutive to _____

RESTITUTION

The defendant is ordered to make restitution to City of Rochester
in the amount of \$ 4,437.88

Payable through the Department of Corrections as directed by the probation/parole officer plus the statutory administrative fee.

Other: _____

Case Name: State v. MIRIAM L CHASE-BURROWS

Case Number: 471-2020-CR-00611

Charge ID Number: 1734497C

DISPOSITION AND SENTENCING FORM

PROBATION

The defendant is placed on probation for a period of ___ months ___ year(s), upon the usual terms of probation and any special terms of probation determined by the probation/parole officer. Effective: ___ Immediately ___ Upon Release

The defendant is ordered to report immediately/upon release to the Probation/Parole Office.

OTHER CONDITIONS OF SUSPENDED OR DEFERRED SENTENCE

The defendant is ordered to be of good behavior and comply with all the terms of this sentence for a period of 2 ___ days ___ months [X] years. Good behavior is defined as not committing any act(s) that would constitute a felony, misdemeanor or major motor vehicle violation as defined in RSA 259:39 (I).

The defendant's ___ license ___ privilege to operate in New Hampshire is ___ Suspended ___ Revoked for a period of ___ days ___ months ___ years effective ___

The loss of license is consecutive to ___

The defendant shall meaningfully participate in LADC/mental health/ ___ evaluation and follow all recommendations including, but not limited to, counseling, treatment and education programs. Written proof of the evaluation shall be provided to the prosecutor and the court by ___ (date) and written proof of compliance with the recommendations shall be provided by ___ (date).

The defendant shall perform ___ hours of community service and provide proof to the State by ___ (date).

The defendant is ordered to have no contact with ___ either directly or indirectly, or through third parties, including but not limited to contact in-person, by mail, phone, e-mail, text message, social networking sites and/or electronic communications for a period of ___ days ___ months ___ years

The defendant is not allowed to enter ___ (location) for a period of ___ years.

[X] Other:

The suspended sentence and right to care for the animal or any pet is conditional upon the defendant completing the Pet Ownership Course through the SPCA or similar agency within 60 Days, with proof to state.

APPEAL ___ (date) Bail \$ ___ Committed ___ See attached bail order

Date

2/16/2021

Signature of Judge

JOHN T. PENDLETON

Printed Name of Judge