

No. 71 MAP 2020

In the Supreme Court of Pennsylvania

COMMONWEALTH OF PENNSYLVANIA, Appellee

v.

SHERON JALEN PURNELL, Appellant

**On appeal from the May 28, 2020 order of the Superior Court,
at No. 1646 EDA 2019, affirming the March 18, 2019 order of the
Chester County Court of Common Pleas, at No. CP-15-CR-4353-2016**

**BRIEF OF *AMICI CURIAE*, ANIMAL LEGAL DEFENSE FUND,
ASSOCIATION OF PROSECUTING ATTORNEYS &
LUTHERAN CHURCH CHARITIES, IN SUPPORT OF APPELLEE**

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INTEREST OF *AMICI CURIAE*

It is a widely held and supported belief that trained dogs in the courtroom can prove enormously beneficial to the judicial system. The diversity of *amici curiae* alone—animal rights advocates, prosecutors, and members of the religious community—reflects the breadth of that belief.

The **Animal Legal Defense Fund** (“ALDF”) (www.aldf.org) is a non-profit organization that works to protect the lives and advance the interests of animals through the legal system. ALDF pursues its mission on behalf of its over 300,000 members and supporters across the country. ALDF files high-impact lawsuits to protect animals from harm, provides free legal assistance and training to prosecutors to ensure that animal abusers are held accountable for their crimes, supports tough animal protection legislation, and fights legislation harmful to animals. ALDF recognizes the symbiotic relationship between animals and humans, particularly during times of stress and anxiety. ALDF’s priority is to protect the rights of animals, who enrich humans’ lives in immeasurable ways. ALDF has also worked since its inception to further the growth of animal law as a field and its application to common legal scenarios. Foundational to animal law is the notion that being an animal is capable of having legal significance, which should be acknowledged by the law where applicable. Indeed, for courtroom facility dogs, their very “animalness”—their status as a non-human creature,

capable of empathic relationships—is central to their utility. As such, ALDF has a particular interest in cases that distinguish the unique role of courtroom facility dogs from other, non-animal analogues. Expanding access to courthouse facility dogs for testifying witnesses furthers ALDF’s core mission.

The **Association of Prosecuting Attorneys** (“APA”) (www.APAInc.org) is a national non-profit group devoted to supporting and enhancing the effectiveness of prosecutors in their mission to create safer communities and to promote a more effective justice system. APA collaborates with criminal justice partners across the globe and advocates on behalf of prosecutors on emerging issues related to the administration of justice. Courthouse facility dogs or “comfort dogs” provide a calming influence and emotional support to victims, witnesses, and children. The existing comfort dog programs substantially impact the work of legal practitioners and the people that they serve. Due to the resounding success of these programs, an increasing number of prosecutors’ offices and judicial systems recognize the importance of providing comfort dogs to testifying witnesses. Since 2004, prosecutors, Children’s Advocacy Centers, law enforcement departments, Court Appointed Special Advocate (CASA) programs, and family courts have established facility dog programs that include hundreds of comfort dogs working in dozens of states.

Lutheran Church Charities (“LCC”) (www.lutheranchurchcharities.org) is a non-profit national and international ministry that provides support to those in need. LCC is the headquarters of the LCC K-9 Comfort Dog Ministry, with a membership of 130 church affiliate members and more than 1,000 certified K-9 handlers and ministry partners. The LCC K-9 Comfort Dog Ministry is a national human-care ministry embracing the unique calming nature and skills of purebred Golden Retrievers and has placed dogs in more than 27 states. Each canine accepted into the ministry is specifically chosen from reputable breeders and is rigorously trained over the course of two years. This training prepares the canine to maintain calm and controlled behavior during times of stress, extreme emotion, loud noises, and large crowds. Upon successful completion of the training program, the canine is placed at an affiliate member church location for community outreach and service. LCC K-9 Comfort Dogs are used in courts in family court proceedings by the office of the guardian *ad litem* and in criminal cases by victim witness advocates. The use of canines with, for example, minors or individuals with intellectual disabilities, promotes the well-being of an individual witness, reducing anxiety, blood pressure, and a potentially traumatic response.

ALDF, APA, and LCC have a significant interest in the outcome of this case. All three organizations understand that this issue is a matter of first impression for this Court. *Amici* urge the Court to follow the overwhelming

national trend of allowing comfort dogs to support testifying witnesses in appropriate circumstances.

Amici agree with and support the position of appellee, the Commonwealth of Pennsylvania. *Amici* submit this brief to provide the Court with the benefit of the unique—but ultimately unified—perspectives of animal rights advocates, prosecutors, and the religious community on the critical issue confronting the Court.¹

¹ No person or entity other than *amici* and their members paid for or authored this brief, either in whole or in part. *See* Pa. R.A.P. 531(b)(2).

STATEMENT OF THE QUESTION INVOLVED

Do Pennsylvania trial courts have the discretion to permit a comfort dog to accompany a vulnerable testifying witness to aid the witness in providing the court with truthful testimony?

SUMMARY OF THE ARGUMENT

This Court should hold that trial courts have the discretion to permit a comfort dog to aid a vulnerable testifying witness. By affording that permission, this Court can broaden access to special accommodations for witnesses in Pennsylvania courtrooms. At the same time, the Court can promote the ends of justice by enabling truthful testimony that may not otherwise be forthcoming.

During the course of a trial—be it civil or criminal—courts are faced with any number of challenges. One obstacle is the fear that witnesses experience when called to testify. Courts are not intimidating places for judges and lawyers. But they are unfamiliar and can be nerve-racking to those who have only sporadic contact with the judicial system. A comfort dog’s presence, particularly for a vulnerable witness, can alleviate anxiety and fear while testifying. Facilitating testimony in this way shows respect for those who testify and treats them with dignity. What’s more, there is ample scientific and anecdotal evidence that comfort dogs help witnesses relax and testify in a more forthright manner. This advances justice by enhancing the truth-seeking function of our courts.

Pennsylvania trial judges have the discretion to control “the mode and order of examining witnesses and presenting evidence,” to “make those procedures effective for determining the truth,” and to “protect witnesses from harassment or undue embarrassment.” Pa.R.E. 611; *see also Com. v. Parker*, 919 A.2d 943, 949

& n.7 (Pa. 2007) (noting trial courts' broad power over the conduct of a trial). Courts thus may accommodate witnesses to facilitate their testimony. In the last several years, courts have used this authority to allow courthouse facility dogs (also referred to this in brief as "comfort dogs") to assist particularly vulnerable witnesses. Today, over 250 comfort dogs work in courtrooms across 41 states, including Pennsylvania. These highly-trained dogs provide comfort, are usually unknown to the jury, and assist witnesses in testifying.

Like many courts across the country, the trial court here carefully exercised its discretion to allow a comfort dog to accompany A.H., an autistic minor who was anxious about testifying. Further, the trial court—again, like courts in similar cases—balanced the benefit of the comfort dog for A.H. against any plausible prejudice to the defendant, Mr. Purnell. The trial court decided to allow the comfort dog. This Court should sustain that decision and hold that Pennsylvania trial courts may allow such support, within the limits of appropriate discretion.

For these reasons, detailed below, *amici curiae* ask the Court to affirm the Superior Court's decision.

ARGUMENT

A. Courts consistently employ their discretionary power to permit comfort dogs in aid of testifying witnesses.

Five years ago, the Court of Criminal Appeals in Tennessee observed that “[w]hile the cases involving the use of a facility dog during a trial are not plentiful, it is clear that the evolving law permits their use.” *State v. Reyes*, 505 S.W.3d 890, 896 (Tenn. Crim. App. 2016). There, the court held the trial court did not abuse its discretion in permitting the use of a courthouse facility dog to aid a child victim witness. And since then, the law has continued to evolve. As of March 2021, 260 comfort dogs work in courthouses across 41 states. Many of these dogs provide services throughout Pennsylvania, including but not limited to the offices of the Bucks County District Attorney, Cumberland County Adult Probation and Parole, Lancaster County District Attorney, and Lehigh County District Attorney.² In the last five years, many courts have approved the use of courthouse facility dogs to promote truthful testimony and support vulnerable witnesses. While this is a matter of first impression in Pennsylvania, there exists ample case law to guide this Court in its analysis and ultimate conclusion.

² *Courthouse Facility Dogs in the United States*, COURTHOUSE DOGS FOUNDATION, <https://courhousedogs.org/dogs/where/where-united-states/>).

Trial courts, in all contexts, have the authority to control what occurs within the courtroom. Across the nation, appellate courts consistently hold that it falls squarely within a trial court’s discretion to allow a witness to be accompanied by a comfort dog.³ By 2020, at least fifteen states enacted statutes governing the use of

³ See e.g., *State v. Millis*, 391 P.3d 1225, 1233 (Ariz. App. 2017) (“[i]n keeping with the trial court’s ‘broad discretion’ in managing trial conduct, this court will not disturb a trial court’s ruling regarding the use of a facility dog absent an abuse of discretion” (citation omitted)); *State v. Hasenyager*, 67 N.E.3d 132 (Ohio App. 2016) (concluding that the defendant “failed to demonstrate that the trial court abused its discretion in allowing the facility dog to accompany” a witness during her testimony); *State v. Jacobs*, 2015 WL 6180908, *5 (Ohio App. 2015) (concluding that trial court did not abuse its discretion by allowing a witness to testify with a comfort dog at her feet; “First, trial courts are in the best position to determine how to control trial proceedings, especially the mode of interrogating witnesses. Second, in light of the trial courts’ position and their position and their discretion, it is not erroneous for them to approve a variety of special allowances for child victims of sexual abuse. And, third, these special allowances may include using a companion dog during the child victim’s testimony under certain circumstances.”); *State v. Dye*, 309 P.3d 1192, 1194, 1199 (Wash. 2013) (trial courts given “wide discretion to control trial proceedings, including the manner in which testimony will be presented”; “[t]rial courts have a unique perspective on the actual witness that an appellate court reviewing a cold record lacks”; “trial court acted within its broad discretion”); *People v. Tohom*, 109 A.D.3d 253, 266-67 (N.Y. App. Div. 2013) (affirming trial court’s allowance of a dog’s presence during a witness’s testimony; the trial court has discretion to “fashion[] an appropriate measure to address a testifying child witness’s emotional or psychological stress, based upon the particular needs of that child”; “judge conducting a public trial is empowered to control the proceedings in whatever manner may be consistent with the demands of decorum and due process”); *People v. Spence*, 212 Cal. App. 4th 478, 512, 517 (Cal. App. 2012) (rule of evidence granting trial court discretion “to control court proceedings in the search for truth” allowed the use of therapy dog; trial court also “appropriately exercised its discretion” under the Evidence Code “to set reasonable controls upon the mode of

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comfort dogs in courtrooms.⁴

Appellate courts uniformly agree that these issues are within a trial court’s discretion. And while most of the existing case law involves witnesses who are children or disabled, no court has drawn an unequivocally bright line excluding other witnesses from this accommodation. Nor have courts indicated that comfort dogs are only allowed to accompany witnesses in criminal cases. Testifying in a civil trial can still be incredibly anxiety-provoking and a witness can benefit equally from a comfort dog in that setting. Further, nothing prevents a criminal or civil defendant from requesting a comfort dog to assist a testifying defense witness. In other words, comfort dogs do not exist solely for the benefit of the prosecutor. Any witness proffered by any party can and should be allowed the benefit of a comfort dog when the circumstances warrant.

interrogation of [a] child witness[] by providing a therapy dog in this exercise of ‘special care to protect [the witness] from undue harassment or embarrassment’).

⁴ See Ala. Code § 12-21-147 (2017); Ariz. Rev. Stat. § 13-4442 (2016); Ark. Code Ann. § 16-43-1002 (2015); Cal. Penal Code § 868.4 (2018); Colo. Rev. Stat. § 16-10-404 (2019) (amended 2020); Fla. Stat. § 92.55 (2017); Haw. Rev. Stat. 621-30 (2019); Idaho Code § 19-3023 (2017); 725 Ill. Comp. Stat. § 5/106B-10 (2015); La. Stat. Ann. § 15:284 (2018) (amended 2020); Mich. Comp. Laws § 600.2163a (2019); Miss. Code Ann. § 99-43-101 (2019); Okla. Stat. Ann. 2611.2 (2014); Va. Code Ann. § 18.2-67.9:1 (2018); Wash. Rev. Code § 10.52.110 (2019).

The Court should permit broad access to comfort dogs in Pennsylvania courtrooms, subject, of course, to some basic limiting principles. One possible approach is the one applied in *State v. Devon D.*, 138 A.3d 849, 867 (Conn. 2016), where the Connecticut Supreme Court engaged in an extensive analysis and held that the trial court “may exercise its discretion to permit a dog to provide comfort and support to a testifying witness.” There, a comfort dog was permitted to sit next to a child victim witness for the prosecution. *Id.* at 861.

The court explained that the trial court’s discretion should be channeled through a balancing test: “the court must balance the extent to which the accommodation will help the witness to testify reliably and completely against any possible prejudice to the defendant’s right to a fair trial.” *Id.* at 876. If a dog’s presence obviates the need for “more drastic measures to secure the witness’ testimony,” this militates in favor of allowing the comfort dog in the courtroom. *Id.* And there are a number of measures available to minimize or eliminate any plausible prejudice, such as jury or other limiting instructions. *Id.*

In *Devon*, much like in this case, the trial court heard testimony about the positive impact the comfort dog would have on the child witness’s testimony and employed procedures to eliminate any possibility that the jurors “might be swayed by the presence of ‘[a] cute little kid with her cute dog,’” as the defendant argued. *Id.* at 868.

Similarly, in *Jones v. State*, 841 S.E.2d 112 (Ga. App. 2020), the trial court took nearly the same measures as those taken here. Though that case involved a victim witness's personal service dog, and not a courthouse facility dog, the trial court investigated the propriety of the service dog's presence and the service dog's training. *Id.* at 122. Further, "[g]iven the procedures the trial court followed to minimize the dog's presence, we cannot assume that the dog had any impact on the jurors, much less that it engendered sympathy in them for [the witness]." *Id.* The Court of Appeals held that, "[u]nder these circumstances, ... the trial court acted within its discretion in allowing [the] dog to accompany [the witness] during his testimony." *Id.* at 124.

There are a number of similar and analogous cases, including *People v. Tohom*, 109 A.D.3d 253 (N.Y. App. Div. 2013). There, the court found that the defendant failed to show that the comfort dog's presence during a child witness's testimony impacted the proceeding. *Id.* at 267. Specifically, the jury was instructed not to draw any inference in favor of or against either side due to the dog's presence. *Id.* Thus, the Appellate Division of the New York Supreme Court held that the trial court's decision to allow the comfort dog was a proper exercise of its discretion. *Id.*

The trial court here took every reasonable step to ensure both that the comfort dog would assist A.H. in testifying and that Mr. Purnell would suffer no

prejudice. As the Superior Court explained, the trial court thoroughly considered this issue outside of the jury's presence, learned of A.H.'s anxiety and autism, conferred extensively with counsel, and used procedures that minimized the dog's presence in order to mitigate any prejudice to Mr. Purnell. *See* 223 A.3d 824, 827. This is precisely how Pennsylvania trial courts should use their discretion to determine the circumstances that warrant this accommodation. Given that every case will be fact-specific, courts should not be required to consider the same factors in every situation, thus unnecessarily limiting the court's discretion to manage the courtroom.⁵

B. The use of comfort dogs to assist testifying witnesses is not inherently prejudicial.

Mr. Purnell speculates that the presence of a comfort dog “naturally engender[s] sympathy” and “has the very real probability to lead the jury to prejudicially infer that the witness is so afraid of the defendant that he / she needs the extraordinary measure of a dog to testify against the defendant.” (Br. at 24.) Not only is this assumption baseless, but Mr. Purnell fails to provide this Court

⁵ *Amici* suggest that it may be appropriate for this Court to refer the issue here to an appropriate rules committee (such as the Criminal Procedural Rules Committee, Civil Procedural Rules Committee, or Committee on Rules of Evidence) for potential development of a recommendation for adoption of a rule addressed to this issue.

with any evidence that allowing A.H. to testify with a comfort dog actually caused Mr. Purnell any prejudice. And there is no inherent prejudice in the use of comfort dogs to support witnesses at trial.

Here, the Superior Court rightly concluded that “[a]ll of the courts which have examined a challenge to the use of a comfort dog in a courtroom have concluded that the dog’s presence is not inherently prejudicial.” 233 A.3d at 836. For example, the Washington Supreme Court rejected a defendant’s unsupportable theory that the comfort dog’s presence improperly biased the jury. *Dye*, 309 P.3d at 1200. The witness experienced significant anxiety regarding his upcoming testimony and was fearful of the defendant. *Id.* at 1199. The trial court looked to the fifty-six-year-old victim’s emotional trauma and developmental disability, allowing the comfort dog to accompany the witness on the stand. *Id.* The defendant in *Dye* contended that the dog’s presence somehow gave the witness’s testimony an “aura of truth and sympathy.” *Id.* The court, however, explained that “whatever subconscious bias may have befallen the jury was cured by the trial court’s limiting instruction, which cautioned the jury not to ‘make any assumptions or draw any conclusions based on the presence of this [] dog.’” *Id.* A jury’s constitutional role prevents the mere assumption that the jury made “a decision based on the dog’s reaction and demeanor, not the witness’s.” *Id.*

A New York court also held that a comfort dog’s accompaniment of a witness was not inherently prejudicial, as it was “beyond dispute that a dog does not have the ability to discern truth from falsehood and, thus, cannot communicate such a distinction to a jury. Nor can it be concluded that any actual prejudice resulted from the concededly unobtrusive presence of the dog in the courtroom.” *Tohom*, 109 A.D.3d at 268. The witness, a minor who was a victim of abuse, expressed anxiety about testifying. *Id.* at 256. The trial court emphasized that it did not take defendant’s arguments lightly and used limiting and curative instructions to minimize or eliminate any possible prejudice. *Id.* at 259. The appellate court ultimately concluded a jury must be presumed to follow limiting instructions and that the “unobtrusive presence” of the dog was appropriate. *Id.* at 268, 270.

In sum, given a trial court’s inherent discretion to allow comfort dogs to accompany witnesses, a court will invariably consider a variety of appropriate factors in making its assessment. As numerous other courts have concluded, that decision is not *per se* prejudicial.⁶

⁶ See *State v. Nuss*, 446 P.3d 458, 461 (Idaho App. 2019) (dismissing mere echoes of trial counsel’s argument that presence of dog would make the victim “appear more vulnerable” and give her “testimony more credence and emotionality” when there was no actual evidence that the dog’s presence prejudiced defendant); *People v. Johnson*, 899 N.W.2d 513, 525 (Mich. App. 2016) (concluding that the “use of a support animal is more neutral, and thus less prejudicial, than the use of a support

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Mr. Purnell also attempts to compare his case to scenarios in which child victim witnesses testify via closed-circuit television. But that procedure is far more extraordinary than the presence of comfort dogs in the courtroom. Further, courts distinguish between witnesses testifying with comfort dogs and via closed-circuit television. *See e.g., People v. Chenault*, 175 Cal. Rptr. 3d 1, 11 (Cal. App. 2014) (concluding that a finding of necessity was not required because a “support dog” was closer to a “support person,” which was decidedly different than specialized procedures such as testimony via closed-circuit television); *Devon*, 138 A.3d at 862 (explaining that the trial court opined that permitting the comfort dog would prevent the need for more drastic measures such as video recording the witness’s testimony).

Finally, courthouse facility dogs do not violate a defendant’s right to confrontation. The Colorado Court of Appeals recently rejected a defendant’s confrontation claim “[b]ecause we conclude that Collins’s right to confrontation

person—a procedure deemed permissible by our Legislature” and that “[t]he use of a support animal in appropriate circumstances is therefore not inherently prejudicial.”); *People v. Chenault*, 175 Cal. Rptr. 3d 1, 10 (Cal. App. 2014) (“We disagree with Chenault’s apparent assertion that a jury will necessarily infer from the presence of a support dog that the witness is a victim so traumatized by the crimes allegedly committed by the defendant that he or she cannot testify without a support dog and therefore is more credible than if that witness is not accompanied by a support dog” and concluding that the presence of a support dog is not inherently prejudicial or more prejudicial than the presence of a support person).

doesn't carry with it right to impose discomfort on an accusing witness[.]” *People v. Collins*, 2021 WL 627571, *1 (Col. App. 2021). Confrontation is with the witness, not a comfort dog.

C. Comfort dogs provide benefits to testifying witnesses and ultimately aid in the courts’ administration of justice.

As discussed above, the majority of appellate courts repeatedly affirm the trial court’s decision to allow the presence of a dog in court to support a vulnerable witness. In so doing, those courts assessed the witness’ need for support, the benefits of the dog’s presence, and the potential prejudice to the defendant. As noted, *amici* suggest such a balancing test is appropriate and, as explained below, argue that the benefit a support dog provides to a vulnerable witness and to the court far outweighs any prejudice to the defendant.

1. The stress of testifying and its impact on a witness.

The courtroom is an intimidating place. But for a witness called to testify at trial, the American legal system’s reliance on the “rigorous adversarial testing” of testimony to ascertain the truth can make the courtroom especially fearsome.

Maryland v. Craig, 497 U.S. 836, 846 (1996); *Coy v. Iowa*, 487 U.S. 1012, 1020 (1988). This is especially true for a vulnerable witness who, by reason of age, disability, or prior trauma, may experience excessive stress or anxiety. “Indeed, if one set out intentionally to design a system for provoking symptoms of

posttraumatic disorder, it might look very much like a court of law.” Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 J. TRAUMATIC STRESS 159 (2003).

Stress and anxiety can negatively impact a witness’ ability to recall events and correctly answer questions about those events when subjected to direct and cross examination.⁷ Goodman & Helgeson, *Child Sexual Assault: Children’s Memory and the Law*, 40 U. MIAMI L. REV. 181, 203 (1985); see also Pantell, *et al.*, *Policy Statement: The Child Witness in the Courtroom*, 139 PEDIATRICS 3 (2017) (“Studies have established clearly that children experience anxiety surrounding court appearances and that the main fear is facing the defendant. Other fears include being hurt by the defendant, embarrassment about crying or not being

⁷ Although many studies examine the effect of stress on witness memory and recall (particularly regarding the effect of stress on an eyewitness’s memory), most addressing the effect of *courtroom* stress on a witness’s ability to testify have been limited to the effect on children. This is not surprising, given that—as in the present case—most of the reported decisions addressing accommodations for anxious witnesses have been limited to child witnesses. In other words, the studies and case law simply reflect that the law in this area is still evolving. Dellinger, *Using Dogs for Emotional Support of Testifying Victims of Crime*, 15 ANIMAL L. 171, 174 (2009).

able to answer questions and going to jail. The more frightened a child is, the less he or she is able to answer questions.”).

High levels of stress reduce a person’s capacity for short-term memory needed to comprehend sentences. Thus, a witness may have greater difficulty understanding the questions asked. *Id.* As a result, information a witness provides in a courtroom setting may be less thorough and accurate than information provided in a more neutral environment. Nathanson & Saywitz, *The Effects of the Courtroom Context on Children’s Memory and Recall*, 31 J. OF PSYCH. & LAW 67, 71 (Spring 2003). Stress also interferes with memory retrieval processes, and retrieval failures in turn predict heightened suggestibility. Goodman & Helgeson, *supra*, at 204. Heightened suggestibility in a courtroom environment may lead a witness to provide a false response to a leading question. *Id.*

A growing body of scientific literature on the psychological and physiologic consequences of testifying in court supports modifications of courtroom procedures, and courts have adopted various accommodations to help relieve the stress and anxiety a witness may feel. Such accommodations include allowing use of closed-circuit television, as well as permitting the presence of a support person

or item.⁸ Burd & McQuiston, *Facility Dogs in the Courtroom: Comfort Without Prejudice?*, 44 CRIMINAL JUSTICE REVIEW 515, 516 (2019). The exercise of such “therapeutic jurisprudence” eases the harm to vulnerable witnesses and, by reducing the stress those witnesses experience, allows for more complete and accurate testimony. *Id.*

More recently, as represented by this case, such accommodations include the use of a comfort dog in the courtroom. Dellinger, *supra*, at 175. Specially trained dogs are uniquely qualified to work in courts—not only to support witnesses, but to make the legal process a less stressful and more humane experience for everyone involved.

2. Dogs as stress-relievers: the oxytocin effect.

George Eliot wrote, “Dogs are such agreeable friends—they ask no questions, they pass no criticisms.” *Scenes of Clerical Life* (1857). Eliot was not alone in this opinion; popular culture is replete with depictions of dogs bringing comfort to humans. But the positive effect dogs have on human emotions is not

⁸ In 1990, Congress enacted the Victims of Child Abuse Act, 18 U.S.C. § 3509, which outlines alternative methods of testimony in federal courts for children unable to testify in open court because of fear, likelihood of trauma, or other impediments, and many states have enacted similar legislation. In addition, as explained above, all trial courts retain discretion under common law to control the giving of testimony, including the accommodation of vulnerable witnesses.

mere folklore. It is rooted in science. Numerous scientific studies reveal the positive mental and physical health benefits of human-animal interactions, suggesting that those interactions increase the brain's production of oxytocin.⁹

Oxytocin is a hormone produced in the hypothalamus and released into the body by the pituitary gland. Olmert, *Made for Each Other: The Biology of the Human-Animal Bond* 16 (2009). Oxytocin performs many functions, including blocking the production of hormones related to physiological and psychological feelings of stress and anxiety. *Id.* at 48-49. Researchers measuring the levels of oxytocin, as well as other biomarkers such as blood pressure and heart rate, in individuals undergoing stressful situations note a correlation between elevated levels of oxytocin and decreased signs of stress. *Id.* And human-animal interaction increases the levels of oxytocin produced by both the humans and the animals. *Id.* at 74; Odendaal & Meintjes, *Neurophysiological Correlates of Affiliative Behavior Between Humans and Dogs*, 165 VETERINARY J. 296, 297-99 (2003).

Whether the result of increased oxytocin or attributed to other factors, there is little dispute in the scientific community that these human-animal interactions

⁹ See Beetz, *et al.*, *Psychosocial and Psychophysiological Effects of Human-Animal Interactions: The Possible Role of Oxytocin*, 3 FRONTIERS IN PSYCHOLOGY 234 (2012) (survey and meta-analysis of HAI studies) (available at: www.ncbi.nlm.nih.gov/pmc/articles/PMC3408111/).

lead to reduction of stress in humans. Donovan, *Domestic Violence and Animal Welfare: The Science of Human-Animal Interaction*, 53 U.S.F. L. REV. 393, 394 (2019). In therapeutic settings, dogs have a calming effect on both children and adults. See Burd & McQuiston, *supra*, at 517 (describing studies). Indeed, the stress biomarkers of children accompanied by a dog during forensic interviews relating to sexual abuse were significantly lower than those of children in the same circumstances without canine support. Krause-Parello & Gulick, *Forensic Interviews for Child Sexual Abuse Allegations: An Investigation into the Effects of Animal-Assisted Intervention on Stress Biomarkers*, 24 J. CHILD SEXUAL ABUSE 873, 881-83 (2015).

In short, the presence of a dog can ease the fear, stress, and anxiety a person experiences when placed in a stressful environment or when faced with a frightening task—such as testifying in court. Ultimately, then, comfort dogs further the ends of justice in the courtroom.

3. Comfort dogs: facilitators of truth and justice in the courtroom.

The first known use of a dog to support a testifying witness was in 1992, when a Mississippi court allowed “Vachss,” a German Shepherd, to accompany a seven-year-old witness to the stand. Holder, *All Dogs Go to Court: The Impact of Court Facility Dogs as Comfort for Child Witnesses on a Defendant’s Right to a*

Fair Trial, 50 HOUS. L. REV. 1155, 1167 (2013). In 2003, prosecutors in King County, Washington, initiated a program in which specially trained “courthouse facility dogs” supported child victims, witnesses, and even offenders through all phases of a criminal proceeding, from initial interview to trial.¹⁰ *Id.* at 1167-68. By 2017, support dogs became a fixture in courts and prosecutors’ offices across the country, as well as the subjects of human-interest stories in newspapers and television.¹¹ In 2018, the National District Attorney’s Association and the Association of Prosecuting Attorneys passed resolutions supporting the implementation of courthouse dog programs to assist children and vulnerable witnesses. Mariani, *Courthouse Facility Dogs: A Witness’s Best Friend*, 35 CRIM. JUST. 14, 17-18 (Summer 2020). Courts in Argentina, Canada, Chile, the United Kingdom, and parts of continental Europe use comfort dogs to support witnesses and victims of crime. *Id.* at 18. Recently, the American Bar Association House of Delegates passed a resolution:

¹⁰ Notably, the first time a support dog was used by a King County prosecutor, it was not with child victims but, rather, with juvenile offenders in drug court. Wallick, *Dogs in the Courtroom*, THE BARK (July 2008) (available at: www.thebark.com/content/dogs-courtroom).

¹¹ See, e.g., PBS News Hour, *New Mexico Courtroom Therapy Dogs* (July 1, 2016) (available at: www.youtube.com/watch?v=iINVEgv_Z1Q); CBS This Morning, *Facility Dog Pella Comforts Children Testifying in Court* (Jan. 5, 2017) (available at: www.youtube.com/watch?v=HvVJ1E6P7ZE).

“urg[ing] federal, state, local, territorial and tribal governments and foreign governments to enact laws authorizing courts to allow specially trained dogs (called *facility dogs*) to assist victims/vulnerable witnesses in their participation at any stage of the criminal justice system, including during their testimony in any judicial proceedings.”

Resolution 101A, *American Bar Association* (February 2021).

The benefits of a courthouse facility dog program are not limited to comforting anxious witnesses. Defendants may derive benefits from the presence of a dog, as well. One judge described the dogs active in her courtroom as “a bridge” between the system and the juveniles attending her drug court. Dellinger, *supra*, at 176. Another judge explained, “The dog’s presence dissipates tension for everyone dealing with difficult issues and provides a sense of normalcy.” *Id.* at 177. At least one recent study indicates that, of the various witness accommodations employed by courts for child witnesses, a support dog is less likely to prejudice a jury than accommodations such as allowing the child to carry a doll or teddy bear. *See* Burd & McQuiston, *supra*, at 532-33 (in study utilizing mock trial paradigms involving child witnesses, jurors who viewed a child witness holding a teddy bear “were more likely to express anger and disgust, which in turn impacted their likelihood of convicting a defendant” than did the jurors who saw a child accompanied by a dog). And, unlike a support person, a trained courthouse

dog supporting a witness is not likely to have an inadvertent physical reaction to the witness's testimony that might prejudice a jury.

CONCLUSION

For these reasons, *amici curiae*, Animal Legal Defense Fund, Association for Prosecuting Attorneys, and Lutheran Church Charities, request that the Court affirm the Superior Court's decision.

Respectfully submitted,

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Dated: March 8, 2021

CERTIFICATE OF COMPLIANCE: WORD COUNT

I certify that this brief complies with the type-volume limit of Pa.R.A.P.
531(b)(1) because it contains 5,455 words, excluding its exempt parts.

/s/ Karl S. Myers
Karl S. Myers

Dated: March 8, 2021

IN THE SUPREME COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania, Appellee : 71 MAP 2020
v. :
Sheron Jalen Purnell, Appellant :

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IN THE SUPREME COURT OF PENNSYLVANIA

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