Tennessee Animal Laws and Law Enforcement

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Williamson County

West's Tennessee Code Annotated
Title 39. Criminal Offenses
Chapter 14. Offenses Against Property (Refs & Annos)
Part 2. Animals (Refs & Annos)

T. C. A. § 39-14-202

§ 39-14-202. Cruelty to animals

Effective: July 1, 2010

Currentness

(a) A person commits an offense who intentionally or knowingly:

"an animal" each individual animal may form the basis for a seperate conviction TN v. Siliski.

(1) Tortures, maims or grossly overworks an animal;

(2) Fails unreasonably to provide necessary food, water, care or shelter for an animal in the person's custody;

(3) Abandons unreasonably an animal in the person's custody;

(4) Transports or confines an animal in a cruel manner; or

(5) Inflicts burns, cuts, lacerations, or other injuries or pain, by any method, including blistering compounds, to the legs or hooves of horses in order to make them sore for any purpose including, but not limited to, competition in horse shows and similar events.

(b) A person commits an offense who knowingly ties, tethers, or restrains a dog in a manner that results in the dog suffering bodily injury as defined in § 39-11-106.

↳ means a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty

(c) It is a defense to prosecution under this section that the person was engaged in accepted veterinary practices, medical treatment by the owner or with the owner's consent, or bona fide experimentation for scientific research.

(d) Whenever any person is taken into custody by any officer for violation of subdivision (a)(4), the officer may take charge of the vehicle or conveyance, and its contents, used by the person to transport the animal. The officer shall deposit these

items in a safe place for custody. Any necessary expense incurred for taking charge of and sustaining the same shall be a lien thereon, to be paid before the same can lawfully be recovered; or the expenses, or any part thereof, remaining unpaid may be recovered by the person incurring the same of the owners of the animal in an action therefor.

restriction on custody of animals

(e) In addition to the penalty imposed in subsection (g), the court making the sentencing determination for a person convicted under this section shall order the person convicted to surrender custody and forfeit the animal or animals whose treatment was the basis of the conviction. Custody shall be given to a humane society incorporated under the laws of this state. The court may prohibit the person convicted from having custody of other animals for any period of time the court determines to be reasonable, or impose any other reasonable restrictions on the person's custody of animals as necessary for the protection of the animals. → restriction can be for other animals seized that were not the subject of a guilty verdict. TN v. Webb.

(f)(1) Nothing in this section shall be construed as prohibiting the owner of a farm animal or someone acting with the consent of the owner of that animal from engaging in usual and customary practices which are accepted by colleges of agriculture or veterinary medicine with respect to that animal.

(2) It is an offense for a person other than a law enforcement officer acting with probable cause to knowingly interfere with the performance of any agricultural practices permitted by subdivision (f)(1).

(3) An offense under subdivision (f)(2) is a Class B misdemeanor.

(g)(1) Cruelty to animals is a Class A misdemeanor.

(2) A second or subsequent conviction for cruelty to animals is a Class E felony.

(3) Violation of any prohibition or restriction imposed by the sentencing court pursuant to subsection (e) is a Class A misdemeanor.

T. C. A. § 39-14-203

§ 39-14-203. Fighting or baiting exhibitions

Effective: July 1, 2015

Currentness

(a) It is unlawful for any person to:

(1) Own, possess, keep, use or train any bull, bear, dog, cock, swine or other animal, for the purpose of fighting, baiting or injuring another such animal, for amusement, sport or gain;

(2) Cause, for amusement, sport or gain, any animal referenced in subdivision (a)(1) to fight, bait or injure another animal, or each other;

(3) Permit any acts stated in subdivisions (a)(1) and (2) to be done on any premises under the person's charge or control, or aid or abet those acts;

(4) Be knowingly present, as a spectator, at any place or building where preparations are being made for an exhibition for the fighting, baiting or injuring of any animal, with the intent to be present at the exhibition, fighting, baiting or injuring; or

(5) Knowingly cause a person under eighteen (18) years of age to attend an animal fight.

(b) It is the legislative intent that this section shall not apply to the training or use of hunting dogs for sport or to the training or use of dogs for law enforcement purposes.

(c)(1) Except for any offense involving a cock, an offense under subdivisions (a)(1)-(3) is a Class E felony.

(2) An offense involving a cock under subdivisions (a)(1)-(3) is a Class A misdemeanor.

(d)(1) A violation of subdivision (a)(4) is a Class A misdemeanor.

(2) A violation of subdivision (a)(5) is a Class A misdemeanor. Notwithstanding § 40-35-111(e)(1), the fine for a violation of subdivision (a)(5) shall be not less than one thousand dollars ($1,000) nor more than two thousand five hundred dollars ($2,500).

sets out penalties

different in that sets minimum fine; Most misdemeanors don't have a minimum fine

(e) It is not an offense to own, possess or keep cocks, or aid or abet the ownership, possession or keeping of cocks, for the sole purpose of selling or transporting cocks to a location in which possession or keeping of cocks is legal, as long as it does not violate any other part of this section or federal law.

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Title 39. Criminal Offenses
Chapter 14. Offenses Against Property (Refs & Annos)
Part 2. Animals (Refs & Annos)

T. C. A. § 39-14-205

§ 39-14-205. Intentional killing; police dogs; justifiable killing

Effective: May 8, 2015

Currentness

(a)(1)(A) It is an offense to knowingly and unlawfully kill the animal of another without the owner's effective consent.

(B) A violation of subdivision (a)(1)(A) is theft of property, graded according to the value of the animal, and punished in accordance with § 39-14-105.

↳ sets out grade based on value

(2)(A) In determining the value of a police dog, fire dog, search and rescue dog, service animal or police horse under § 39-14-105, the court shall consider the value of the police dog, fire dog, search and rescue dog, service animal or police horse as both the cost of the animal and any specialized training the animal received.

(B) Notwithstanding subdivision (a)(1)(B), a violation of subdivision (a)(1)(A) with respect to a police dog, fire dog, search and rescue dog, or police horse shall be a Class E felony, unless the offense would be a higher classification based on the animal's value, in which case the violation shall be graded pursuant to subdivision (a)(1)(B).

it's at least an E felony
Aron's Law - K9 Officer Aron (Nashville) Killed in 1998 robbery

(b) A person is justified in killing the animal of another if the person acted under a reasonable belief that the animal was creating an imminent danger of death or serious bodily injury to that person or another or an imminent danger of death to an animal owned by that person. A person is not justified in killing the animal of another if at the time of the killing the person is trespassing upon the property of the owner of the animal. The justification for killing the animal of another authorized by this subsection (b) shall not apply to a person who, while engaging in or attempting to escape from criminal conduct, kills a police dog that is acting in its official capacity. In that case the provisions of subsection (a) shall apply to the person.

Self defense but can't be a trespasser

West's Tennessee Code Annotated
Title 39. Criminal Offenses
Chapter 14. Offenses Against Property (Refs & Annos)
Part 1. Theft (Refs & Annos)

T. C. A. § 39-14-105

§ 39-14-105. Theft of property or services

Effective: January 1, 2017 → If offense date prior to this, grading is different

Currentness

(a) Theft of property or services is:

(1) A Class A misdemeanor if the value of the property or services obtained is one thousand dollars ($1,000) or less;

(2) A Class E felony if the value of the property or services obtained is more than one thousand dollars ($1,000) but less than two thousand five hundred dollars ($2,500);

(3) A Class D felony if the value of the property or services obtained is two thousand five hundred dollars ($2,500) or more but less than ten thousand dollars ($10,000);

(4) A Class C felony if the value of the property or services obtained is ten thousand dollars ($10,000) or more but less than sixty thousand dollars ($60,000);

(5) A Class B felony if the value of the property or services obtained is sixty thousand dollars ($60,000) or more but less than two hundred fifty thousand dollars ($250,000); and

(6) A Class A felony if the value of the property or services obtained is two hundred fifty thousand dollars ($250,000) or more.

(b)(1) In a prosecution for theft of property, theft of services, and any offense for which the punishment is determined pursuant to this section, the state may charge multiple criminal acts committed against one (1) or more victims as a single count if the criminal acts arise from a common scheme, purpose, intent or enterprise.

(2) The monetary value of property from multiple criminal acts which are charged in a single count of theft of property shall be aggregated to establish value under this section.

(c) Venue in a prosecution for any offense punishable pursuant to this section shall be in the county where one (1) or more elements of the offense occurred, or in the county where an act of solicitation, inducement, offer, acceptance, delivery, storage, or financial transaction occurred involving the property, service or article of the victim.

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Part 2. Animals (Refs & Annos)

T. C. A. § 39-14-212

§ 39-14-212. Aggravated cruelty to animals; definitions; penalties

Effective: July 10, 2014

Currentness

(a) A person commits aggravated cruelty to animals when, with aggravated cruelty and with no justifiable purpose, the person intentionally kills or intentionally causes serious physical injury to a companion animal.

(b) For purposes of this section:

(1) "Aggravated cruelty" means conduct which is done or carried out in a depraved and sadistic manner and which tortures or maims an animal, including the failure to provide food and water to a companion animal resulting in a substantial risk of death or death;

→ Not defined

torture defined as every Act, omission, or neglect whereby unreasonable physical pain, suffering, or death is caused or permitted . . . .

(2) "Companion animal" means any non-livestock animal as defined in § 39-14-201;

↳ A pet normally maintained in/near the household(s) of its owner(s), other domesticated animal, previously captured wildlife, an exotic animal, or any other pet, including but not limited to pet rabbits, a pet chick, duck, or pot bellied pig that is not classified as livestock

(3) "Elderly" means any person sixty-five (65) years of age or older; and

(4) "Minor" means any person under eighteen (18) years of age.

(c) Subsection (a) is not to be construed to prohibit or interfere with the following endeavors:

Livestock means all equine as well as animals raised primarily for food or fiber consumption/utilization including but not limited to cattle, sheep, swine, goats, & poultry

(1) Dispatching an animal in any manner absent of aggravated cruelty;

(2) Engaging in lawful hunting, trapping, or fishing activities, including activities commonly associated with the hunting of small game as defined in § 70-1-101(a)(34);

(3) Dispatching rabid or diseased animals;

(4) Dispatching animals posing a clear and immediate threat to human safety;

(5) Performing or conducting bona fide scientific tests, experiments or investigations within or for a bona fide research laboratory, facility or institution;

(6) Performing accepted veterinary medical practices or treatments;

(7) Dispatching animals in accordance with § 44-17-403(e);

↳ has to do with nonprofits or governmental Agencies negligently causing death of a pet while acting on behalf of public health or animal welfare or the killing of a dog that was killing or worrying livestock

(8) Engaging, with the consent of the owner of a farm animal, in usual and customary practices which are accepted by colleges of agriculture or veterinary medicine with respect to that animal;

(9) Dispatching wild or abandoned animals on a farm or residential real property; or

(10) Applying methods and equipment used to train animals.

→ (d) Aggravated cruelty to animals is a Class E felony.

Surrender restriction on custody of Animals

(e) In addition to the penalty imposed by subsection (d), the sentencing court may order the defendant to surrender custody and forfeit all companion animals as defined in subdivision (b)(2), and may award custody of the animals to the agency presenting the case. The court may prohibit the defendant from having custody of other animals for any period of time the court determines to be reasonable, or impose any other reasonable restrictions on the person's custody of animals as is necessary for the protection of the animals.

(f) In addition to the penalty imposed by subsection (d), the court may require the defendant to undergo psychological evaluation and counseling, the cost to be borne by the defendant. If the defendant is indigent, the court may, where practicable, direct the defendant to locate and enroll in a counseling or treatment program with an appropriate agency.

(g) If a defendant convicted of a violation of this section resides in a household with minor children or elderly individuals, the court may, within fifteen (15) days, send notification of the conviction to the appropriate protective agencies.

(h) In addition to the penalty imposed by subsection (d), the defendant may be held liable to the impounding officer or agency for all costs of impoundment from the time of seizure to the time of proper disposition of the case.

(i)(1) In addition to the penalty imposed by subsection (d), the defendant may be held liable to the owner of the animal for damages.

(2) If an unlawful act resulted in the death or permanent disability of a person's guide dog, then the value of the guide dog shall include, but shall not necessarily be limited to, both the cost of the guide dog as well as the cost of any specialized training the guide dog received.

(j) If a juvenile is found to be within the court's jurisdiction, for conduct that, if committed by an adult, would be a criminal violation involving cruelty to animals or would be a criminal violation involving arson, then the court may order that the juvenile be evaluated to determine the need for psychiatric or psychological treatment. If the court determines that psychiatric or psychological treatment is appropriate for that juvenile, then the court may order that treatment.

(k) This section does not preclude the court from entering any other order of disposition allowed under this chapter.

(l) The provisions of this section are not to be construed to change, modify, or amend any provision of title 70, involving fish and wildlife;

(m) The provisions of this section do not apply to activities or conduct that are prohibited by § 39-14-203;

↳ Cock + Animal Fighting

(n) The provisions of this section do not apply to equine animals or to animals defined as livestock by the provisions of § 39-14-201;

Tenn. Op. Atty. Gen. No. 08-124 (Tenn.A.G.), 2008 WL 2790953

Office of the Attorney General

State of Tennessee
Opinion No. 08-124
July 16, 2008

Definition of "Depraved and Sadistic" as it Relates to Aggravated Animal Cruelty

***1** The Honorable Janis Sontany
State Representative
32 Legislative Plaza
Nashville, TN 37243-0153

QUESTION

What is the definition of "depraved and sadistic" as it relates to aggravated animal cruelty under Tenn. Code Ann. § 39-14-212(b)(1)?

OPINION

The terms "depraved and sadistic" are not defined in Tenn. Code Ann. § 39-14-212(b)(1) or elsewhere in the statutory scheme. Therefore, one must look to the plain language of the statute and apply the ordinary meaning of the words.

ANALYSIS

Aggravated cruelty to animals is committed when, "with aggravated cruelty and with no justifiable purpose, such person intentionally kills or intentionally causes serious physical injury to a companion animal." Tenn. Code Ann. § 39-14-212(a). Aggravated cruelty is defined as, "conduct which is done or carried out in a depraved and sadistic manner and which tortures or maims an animal ... "Tenn. Code Ann. § 39-14-212(b)(1). Aggravated cruelty to animals is a Class E felony. Tenn. Code Ann. § 39-14-212(d). The statute does not define what constitutes "depraved and sadistic;" however, it is a basic rule of statutory construction that, when construing or interpreting statutes, courts must "ascertain and carry out the legislature's intent without unduly restricting or expanding a statute beyond its intended scope." *Lavin v. Jordan*, 16 S.W.3d 362, 365 (Tenn. 2000). In so doing, courts "examine the 'natural and ordinary meaning of the language used, without a forced or subtle construction that would limit or extend the meaning of the language.' Where the language of the statute is clear and unambiguous, ... [courts] will give effect to the statute according to the plain meaning of its terms." *Id.* at 365 (citations omitted). "Depraved" has been defined as "morally corrupt; perverted." "Sadistic" has been defined as "deriving of sexual gratification or the tendency to derive sexual gratification from inflicting pain or emotional abuse on others; deriving of pleasure, or the tendency to derive pleasure, from cruelty; extreme cruelty." *American Heritage Dictionary*, 4th Edition (2000).

In order to violate the statute with respect to aggravated cruelty, a person must intentionally torture or maim an animal by engaging in conduct in a morally corrupt or perverted manner or by deriving pleasure or sexual gratification from inflicting pain or cruelty on an animal. In a criminal prosecution under § 39-14-212, it would be the duty of the fact-finder to determine whether the defendant's actions were carried out in a "depraved and sadistic" manner.

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Attorney General and Reporter
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notice doesn't have anything About failure to provide food and water

See also TN v. Christopher Lee Barnett 2010
Coming in future TN v. Frederick D. Curll

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T. C. A. § 39-14-214

§ 39-14-214. Sexual activity with animals

Effective: July 1, 2007

Currentness

(a) A person commits an offense who knowingly:

(1) Engages in any sexual activity with an animal;

(2) Causes, aids, or abets another person to engage in any sexual activity with an animal;

(3) Permits any sexual activity with an animal to be conducted on any premises under the person's charge or control;

(4) Engages in, organizes, promotes, conducts, advertises, aids, abets, participates in as an observer, or performs any service in the furtherance of an act involving any sexual activity with an animal for a commercial or recreational purpose; or

(5) Photographs or films, for purposes of sexual gratification, a person engaged in a sexual activity with an animal.

(b) A violation of this section is a Class E felony.

(c) In addition to the penalty imposed in subsection (b), the court may order that the convicted person do any of the following:

(1) Not harbor or own animals or reside in any household where animals are present;

(2) Participate in appropriate counseling at the defendant's expense; or

(3) Reimburse the animal shelter or humane society for any reasonable costs incurred for the care and maintenance of any animals taken to the animal shelter or humane society as a result of conduct proscribed in subsection (a).

(d) Nothing in this section may be considered to prohibit accepted animal husbandry practices or accepted veterinary medical practices.

(e) If the court has reasonable grounds to believe that a violation of this section has occurred, the court may order the seizure of all animals involved in the alleged violation as a condition of bond of a person charged with a violation.

(f) For purposes of this section:

(1) "Animal" has the same meaning as the term is defined in § 63-12-103;

(2) "Photographs" or "films" means the making of a photograph, motion picture film, videotape, digital image, or any other recording, sale, or transmission of the image; and

(3) "Sexual activity" means physical sexual contact between the person and the animal.

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Part 2. Animals (Refs & Annos)

T. C. A. § 39-14-217

§ 39-14-217. Aggravated cruelty to livestock

Effective: July 1, 2012

Currentness

(a) As used in this section only, "livestock" means all equine as well as animals which are being raised primarily for use as food or fiber for human utilization or consumption, including, but not limited to, cattle, sheep, swine, and goats.

(b) Except as provided in subsections (d) and (e), a person commits aggravated cruelty to a livestock animal who, in a depraved and sadistic manner, intentionally engages in any of the conduct described in subdivisions (c)(1)--(12), the conduct results in serious bodily injury to the animal or the death of the animal, and is without justifiable or lawful purpose.

↳ serious bodily injury defined @ 39-11-106(a)(34)
bodily injury that involves substantial risk of death, protracted unconsciousness, extreme physical pain, protracted or obvious disfigurement, or protracted loss or substantial impairment of a function of a bodily member, organ, or mental faculty

(c) The following conduct constitutes aggravated cruelty to livestock animals if accomplished in the manner described in subsection (b):

(1) Setting an animal on fire;

(2) Burning an animal with any hot object;

(3) Cutting or stabbing an animal with any object;

(4) Causing blunt force trauma to an animal;

(5) Securing an animal to a vehicle and dragging it;

(6) Blinding an animal;

(7) Applying acid or other caustic substance or chemical to any exposed area of an animal or forcing the animal to ingest the substance;

(8) Hanging a living animal;

(9) Skinning an animal while it is still alive;

(10) Administering electric shock to an animal;

(11) Drowning an animal; or

(12) Shooting an animal with a weapon.

(d) Subsections (b) and (c) shall not be construed to apply to, prohibit or interfere with the following:

(1) Any provision of title 70, involving fish and wildlife, or any hunting, trapping, or fishing activities lawful under such title;

(2) Activities or conduct that are prohibited by § 39-14-203; or

↳ Fighting

(3) Dispatching an animal in any manner not prohibited by this section.

(e) The following shall not be construed as aggravated cruelty to a livestock animal as defined in this section:

(1) Dispatching rabid, diseased, sick or injured livestock animals;

(2) Dispatching livestock animals posing a clear and immediate threat to human safety;

(3) Performing or conducting bona fide scientific tests, experiments or investigations within or for a bona fide research

laboratory, facility or institution;

(4) Performing accepted veterinary medical practices or treatments;

(5) Engaging, with the consent of the owner of a livestock animal, in usual and customary practices which are accepted by colleges of agriculture or veterinary medicine with respect to that animal;

(6) Dispatching wild or abandoned livestock animals on a farm or residential real property; or

(7) Applying methods and equipment used to train livestock animals.

(f) In addition to the penalty imposed by subsection (j), the defendant may be held liable to:

(1) The owner of the livestock animal for damages; and

(2) The impounding officer or agency for all costs of impoundment from the time of seizure to the time of proper disposition of the case.

Surrender restriction on custody of animals

(g) In addition to the penalty imposed by subsection (j), the sentencing court may order the defendant to surrender custody and forfeit all livestock animals, and may award custody of the animals to the agency presenting the case. The court may prohibit the defendant from having custody of other livestock animals for any period of time the court determines to be reasonable, or impose any other reasonable restrictions on the person's custody of livestock animals as is necessary for the protection of the animals.

(h) In addition to the penalty imposed by subsection (j), the court may require the defendant to undergo psychological evaluation and counseling, the cost to be borne by the defendant. If the defendant is indigent, the court may, where practicable, direct the defendant to locate and enroll in a counseling or treatment program with an appropriate agency.

(i) This section does not preclude the court from entering any other order of disposition allowed under this chapter.

→ (j) Aggravated cruelty to a livestock animal is a Class E felony.

T. C. A. § 39-11-106

§ 39-11-106. Definitions

Effective: July 1, 2014

Currentness

(a) As used in this title, unless the context requires otherwise:

(1) "Benefit" means anything reasonably regarded as economic gain, enhancement or advantage, including benefit to any other person in whose welfare the beneficiary is interested;

(2) "Bodily injury" includes a cut, abrasion, bruise, burn or disfigurement, and physical pain or temporary illness or impairment of the function of a bodily member, organ, or mental faculty;

(3) "Coercion" means a threat, however communicated, to:

(A) Commit any offense;

(B) Wrongfully accuse any person of any offense;

(C) Expose any person to hatred, contempt or ridicule;

(D) Harm the credit or business repute of any person; or

(E) Take or withhold action as a public servant or cause a public servant to take or withhold action;

(4) “Criminal negligence” refers to a person who acts with criminal negligence with respect to the circumstances surrounding that person’s conduct or the result of that conduct when the person ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person’s standpoint;

(5) “Deadly weapon” means:

(A) A firearm or anything manifestly designed, made or adapted for the purpose of inflicting death or serious bodily injury; or

(B) Anything that in the manner of its use or intended use is capable of causing death or serious bodily injury;

(6)(A) “Deception” means that a person knowingly:

(i) Creates or reinforces a false impression by words or conduct, including false impressions of fact, law, value or intention or other state of mind that the person does not believe to be true;

(ii) Prevents another from acquiring information which would likely affect the other’s judgment in the transaction;

(iii) Fails to correct a false impression of law or fact the person knows to be false and:

(*a*) The person created; or

(*b*) Knows is likely to influence another;

(iv) Fails to disclose a lien, security interest, adverse claim or other legal impediment to the enjoyment of the property, whether the impediment is or is not valid, or is or is not a matter of public record;

(v) Employs any other scheme to defraud; or

(vi)(*a*) Promises performance that at the time the person knew the person did not have the ability to perform or that the person does not intend to perform or knows will not be performed, except mere failure to perform is insufficient to establish that the person did not intend to perform or knew the promise would not be performed;

(*b*) Promising performance includes issuing a check or similar sight order for the payment of money or use of a credit or debit card when the person knows the check, sight order, or credit or debit slip will not be honored for any reason;

(B) "Deception" does not include falsity as to matters having no pecuniary significance or puffing by statements unlikely to deceive ordinary persons in the group addressed;

(7) "Defendant" means a person accused of an offense under this title and includes any person who aids or abets the commission of such offense;

(8) "Deprive" means to:

(A) Withhold property from the owner permanently or for such a period of time as to substantially diminish the value or enjoyment of the property to the owner;

(B) Withhold property or cause it to be withheld for the purpose of restoring it only upon payment of a reward or other compensation; or

(C) Dispose of property or use it or transfer any interest in it under circumstances that make its restoration unlikely;

(9) "Effective consent" means assent in fact, whether express or apparent, including assent by one legally authorized to act for another. Consent is not effective when:

(A) Induced by deception or coercion;

(B) Given by a person the defendant knows is not authorized to act as an agent;

(C) Given by a person who, by reason of youth, mental disease or defect, or intoxication, is known by the defendant to be unable to make reasonable decisions regarding the subject matter; or

(D) Given solely to detect the commission of an offense;

(10) “Emancipated minor” means any minor who is or has been married, or has by court order or otherwise been freed from the care, custody and control of the minor’s parents;

(11) “Firearm” means any weapon designed, made or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use;

(12) “Force” means compulsion by the use of physical power or violence and shall be broadly construed to accomplish the purposes of this title;

(13) “Fraud” means as used in normal parlance and includes, but is not limited to, deceit, trickery, misrepresentation and subterfuge, and shall be broadly construed to accomplish the purposes of this title;

(14) “Government” means the state or any political subdivision of the state, and includes any branch or agency of the state, a county, municipality or other political subdivision;

(15) “Governmental record” means anything:

(A) Belonging to, received or kept by the government for information; or

(B) Required by law to be kept by others for information of the government;

(16) “Handgun” means any firearm with a barrel length of less than twelve inches (12″) that is designed, made or adapted to be fired with one (1) hand;

(17) “Harm” means anything reasonably regarded as loss, disadvantage or injury, including harm to another person in whose welfare the person affected is interested;

(18) “Intentional” means that a person acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result;

(19) “Jail” includes workhouse and “workhouse” includes jail, whenever the context so requires or will permit;

(20) “Knowing” means that a person acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result;

(21) “Law enforcement officer” means an officer, employee or agent of government who has a duty imposed by law to:

(A) Maintain public order; or

(B) Make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses; and

(C) Investigate the commission or suspected commission of offenses;

(22) “Legal privilege” means a particular or peculiar benefit or advantage created by law;

(23) “Minor” means any person under eighteen (18) years of age;

(24)(A) “Obtain” means to:

(i) Bring about a transfer or purported transfer of property or of a legally recognized interest in the property, whether to the defendant or another; or

(ii) Secure the performance of service;

(B) “Obtain” includes, but is not limited to, the taking, carrying away or the sale, conveyance or transfer of title to or interest in or possession of property, and includes, but is not limited to, conduct known as larceny, larceny by trick, larceny by conversion, embezzlement, extortion or obtaining property by false pretenses;

(25) “Official proceeding” means any type of administrative, executive, legislative or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath;

(26) “Owner” means a person, other than the defendant, who has possession of or any interest other than a mortgage, deed of trust or security interest in property, even though that possession or interest is unlawful and without whose consent the defendant has no authority to exert control over the property;

(27) “Person” includes the singular and the plural and means and includes any individual, firm, partnership, copartnership, association, corporation, governmental subdivision or agency, or other organization or other legal entity, or any agent or servant thereof;

(28) “Property” means anything of value, including, but not limited to, money, real estate, tangible or intangible personal property, including anything severed from land, library material, contract rights, choses-in-action, interests in or claims to wealth, credit, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power. Commodities of a public nature, such as gas, electricity, steam, water, cable television and telephone service constitute property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits or other equipment is deemed a rendition of service rather than a sale or delivery of property;

(29) “Public place” means a place to which the public or a group of persons has access and includes, but is not limited to, highways, transportation facilities, schools, places of amusement, parks, places of business, playgrounds and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence. An act is deemed to occur in a public place if it produces its offensive or proscribed consequences in a public place;

(30) “Public servant” means:

(A) Any public officer or employee of the state or of any political subdivision of the state or of any governmental instrumentality within the state including, but not limited to, law enforcement officers;

(B) Any person exercising the functions of any such public officer or employee;

(C) Any person participating as an adviser, consultant or otherwise performing a governmental function, but not including witnesses or jurors; or

(D) Any person elected, appointed or designated to become a public servant, although not yet occupying that position;

(31) “Reckless” means that a person acts recklessly with respect to circumstances surrounding the conduct or the result of the conduct when the person is aware of, but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the

standard of care that an ordinary person would exercise under all the circumstances as viewed from the accused person's standpoint;

(32)(A) "Recorded device" means the tangible medium upon which sounds or images are recorded or otherwise stored;

(B) "Recorded device" includes any original phonograph record, disc, tape, audio, or videocassette, wire, film or other medium now known or later developed on which sounds or images are or can be recorded or otherwise stored, or any copy or reproduction which duplicates, in whole or in part, the original;

(33) "Security guard/officer" means an individual employed to perform any function of a security guard/officer and security guard/officer patrol service as set forth in the Private Protective Services Licensing and Regulatory Act, compiled in title 62, chapter 35;

(34) "Serious bodily injury" means bodily injury that involves:

(A) A substantial risk of death;

(B) Protracted unconsciousness;

(C) Extreme physical pain;

(D) Protracted or obvious disfigurement;

(E) Protracted loss or substantial impairment of a function of a bodily member, organ or mental faculty; or

(F) A broken bone of a child who is twelve (12) years of age or less;

(35) "Services" includes labor, skill, professional service, transportation, telephone, mail, gas, electricity, steam, water, cable television, entertainment subscription service or other public services, accommodations in hotels, restaurants or elsewhere, admissions to exhibitions, use of vehicles or other movable property, and any other activity or product considered in the ordinary course of business to be a service, regardless of whether it is listed in this subdivision (a)(35) or a specific statute exists covering the same or similar conduct; and

(36) "Value":

(A) Subject to the additional criteria of subdivisions (a)(36)(B)-(D), "value" under this title means:

(i) The fair market value of the property or service at the time and place of the offense; or

(ii) If the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the offense;

(B) The value of documents, other than those having a readily ascertainable fair market value, means:

(i) The amount due and collectible at maturity, less any part that has been satisfied, if the document constitutes evidence of a debt; or

(ii) The greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt;

(C) If property or service has value that cannot be ascertained by the criteria set forth in subdivisions (a)(36)(A) and (B), the property or service is deemed to have a value of less than fifty dollars ($50.00); and

(D) If the defendant gave consideration for or had a legal interest in the property or service that is the object of the offense, the amount of consideration or value of the interest shall be deducted from the value of the property or service ascertained under subdivision (a)(36)(A), (B) or (C) to determine value.

(b) The definition of a term in subsection (a) applies to each grammatical variation of the term.

Credits

1989 Pub.Acts, c. 591, § 1; 1990 Pub.Acts, c. 1030, §§ 1, 2; 1995 Pub.Acts, c. 322, § 1, eff. July 1, 1995; 1996 Pub.Acts, c. 1009, § 22, eff. Nov. 1, 1996; 1997 Pub.Acts, c. 437, § 2, eff. July 1, 1997; 2009 Pub.Acts, c. 307, § 1, eff. July 1, 2009; 2009 Pub.Acts, c. 325, § 1, eff. July 1, 2009; 2011 Pub.Acts, c. 348, § 1, eff. July 1, 2011; 2014 Pub.Acts, c. 984, § 1, eff. July 1, 2014.

Notes of Decisions (74)

T. C. A. § 39-11-106, TN ST § 39-11-106
Current with laws from the 2017 First Reg. Sess. of the 110th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text.

End of Document

T. C. A. § 40-17-123

§ 40-17-123. Subpoena for production of books, papers, records, documents, tangible things, electronic data; procedure; affidavits; service; refusal to produce materials; motion to quash; objections

Effective: July 9, 2012

Currentness

(a) The following procedure shall be employed when a law enforcement officer, as defined in § 39-11-106, seeks to obtain a subpoena for the production of books, papers, records, documents, tangible things, or information and data electronically stored for the purpose of establishing, investigating or gathering evidence for the prosecution of a criminal offense.

(b) If the officer has reason to believe that a criminal offense has been committed or is being committed and that requiring the production of documents or information is necessary to establish who committed or is committing the offense or to aid in the investigation and prosecution of the person or persons believed to have committed or believed to be committing the offense, the officer shall prepare an affidavit in accordance with subsection (c).

(c) An affidavit in support of a request to compel the production of books, papers, records, documents, tangible things, or information and data electronically stored shall state with particularity the following:

(1) A statement that a specific criminal offense has been committed or is being committed and the nature of the criminal offense;

(2) The articulable reasons why the law enforcement officer believes the production of the documents requested will materially assist in the investigation of the specific offense committed or being committed;

(3) The custodian of the documents requested and the person, persons or corporation about whom the documents pertain;

(4) The specific documents requested to be included in the subpoena; and

(5) The nexus between the documents requested and the criminal offense committed or being committed.

(d)(1) Upon preparing the affidavit, the law enforcement officer shall submit it to either a judge of a court of record or a general sessions judge who serves the officer's county of jurisdiction. The judge shall examine the affidavit and may examine the affiants under oath. The judge shall grant the request for a subpoena to produce the documents requested if the judge finds that the affiants have presented a reasonable basis for believing that:

(A) A specific criminal offense has been committed or is being committed;

(B) Production of the requested documents will materially assist law enforcement in the establishment or investigation of the offense;

(C) There exists a clear and logical nexus between the documents requested and the offense committed or being committed; and

(D) The scope of the request is not unreasonably broad or the documents unduly burdensome to produce.

(2) If the judge finds that all of the criteria set out in subdivision (d)(1) exist as to some of the documents requested but not all of them, the judge may grant the subpoena as to the documents that do, but deny it as to the ones that do not.

(3) If the judge finds that all of the criteria set out in subdivision (d)(1) do not exist as to any of the documents requested, the judge shall deny the request for subpoena.

(e) The affidavit filed in support of any request for the issuance of a subpoena pursuant to this section shall be filed with and maintained by the court. If a subpoena is issued as the result of an affidavit, the affidavit shall be kept under seal by the judge until a copy is requested by the district attorney general, criminal charges are filed in the case, or the affidavit is ordered released by a court of record for good cause.

(f) A subpoena granted pursuant to this section by a judge of a court of record shall issue to any part of the state and shall command the person, or designated agent for service of process, to whom it is directed to produce any books, papers, records, documents, tangible things, or information and data electronically stored that is specified in the subpoena, to the law enforcement officer and at any reasonable time and place that is designated in the subpoena. A subpoena granted pursuant to this section by a judge of a court of general sessions shall in all respects be like a subpoena granted by the judge of a court of record but shall issue only within the county in which the sessions judge has jurisdiction. The court shall prepare or cause to be prepared the subpoena and it shall describe the specific materials requested and set forth the date and manner the materials are to be delivered to the officer.

(g) If the subpoena is issued by a judge of a court of record, it may be served by the officer in any county of the state by personal service, registered mail, or by any other means with the consent of the person named in the subpoena. If the subpoena is issued by a judge of a general sessions court it shall be served by an officer with jurisdiction in the county of the issuing judge, but may be served by personal service, registered mail, or by any other means with the consent of the person named in the subpoena. The officer shall maintain a copy of the subpoena and endorse on the subpoena the date and manner of service as proof of service.

(h) No person shall be excused from complying with a subpoena for the production of documentary evidence issued pursuant to this section on the ground that production of the requested materials may tend to incriminate the person. Any person claiming a privilege against self incrimination must assert the claim before the court issuing the subpoena and before the time designated for compliance therewith. If the district attorney general thereafter certifies to the court that the interests of justice demands the production of the requested materials for which the claim of privilege is asserted, then the court shall order the production of the materials and no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning the requested materials the person was compelled to produce. If the person fails to assert the privilege against self-incrimination, the person may raise this issue later but will not be entitled to immunity from prosecution.

(i) No subpoena for the production of documentary evidence authorized by this section shall be directed to, or served upon, any defendant, or that defendant's counsel, to a criminal action in this state.

(j) If any person without cause refuses to produce the requested materials within the time and manner designated for compliance by the issuing judge, the district attorney may file a motion for civil contempt with the court with the motion and show cause order being served upon the person. The order shall designate a time and place for a hearing on the merits. If at the hearing the court finds that the person has willfully refused to produce the requested materials, the court may find that the person is in civil contempt and may assess sanctions accordingly including incarcerating the person with or without bond being set until compliance with the subpoena is satisfied. If the person fails to appear for the hearing, the court may issue a writ of attachment for the person.

(k) A person to whom a subpoena is directed may file a motion to quash or modify the subpoena upon a showing that compliance would be unreasonable or oppressive. The person shall file any such motion stating an objection to the subpoena with the clerk of the court for the issuing judge within seven (7) days of service of the subpoena. The filing of the motion shall stay all proceedings pending the outcome of a hearing before the issuing judge. The judge shall conduct the hearing within seven (7) days of the filing of the motion.

(*l*) Notwithstanding subsections (a)-(k), a subpoena shall also comply with the Financial Records Privacy Act, compiled in title 45, chapter 10, as to any records or persons covered by that Act.

Credits

2002 Pub.Acts, c. 849, § 11, eff. July 4, 2002.

Notes of Decisions (7)

T. C. A. § 40-17-123, TN ST § 40-17-123
Current with laws from the 2017 First Reg. Sess. of the 110th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text.

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2010 WL 3822880
Only the Westlaw citation is currently available.

SEE RULE 19 OF THE RULES OF THE COURT OF CRIMINAL APPEALS RELATING TO PUBLICATION OF OPINIONS AND CITATION OF UNPUBLISHED OPINIONS.

Court of Criminal Appeals of Tennessee,
at Nashville.

STATE of Tennessee
v.
Christopher Lee BARNETT.

No. M2009-00756-CCA-R3-CD.
|
Assigned on Briefs March 24, 2010.
|
May 20, 2010.
|
Application for Permission to Appeal
Denied by Supreme Court
Nov. 23, 2010.

West KeySummary

1 **Animals**
Protective and anti-cruelty regulation in general

Evidence was sufficient that defendant acted in a "depraved and sadistic manner," thereby supporting his conviction for aggravated cruelty to animals. Defendant kicked his dog multiple times in the head, forcefully filed away its teeth with only marginally effective anesthesia, then angrily kicked the unconscious and bleeding dog. Defendant's behavior was "marked by corruption of evil" and of "excessive cruelty." T.C.A. § 39-14-212(a) and (b)(2) (2006).

1 Cases that cite this headnote

Direct Appeal from the Circuit Court for **Warren** **County**, No. 11531; Larry B. Stanley, Judge.

Attorneys and Law Firms

Robert S. Peters, Winchester, Tennessee, for the Appellant, Christopher Lee Barnett.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; John H. Bledsoe, Assistant Attorney General; Lisa Zavogiannis, District Attorney General; Josh Crain, Assistant District Attorney General, for the Appellee, State of Tennessee.

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JERRY L. SMITH and THOMAS T. WOODALL, J.J., joined.

OPINION

ROBERT W. WEDEMEYER, J.

***1** A **Warren** **County** jury convicted the Defendant, Christopher Lee Barnett, of attempted aggravated cruelty to animals. The trial court sentenced him to eleven months and twenty-nine days, ordering him to serve seventy-five days in jail and the balance of his sentence on probation. The Defendant appeals, contending the evidence was insufficient to support his conviction and that the trial court improperly sentenced him. After a thorough review of the record and relevant authorities, we affirm the trial court's judgment.

I. Facts

This case arises from the Defendant knocking his pet dog, **Lucas**, unconscious and filing down **Lucas's** teeth after **Lucas** chewed through several boards and wires belonging to the Defendant. A **Warren** **County** grand jury indicted the Defendant for aggravated cruelty to animals. At the Defendant's trial on this charge, the following evidence was presented: Joy Purcell, an employee of a dairy farm adjacent to the Defendant's residence, testified that shortly after arriving at work at 5:00 p.m. on February 16, 2008, she saw the Defendant outside, crouched down about thirty yards from where she stood in her employer's milk barn. Purcell said it was still light outside and nothing obstructed her view of the Defendant. She recalled that the Defendant was on his knees, straddling his dog, a grayish-black Huskey with a fuzzy, thick tail, whom Purcell recognized

as "Lucas," a dog she had seen on the Defendant's property in the past. She recalled that Lucas had always been "real playful, playing around the yard when we were there." She described what she then saw the Defendant do to Lucas:

> He was sitting there straddl[ing] the dog with his legs on each side of it holding the dog down and he had something in his hand and he was just raising it up and just beating the dog on the head just time after time after time.

According to Purcell, while the Defendant beat Lucas in the head "at least a dozen times," Lucas did not move, but his head "flinched" every time the Defendant hit it. Purcell could not identify the object the Defendant used to strike Lucas, but she described it as "long" and "straight."

Purcell next saw the Defendant take an instrument, place it inside Lucas's mouth, and move it back and forth. She said, "the dog's head was just going like this (indicating) every time he would do it. His head was just going back and forth with the force of it." After doing this for about a minute, the Defendant then took the instrument out of Lucas's mouth, and began to strike him again, striking him "several times" until he "just flopped over." Purcell did not see Lucas move at all after this.

Purcell said, after seeing this, she was "in shock" and afraid, and she was unsure whether the Defendant was perhaps drunk or "in a rage." She did not understand why the Defendant "would have done this to this animal." She summoned her daughters, who were nearby milking cows, and telephoned her boss, Vince Maxwell. She asked Maxwell to come to the milk barn because the dog was in danger, but then she told Maxwell she believed the dog was already dead.

***2** The Defendant briefly remained on top of Lucas after Lucas stopped moving but then stood up and began kicking Lucas: "He got up off him and he kicked him several times and then he put his foot on top of him and stomped on him a couple times and the dog just la[y] there."

The owner of the dairy farm, "Mr. Paul," then pulled up to the farm, apparently after Maxwell called him and relayed Purcell's story. Purcell testified that no one besides herself, her daughters, and the Defendant was present before Mr. Paul arrived. Maxwell arrived approximately fifteen minutes later. Fearing the Defendant, Purcell stayed inside the milk barn with her daughters throughout the entire ordeal but continued watching the Defendant in case he headed toward the milk barn to "bother" them. Purcell reiterated that she never saw Lucas move or get up after the Defendant began attacking him.

On cross-examination, Purcell agreed that it was beginning to get dark when she witnessed the Defendant beating Lucas. She testified that the windows in the "tank room" of the milk barn, where she stood watching the Defendant, were very clear because they had to keep the tank room "extremely clean."

Sarah Purcell, Joy Purcell's nineteen year old daughter, testified she was also working at Maxwell's dairy farm on February 16, 2008. She recalled that, around 5:00 p.m., she was in the parlor milking the cows, and her mother was in the tank room. Her mother called her and her sister, who also worked at the dairy, into the tank room. She entered the tank room, looked outside through the glass doors, and saw the Defendant standing in the yard across a driveway. Sarah testified that there was plenty of daylight at this time. She said that she saw Lucas lying motionless on the ground. Sarah then saw the Defendant stand over Lucas, look at him, kick Lucas "really hard" five times, and then stomp on his chest "really hard" two times. She recalled that Lucas remained limp and unmoving on the ground.

Sarah was familiar with the custom of nudging a deer with one's foot to check whether the deer is alive but said the Defendant was not doing this when he kicked Lucas. She reiterated that the Defendant forcefully kicked Lucas, "like he meant to hurt [him], like he was mad at [him]." Sarah's sister began crying while she watched the Defendant attack Lucas. Sarah wished to stop the Defendant but did not do so because she feared the Defendant was using drugs and might hurt her or her family. Instead, she joined her sister in the parlor and resumed milking. Sarah emerged once more and peered briefly outside where she saw the Defendant and several men standing and talking near Lucas.

Sarah insisted that, although the sky became darker earlier in February, when these events took place, she was certain of what she saw. Further, she said she was certain the Defendant was the man whom she saw strike Lucas.

On cross-examination, Sarah testified she believed that the force with which the Defendant kicked Lucas would have caused significant injury. She said she was unaware that Dr. Young did not find any injury to Lucas's torso or abdomen. Sarah did not know whether any lights were on outside when she saw the Defendant striking Lucas. She testified she believed thirty or thirty-five yards separated her and the Defendant. Sarah said she had talked about the Defendant's case with her mother and investigators, but

she did not testify at the preliminary hearing.

***3** The State then read the preliminary hearing testimony of Vincent Maxwell, who was unavailable for trial, into evidence. At the preliminary hearing, Maxwell testified he knew the Defendant only because he and the Defendant rented adjacent properties from Harry Paul. The Defendant rented a residence from Paul, whereas Maxwell rented a dairy farm from Paul.

On February 16, 2008, Joy Purcell called Maxwell, and, as a result of this call, Maxwell called Paul and drove to the dairy farm. When he arrived at the farm, he saw a dog lying unconscious on the ground with the Defendant standing nearby. Maxwell asked the Defendant whether the dog was alive, and the Defendant responded by picking the dog up to chest height by the skin on its neck and hips and saying "See, it's alive." When the Defendant did this, Maxwell saw "a lot of blood" pour from the dog's mouth. The Defendant then "tossed" the dog back to the ground.

The Defendant explained to Maxwell that he filed the dog's teeth because the dog had chewed up wires on his house and on a truck. Around this time, Paul told Maxwell that the situation was "none of his business," told him that the Defendant "was a professional at it," and told Maxwell to return to his dairy farm. Maxwell accordingly left, but as he did so he called the Sheriff's Department on his cell phone. The Sheriff's Department asked him to come to their station and give a statement, which he and the Purcells did after they finished the evening milking.

On cross-examination, Maxwell said he met the Defendant a few weeks before the incident in this case when the Defendant asked to borrow a bungee cord. Maxwell testified that, at this time, he perceived the Defendant to be a "real nice fellow." He testified that he previously never had any problems with the Defendant and that he had never seen him beat his dogs.

Maxwell testified that he saw an instrument that he could not identify lying near the dog when he arrived at the Defendant's house around 5:40 p.m. He said the instrument could have been a file or a rasp. He saw something blue lying on the end of the dog opposite this instrument. Maxwell said that, although he was not sure the dog was alive when the Defendant picked him up, he told the Sheriff's Department later that he believed the dog might still be alive. He recalled that the Defendant told him that he was a "professional at it" and that he had sedated the dog, though he did not go into detail about how he had done so.

Maxwell recalled that, after the Defendant explained why he had filed the dog's teeth, he told the Defendant that a "proper way [exists] to discipline any animal," to which the Defendant responded that "all animals need to be disciplined." Maxwell repeated that "a proper way [exists] to discipline an animal" and that "if the dog was a problem [the Defendant] could have pinned it up or tied it or we would have helped him find a home for it." He explained that the Defendant was actually the first person to refer to what he did to the dog as "discipline."

***4** Maxwell believed that the Defendant and another male whom Maxwell did not know moved the dog into the Defendant's garage because the dog was gone after he ended his call to the Sheriff's Department. Maxwell had not spoken with the Defendant since the incident.

Dr. Sam Young, a veterinarian, recalled that on February 19, 2008, the Humane Society brought **Lucas**, as well as another dog, to his office and requested he closely examine them for signs of abuse. **Lucas** appeared well fed and healthy. Upon closer examination, however, the veterinarian noticed that **Lucas's** eyes were very bloodshot and, when he opened **Lucas's** mouth, he realized most of his teeth were fractured or missing, and his gums were leaking blood. Upon closer examination, he discovered that the whites of both eyes were bruised and hemorrhaging appeared to have occurred beneath the sclera of each eye. The veterinarian explained that these injuries suggested **Lucas** had suffered severe trauma to the head.

In light of the severe trauma to **Lucas's** eyes and mouth, the veterinarian sedated **Lucas** in order to more closely examine him. He found that at least fourteen teeth on **Lucas's** lower jaw and sixteen teeth in the upper portion of his mouth appeared to have been filed down to their roots. Some of these teeth were worn off smoothly all the way down into the root canal, but a number had fractured and shattered down below the gum level.

The doctor x-rayed **Lucas's** torso to search for broken ribs. Reviewing these x-rays, the doctor noticed that **Lucas's** stomach contained a dense material such as metal or bone. This piqued the doctor's interest because, given the state of the dog's teeth, he could not have eaten any hard, bony substance. The objects in **Lucas's** stomach appeared to be the crowns of his own teeth, which he had apparently swallowed.

Assessing the viable treatment options for **Lucas**, the veterinarian suspected that full restoration of his teeth would be a near impossibility given that his teeth were not merely chipped but filed down to the root. He contacted veterinarian dentists, and they confirmed this assessment.

As a result, the veterinarian performed two surgeries on **Lucas**, which restored **Lucas's** mouth to a "functioning" level. These surgeries included thirteen root canals and six total removals of teeth.

The doctor testified he had never seen a dog's mouth in a state similar to that in which he found **Lucas's** mouth. He said no veterinary practice existed in the United States that would leave a dog's mouth in such a state. Dr. Young explained **Lucas's** teeth had been filed well past their roots, which contain a nerve and typically extend anywhere from a third of the way up to nearly the tip of a tooth, and almost to the gum line. He explained that, whereas a healthy dog's incisors and canine teeth are much higher than his molars, all of **Lucas's** teeth except for his back molars, which his cheeks covered, had been filed level.

Dr. Young testified that the instrument used to file **Lucas's** teeth could not have been a traditional dental instrument for dogs. Similarly, he said a "machinist file," a file used to sharpen farm equipment such as a lawnmower blade, could not have been used to file **Lucas's** teeth. The doctor explained that a machinist file would have left a smooth edge, whereas **Lucas's** teeth were shattered where they were flattened.

***5** The doctor said the only instrument he could imagine was used was a dental float, which is used to file sharp points on a horse's teeth or rasps on a horse's hoof. Dr. Young had never heard of its use on any other animal. He explained that, as a horse ages, its teeth can develop a sharp edge that can cut its cheek and tongue. In order to correct this, a dental float is used to file away the enamel that has caused this sharp edge. Dr. Young testified that this process is painless because the dental float is used only to file away the enamel but that, if one were to file deeper, into the root, this would be painful. He testified that he does not typically sedate a horse in order to file its teeth but that he might have to sedate a horse that was a "bad actor."

Dr. Young explained using a dental float to file away a dog's teeth without sedating the dog would be physically impossible for the doctor. He explained that, without sedation, a dog would not remain still, would experience a great deal of pain, and probably would bite the person performing the filing. He said he would use prescription drugs in order to sedate the dog. The doctor said that only a veterinarian would have access to the sort of drug necessary to sedate a dog. Dr. Young testified that in order to perform a root canal on a dog, he would have to place the dog under deeper anesthesia than that which would be necessary to perform open chest surgery. He explained that the stimulus of pain and the resulting movement required the deeper anesthesia. The doctor testified that it is standard practice to administer post-operative pain medication to a dog after performing a root canal.

Dr. Young testified that he agreed to file a dog's teeth only once, when an elderly couple asked him to file their dog's canine teeth because the dog was set to be put to sleep for "nipping" people. The veterinarian filed down the dog's canine teeth and filled the root canals. He recalled that several coon hunters had asked him to cut their dogs' canine teeth off because the dogs bite trees. The doctor testified that he always refused to do this.

The doctor testified that no veterinary practice existed that would warrant the "sort of activity" that had apparently occurred. He testified that if a licensed veterinarian had performed this crude surgery on an animal and left it in the condition in which he found **Lucas**, the veterinarian would "run a good risk" of losing his veterinary license. Dr. Young said that, although a dog probably has a higher pain threshold than a human, the damage to **Lucas's** mouth almost certainly subjected **Lucas** to severe pain.

On cross-examination, Dr. Young said that animal owners sometimes perform procedures on their animals that a veterinarian normally would perform. The doctor did not know whether other veterinarians had agreed to file down a coon dog's teeth. In fact, he was not aware of any veterinarian ever filing down a dog's teeth for any reason. He testified that, although he does not declaw cats, his partner does. Dr. Young said he does, however, occasionally perform a dental float procedure on a horse. He agreed that, in the past, animal owners have performed many procedures on their animals that he would not be willing to perform.

***6** Although he could not pinpoint the exact date on which **Lucas's** zygomatic arch was fractured, the doctor said it must have been fractured within two weeks of when he saw **Lucas**, three days after the incident in this case occurred. He agreed that he did not know what exactly was inside **Lucas's** stomach, but he said it could not have been wire.

Harry Paul, a retired dairy farmer, testified that he leases a house to the Defendant, whom he described as a good renter. Paul said that he had been very familiar with the Defendant's dogs, as he had seen them when he visited the property every morning to feed his calves. He said they were very friendly dogs, who ran out every morning to meet him. Paul said the Defendant "loved" his dogs and petted them, treating them "like they were babies." Paul was acquainted with Vincent Maxwell, the owner of the dairy farm next to the property he leased to the Defendant, and the ladies that milk Maxwell's cows.

Paul recalled that on February 16th sometime after 5:00 p.m. Maxwell called him and reported that he had just spoken with Purcell, who told him the Defendant had just beaten his dog unconscious with a pipe wrench. Maxwell said he was afraid he would "get into it" with the Defendant if he himself went to speak with the Defendant, so he asked Paul to go check on the situation instead.

Paul testified that, when he arrived, it was already dark outside. He saw the Defendant standing in the yard, and he went over and talked to him. Paul testified he saw **Lucas**, whom he described as "asleep," and he said that "there wasn't a mark on the dog." Paul believed **Lucas** had been "put under anesthesia."

Paul recalled that Maxwell arrived a few minutes later and asked the Defendant whether **Lucas** was dead. According to Paul, the Defendant responded, "He's not dead," and picked up **Lucas** "by his skin" and set him on his feet. Paul said **Lucas** remained on his feet for five to ten seconds, though he was in a daze, but he "went on to the ground because he was still under sedation." Paul said he never saw the Defendant drop or kick **Lucas**.

Paul asked the Defendant why **Lucas** was sedated, and the Defendant told him he had put **Lucas** to sleep and filed his teeth off because **Lucas** had chewed wires under his truck, the "pigtail" on his truck, the liner bed on his truck, and satellite wires under his house. Paul testified he knew the dog had been chewing things on the property and digging holes in the ground, and he himself had tried to cover the vents under the house, but **Lucas** chewed up or moved every cover he used to cover the vents.

Paul testified he had never seen the Defendant beat, hit, or kick **Lucas**. He also said that **Lucas** had never exhibited any fear of either himself or the Defendant. Paul testified that, when he went to his barn the next day to feed his calves, **Lucas** ran out with the Defendant's other dog and met him as they always had before. He said neither was whimpering or otherwise appeared to be in pain. Paul said nothing about the Defendant's past or present behavior changed his opinion of the Defendant.

***7** On cross-examination, Paul said he began leasing his house to the Defendant on January 1, 2008, which was thirty-six days before this incident. He explained that he had known the Defendant before he moved into his property because the Defendant previously lived down the street. Paul recalled that he used to see the Defendant's dogs when he lived down the road and that, at that time, he kept them collared and contained in the yard. He acknowledged that, although he saw the dogs daily, the Defendant could have beaten them when he was not around the property.

Paul testified that it was dusk, not entirely dark, when Maxwell called him around 5:45 p.m. He said the front of the garage on the property the Defendant rented had a light that came on at night. Paul went into more detail about the scene he found when he arrived to check on **Lucas**. He said, when he arrived, the Defendant was standing in front of the garage, and **Lucas** was lying motionless on the ground. Paul said that **Lucas** was not bleeding and that he did not see any device, including any instrumentality of anesthesia, lying near **Lucas**. He explained that he believed the Defendant had sedated **Lucas** because the Defendant told him he had done so. Paul agreed that it was not appropriate to sedate a dog by beating it over the head and that, had the Defendant done so, he would not believe the Defendant was "a person that is good to his dogs."

Paul recalled that, when Maxwell arrived, Maxwell was "kind of hyper" and "kind of hollered" at the Defendant when he asked the Defendant whether **Lucas** was dead. Paul said blood did not pour from **Lucas's** mouth when the Defendant picked him up, and he could not tell whether **Lucas's** mouth was bleeding because "his mouth was closed." He recalled that, before Maxwell arrived, the Defendant told him he had sedated **Lucas** and filed his teeth because he had "chewed up so much stuff."

Paul denied that he said anything to Maxwell once he arrived, specifically denying that he told Maxwell that whether **Lucas** was dead was "none of his business." He did not know whether the Defendant told Maxwell that his treatment of **Lucas** was "none of his business." Paul believed that the Defendant told Maxwell that he had sedated **Lucas** and filed his teeth because he had chewed his property. Paul said he stayed until Maxwell left. Paul testified that, several days after this incident, after learning Maxwell reported the Defendant, Paul may have told Maxwell that what the Defendant did with **Lucas** was his own business.

Paul testified he believed that Maxwell should not have come to the house he leased to the Defendant and that reporting the Defendant was unnecessary. He acknowledged that he and Maxwell had previously disagreed about items they borrowed from one another.

On redirect examination, Paul estimated that 260 feet separated the milk barn from where the Defendant stood with **Lucas** near his garage.

Dr. Philip Gordon, a licensed veterinarian with the Tennessee Department of Agriculture, testified that the

Defendant worked with him part time from 1990 to 1992. He testified that, during this time, he never observed the Defendant abuse an animal and that he "talked to them, interacted with them, walked them, [was] hands on." He testified that the Defendant would have observed many procedures he performed, including the use of a float blade to file a horse's molars. Although the doctor could not specifically recall the Defendant observing him file a horse's teeth, he testified the Defendant likely saw him perform this routine procedure. Regardless of whether the Defendant observed such a procedure, Dr. Gordon said the Defendant would never have participated or aided him in performing the procedure.

***8** Dr. Gordon testified that he would not use a dental float on many animals but that he used one to file a coon dog's teeth three or four times. The doctor said that veterinary standards evolve and that some widely accepted procedures in the past now are out of favor. He testified he had never seen the Defendant do anything that was deliberately cruel to any animal.

On cross-examination, Dr. Gordon testified that, when he has filed coon dogs' teeth, he used the fine side of the dental float that he uses to file a horse's teeth. He explained that filing a dog's teeth with a dental float is not common because doing so neither prevents a dog from chewing on a tree or fighting other dogs; it merely makes the damage from doing so less severe. The doctor said that, on the occasions on which he has filed a dog's teeth, he has filed only minimally, only enough to remove the sharp edges, never filing enough to strike a nerve. He also said he used a drug called sodium Pentothal to anesthetize each coon dog whose teeth he filed. Dr. Gordon testified that filing a dog's teeth without deep sedation likely would be impossible due to the pain filing causes.

The doctor explained that sodium Pentothal, a general anesthesia with a short-acting barbituate, is no longer on the market. Dr. Gordon testified that neither sodium Pentothal nor any other anesthesia necessary to sedate a dog is available on the open market to a lay person and only a veterinarian would have access to these sedatives. He said, however, that a farrier, the Defendant's job title when he worked for Dr. Gordon, would have access to Rompun and Acepromazine, pre-anesthetic drugs with only short-term sedative potential. Rompun and Acepromazine are used on both horses and dogs, and are commonly administered to calm a boisterous horse in order for a veterinarian to perform minor procedures on a horse's mouth or feet. He clarified that only a licensed veterinarian could legally administer these drugs.

Dr. Gordon agreed that no legitimate purpose for filing a dog's teeth exists. He testified that, although he did not recall allowing the Defendant to file a horse's or a dog's teeth, allowing a licensed veterinary technician to file a horse's teeth under supervision would be within veterinary regulations. The doctor said that, when he has treated a dog's fractured teeth in the past, the dog displayed pain and discomfort for only twelve to twenty-four hours after treatment.

On redirect examination, Dr. Gordon explained that a farrier shoes and trims a horse's feet. He said farriers do not have access to sedatives but, in his estimation, would need sedatives given the difficulty of working on a horse's feet. Also, he said sedatives would be useful in filing a horse's teeth because a horse is prone to bite when his teeth are being filed.

The Defendant, who was thirty-six at the time of trial, testified that he held a bachelor's degree in animal science and a master's degree in animal physiology and that he had completed two and a half years toward a doctorate in animal physiology. He explained that animal physiology is the study of the systemic physiology of cows and horses and that his doctoral focus is on reproduction. He recalled that he worked at an animal clinic off and on for nine years and continuously for six years, for a total of fifteen years. He said that, during this time, he prepped dogs for surgery, floated teeth, bred mares, dehorned calves, and "anything and everything that floated through that clinic." As to his interaction with dogs specifically, the Defendant bathed them, prepped them for surgery, walked them, and cleaned their kennels, among other things. As an adult, the Defendant owned three dogs and two cats. The Defendant said that, during the time he worked with Dr. Gordon, he saw dental floats used on a horse countless times and on a dog at least three times.

***9** The Defendant testified he was a certified farrier, meaning he passed several written and hands-on exams demonstrating his ability to trim and shoe a horse's foot. The Defendant explained that he did not need to sedate every horse to shoe it but that some horses protest so much that he had to sedate them. He cited the example of a particularly violent horse who was so notorious for being defensive that her veterinarian prescribed Rompun and Acepromazine to the horse's owner to give to the Defendant for use when he shoed her. He explained that this is how he acquired Rompun, which he testified he used to sedate **Lucas**. He said he administered one "cc" of Rompun to **Lucas**, and five minutes later **Lucas** "just went over and laid down and was out."

He testified that he had never beaten or hit either of his dogs but that he "scolded" **Lucas** once with a magazine

when Lucas fought with Honey, his boxer, over food. He confirmed that he moved from a house down the street into his current residence, where the incident in this case happened. He said Lucas began demonstrating problem chewing behavior when he lived down the street. He recalled that Lucas chewed all the front and back wires from under his 1985 model truck and that he later chewed all the front and back wires from under his 1998 Dodge truck. Lucas also chewed the under-pinning of a trailer as well as duct work. During the summer of 2006, a particularly hot summer, Lucas chewed the wires of his central air conditioning unit, which incapacitated the unit. He recalled that, because his air conditioning did not work after this, he had to travel to Manchester, Tennessee, and rent a hotel room in order to sleep in comfort.

The Defendant said that, although some people may have euthanized a dog who behaved like Lucas, he was sentimentally attached to Lucas due to Lucas's similarity to a dog the Defendant had as a child. He explained that, rather than "get rid of" Lucas, he tried several times to "cure this dog of this destructive habit." First, he collared Lucas to a long lead attached to a corkscrew stake driven into the ground in order to limit the perimeter in which Lucas could travel. He abandoned this approach because he felt guilty confining Lucas and because Lucas was chewing on the lead itself. Next, he purchased a radio fence system to keep him in his yard, and he parked his trucks outside the fence line. Lucas, however, began chewing under his house, so the Defendant consulted a trainer at a Manchester animal clinic, who told him to get another dog because Lucas's chewing was due to boredom or loneliness.

Acting on the trainer's advice, the Defendant acquired his boxer, Honey. After Honey arrived, Lucas's behavior slightly improved, but he eventually resumed chewing, so he returned to the trainer, telling her he was "at his wit's end." At the trainer's suggestion, the Defendant filled dog toys with Cheez Whiz, froze the toys, and gave them to Lucas, hoping this would occupy him. This did not work, and neither did several rawhide bones he bought Lucas. He said Lucas would simply bury the bones and return to chewing things on the property. He also gave Lucas cow bones, which he would destroy in a day. The Defendant said this chewing behavior lasted ten and a half months, nine months of which he spent actively seeking to curb the behavior.

***10** The Defendant said that one day he came home and found that Lucas had chewed the pigtail off of a trailer he had rented and that he had chewed all the wires off of a commercial lawnmower, belonging to a business associate, that the Defendant was storing in his garage. He testified that he had to pay for the damage to the rented trailer and that the lawnmower was worth $10,000. The Defendant recalled that, at this point, he decided to file Lucas's teeth. He described his thought process: "[I said to myself, T]here is a ten thousand dollar lawnmower he's chewed all the wires off of. I can't keep this up and I remembered we had done this procedure and instead of killing the dog, I gave him the shot and put him out and did the dental procedure."

The Defendant testified that, because he did not intend to inflict any harm or pain upon Lucas, he put him to sleep before he filed his teeth. He testified the only reason he filed Lucas's teeth was to keep him from chewing wires under his house and destroying his property. He emphasized that people warned him that the exposed, torn wires were a fire hazard. He said he liked Lucas, that he still likes Lucas, and that Lucas had never exhibited any fear toward him. The Defendant emphasized that the morning after he filed Lucas's teeth, Lucas acted normally toward him and ate dry dog food, as was his custom.

On cross examination, the Defendant testified that when he came home on February 16, 2008, and found the damage Lucas had caused to the trailer and lawnmower, he had "had enough." In the Defendant's mind, he had only two options: kill Lucas or file his teeth down. He acknowledged that he could have given Lucas away rather than kill him or file his teeth, but he said the person to whom he gave Lucas might expect him to pay for any damage Lucas caused.

The Defendant said that, contrary to Purcell's testimony, he never struck Lucas in the head. He acknowledged that, because he had never met Purcell before the day in question, she had no reason to lie about him. The Defendant also denied kicking Lucas, as Purcell's daughter said he had done. He said that, at the most, he nudged Lucas with his foot to see whether he was awake yet. He agreed that the veterinarians were probably correct when they testified that filing a dog's teeth past the enamel and down to the gum line is an abnormal practice. He said, "I filed them and if I went too far, so be it. I didn't mean to do it too far. I'm not a professional. I just did a procedure that I had seen done and tried to emulate a procedure that I had seen done."

The Defendant testified that he did not know whether Lucas experienced pain when he filed Lucas's teeth, but he emphasized that Lucas was able to eat dry food the next day. He said he gave Lucas 150 milligrams of clindamycin, an antibiotic, on Sunday morning, Sunday evening, and again on Monday morning. He explained that he received this antibiotic previously for a dog whose leg

was injured. Recalling from his days in the animal clinic that clindamycin was the antibiotic "of choice," he gave it to **Lucas** after filing his teeth. The Defendant testified that, in his view, he did nothing wrong because he merely performed a surgery veterinarians perform, though he did so to a greater "extent."

***11** On redirect examination, the Defendant testified that, in sedating **Lucas** and later giving him antibiotics, he performed the filing procedure just as a veterinarian would do. He said he filed **Lucas's** teeth "in order to avert [or] end a problem," which he identified as the "chewing of all [his] property, the wires, [his] vehicles, you know, everything that he was chewing." The Defendant testified that he did not file **Lucas's** teeth in order to harm **Lucas**.

Dr. Young again testified, in rebuttal to the Defendant's evidence, explaining that the anesthetic Rompun is a trade name for xylazine, which is a sedative and analgesic approved for use with horse and deer. He testified that, though Rompun is sometimes used as a pre-anesthetic to prepare a dog to receive anesthesia, it never is used by itself as an anesthetic. He explained that Rompun cannot be used to anesthetize an animal because the level necessary to cause anesthesia is highly lethal. He agreed that, in order to sedate a dog, such as **Lucas**, using Rompun, one would have to use "right at a lethal dose, maybe past it." He said if, rather than completely sedating **Lucas**, the Defendant gave **Lucas** only one "cc" of Rompun, **Lucas** would be immobile but would probably thrash around when the Defendant filed his teeth. He explained that **Lucas** would thrash not because he was experiencing pain but because he would be awake and aware of what was going on. Dr. Young testified that Acepromazine is "strictly a tranquilizer," explaining that it only immobilizes an animal rather than relieving any pain or causing sedation.

The doctor testified that both Rompun and Acepromazine are prescription drugs, which "have to come through a licensed veterinarian." He testified that he cannot legally prescribe or distribute these drugs to a lay person and allow the lay person to administer them. He testified that clindamycin, an antibiotic, is a prescription drug that a lay person could obtain from a veterinarian and give to an animal.

Dr. Young testified that, out of caution, his clinic fed **Lucas** only canned dog food. He did not know whether **Lucas** would have been able to chew dry food. Finally, the doctor testified that the Defendant could not have filed **Lucas's** teeth using only Rompun and Acepromazine, emphasizing again that the level of Rompun necessary to sedate **Lucas** would have been lethal.

Based upon this evidence, the jury convicted the Defendant of attempted aggravated cruelty to animals.

At the Defendant's sentencing hearing, a representative from the **Warren County** Humane Society, Andi Anderson, testified about the physical trauma **Lucas** sustained as a result of the Defendant's conduct. She testified that **Lucas** was brought to her at the Humane Society with seven fractured teeth and thirteen bleeding pulp wounds. She said that for the two weeks leading to the restorative surgery Dr. Young performed, **Lucas** could only eat specially prepared meals, and he consistently required pain medication. **Lucas** continued to require specially prepared meals for several weeks after his surgery until his mouth was well. She said that **Lucas** also suffered from head trauma, which the bleeding in the whites of his eyes made evident. Anderson appealed to the trial court to "come forward with a good resolution," saying that "if there was ever a case where something was done terrible to an animal this would have to be it."

***12** At the conclusion of the hearing, the court sentenced the Defendant to eleven months and twenty-nine days at 75%, with seventy-five days to be served in the **Warren County** jail and the remainder on probation. It is from this judgment that the Defendant now appeals.

II. Argument

On appeal, the Defendant contends the evidence is insufficient to support his conviction and that the trial court erred in sentencing him.

A. Sufficiency of the Evidence

The Defendant contends the evidence is insufficient to support his conviction for attempted cruelty to animals. He argues that, while his actions may have been "misguided" and "outside what veterinarians would claim reasonable," the record does not establish that he acted in a "depraved and sadistic" manner as a conviction for attempted aggravated animal cruelty requires.

The State responds that both the manner in which the Defendant filed **Lucas's** teeth and the resulting damage support the jury's finding that the Defendant attempted to commit aggravated animal cruelty against **Lucas**. Further, the State contends that the record would also support a

conviction for the indicted offense of aggravated cruelty to animals and, as such, sufficiently supports the lesser-included offense of attempted aggravated cruelty to animals. The State also notes that the record does not support any statutory exclusion to animal cruelty.

In determining the sufficiency of the evidence, this Court should not re-weigh or re-evaluate the evidence. *State v. Matthews,* 805 S.W.2d 776, 779 (Tenn.Crim.App.1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from the evidence. *State v. Buggs,* 995 S.W.2d 102, 105 (Tenn.1999); *Liakas v. State,* 199 Tenn. 298, 286 S.W.2d 856, 859 (Tenn.1956). "Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact." *State v. Bland,* 958 S.W.2d 651, 659 (Tenn.1997); *Liakas,* 286 S.W.2d at 859. "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State." *State v. Cabbage,* 571 S.W.2d 832, 835 (Tenn.1978); *State v. Grace,* 493 S.W.2d 474, 476 (Tenn.1973). The Tennessee Supreme Court stated the rationale for this rule:

> This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 219 Tenn. 4, 405 S.W.2d 768, 771 (Tenn.1966) (citing *Carroll v. State,* 212 Tenn. 464, 370 S.W.2d 523 (Tenn.1963)). This Court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record, as well as all reasonable inferences which may be drawn from the evidence. *Goodwin,* 143 S.W.3d at 775 (citing *State v. Smith,* 24 S.W.3d 274, 279 (Tenn.2000)). Because a verdict of guilt against a defendant removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. *State v. Carruthers,* 35 S.W.3d 516, 557-58 (Tenn.2000). Further, we note that when the evidence is sufficient to support a conviction for the greater offense charged, a defendant "cannot complain of the jury finding him guilty of the lesser offense." *McDonald v. State,* 512 S.W. 636, 649 (Tenn.Crim.App.1974); *see State v. Carrie Ann Brewster and William Justin Brewster,* No. E2004-00533-CCA-R3-CD, 2005 WL 762604, *1 (Tenn.Crim.App., at Knoxville, Jan. 25, 2005), *perm. app. denied* (Tenn. Aug. 22, 2005).

***13** A person commits aggravated cruelty to animals when, with aggravated cruelty and with no justifiable purpose, he intentionally kills or intentionally causes serious physical injury to a "companion animal," which includes dogs. T.C.A. § 39-14-212(a) and (b)(2) (2006). Also, the Code defines "aggravated cruelty" as "conduct which is done or carried out in a depraved and sadistic manner and which tortures and maims an animal...." T.C.A. § 39-14-212(b)(1). Because the statute does not define either "depraved" or "sadistic," we consider the ordinary meaning of these words in evaluating the sufficiency of the evidence. Merriam-Webster's Dictionary defines *depraved* as "marked by corruption or evil; especially: perverted." *Merriam-Webster Online Dictionary.* 2010. Merriam-Webster Online. 8 April 2010 < http://www.meriam-webster.com/dictionary/depraved.> It provides two definitions of *sadistic:* (1) "a sexual perversion in which gratification is obtained by the infliction of physical or mental pain on others (as in a love object)"; and (2) a "delight in cruelty" or "excessive cruelty." *Id.* <http://www.meriam-webster.com/dictionary/sadistic.>

A person commits criminal attempt where, acting with the kind of culpabiltity otherwise required for the principle offense, the person "acts with intent to cause a result that is an element of the offense, and believes the conduct will cause the result without further conduct on the person's part...." T.C.A. § 39-12-101 (2006). Thus, in order to have committed attempted aggravated animal cruelty, the Defendant must have intended to kill or cause serious physical injury to **Lucas** and done so by conducting himself "in a depraved and sadistic manner" that tortured or maimed **Lucas**. T.C.A. §§ 39-12-101 and 39-14-212(a) and (b)(2).

The evidence in this case, viewed in the light most favorable to the State, showed that the Defendant arrived home and found that his dog, **Lucas**, had chewed through several wires on his property. Having dealt with **Lucas's** problem behavior for months, the Defendant, out of anger and frustration, resolved to file down **Lucas's** teeth. The Defendant testified that he administered a pre-anaesthetic drug and a tranquilizer to **Lucas** as he prepared to file his teeth. Neither of these would have completely immobilized **Lucas** or incapacitated him from feeling pain, but what the

Defendant next did would: The Defendant straddled **Lucas** and struck his head at least ten times with an unidentified object, which fractured **Lucas's** zygomatic arch and caused orbital bleeding. When **Lucas** stopped struggling, the Defendant wielded an unidentified instrument, perhaps an equine dental float, forced this into **Lucas's** mouth, and drug the instrument back and forth against **Lucas's** upper and lower teeth for approximately one minute.

Examination later revealed that the Defendant filed away thirty of **Lucas's** teeth to their roots, leaving many of these teeth fractured and shattered. **Lucas** appeared to have swallowed several of the crowns of his teeth that the Defendant filed away. The pre-anesthetic **Lucas** received from the Defendant would remove only some of his sensation of pain, and it would neither cause him to lose consciousness nor completely immobilize him. Conversely, the tranquilizer the Defendant administered to **Lucas** would only immobilize **Lucas**; it would not relieve pain or render him unconscious. Thus, based on the Defendant's own testimony, **Lucas** would have experienced pain while the Defendant filed his teeth and been aware of what the Defendant was doing. Thirteen root canals and six extractions were necessary to restore **Lucas's** mouth to a functioning level. In the weeks leading up to these restorative procedures and in the following recovery period, **Lucas** could eat only food that had been specially prepared for him.

***14** After the Defendant stopped filing **Lucas's** teeth, he began to strike **Lucas's** head again until **Lucas** was completely motionless. The Defendant then rose from where he had been straddling **Lucas**, and he began angrily kicking **Lucas** "like he meant to hurt him, like he was mad at him." The Defendant also stomped on **Lucas's** chest several times.

When Maxwell, his neighbor, inquired as to whether **Lucas** was alive, the Defendant lifted **Lucas**, who was unconscious, up by his skin to chest-level and then carelessly tossed him back down to the ground. Maxwell then asked the Defendant why he had filed **Lucas's** teeth, and the Defendant referred to his actions as a form of "discipline," explaining that **Lucas** had chewed wires around his property. When he testified at his trial, he maintained this defense of his treatment of **Lucas**, defiantly stating that he simply attempted to replicate a procedure he had previously observed and that if he improperly did so, then "so be it."

We conclude that the record adequately supports the jury's finding that the Defendant attempted to commit aggravated cruelty to animals. The Defendant brutally knocked **Lucas** unconscious, filed his teeth, kicked **Lucas** several times while he remained unconscious, and then callously batted around **Lucas's** body. The evidence adduced at trial establishes that **Lucas** experienced pain both during and after the crude surgery the Defendant performed and that **Lucas** was only able to regain "functionality" as opposed to full restoration of his dental structure. Thus, the Defendant's surgery both tortured **Lucas** and left him maimed. The Defendant testified that he intended to file away **Lucas's** teeth, and from his testimony at trial we infer that he was not surprised by the extent of damage to **Lucas's** mouth his conduct caused. Thus, we conclude that the Defendant intended to severely physically injure **Lucas** and in fact did so.

Further, we note that the record need not show that the Defendant acted with the sole intent of injuring **Lucas**; the offense definition is broad enough to allow for the Defendant's additional objective of preventing further damage to his property. It is enough that the Defendant intended to file away **Lucas's** teeth to the root, causing severe physical injury, and that he did so through depraved and sadistic means that tortured or maimed **Lucas**.

Indeed, concerning the actus reus of the Defendant's conduct, we conclude that the Defendant filed away **Lucas's** teeth through depraved and sadistic means. In our view, striking a dog multiple times in the head, forcefully filing away his teeth with only marginally effective anesthesia, and then angrily kicking the unconscious and bleeding dog is behavior "marked by corruption or evil" and of "excessive cruelty." *See* T.C.A. § 39-14-212(b)(1). Therefore, we conclude the record adequately supports the jury's finding that the Defendant intentionally carried out severe physical injury to **Lucas** through depraved and sadistic means that tortured and maimed **Lucas**.

***15** Further, we note that the elements of attempted aggravated cruelty to animals are essentially identical to those of aggravated cruelty to animals, the offense for which the Defendant was indicted. To wit, aggravated cruelty to animals requires that an offender intentionally cause serious physical injury to a companion animal, with aggravated cruelty and with no justifiable purpose. T.C.A. § 39-14-212. As discussed above, attempted aggravated cruelty to animals requires that an offender act with aggravated cruelty and with no justifiable purpose, believing his conduct will cause severe physical injury on a companion animal with no further conduct on the offender's part. T.C.A. § 39-12-101. In this case, the record establishes not only that the Defendant acted with aggravated cruelty and with no justifiable purpose but also that his actions did in fact cause severe physical injury to **Lucas**. As such, the evidence is sufficient to support a finding of guilt as to aggravated cruelty to animals, for

which the Defendant was originally indicted. The evidence is also, therefore, sufficient to support a finding of guilt as to attempted aggravated cruelty to animals. The Defendant is not entitled to relief on this issue.

B. Sentencing

The Defendant contends the trial court erred when it denied him full probation. He argues that the evidence adduced at sentencing did not overcome "the statutory presumption of alternative sentencing." He argues his lack of a criminal history, his education, his history of peaceful relationships with animals, and the fact that he simply "did something totally out of line and out of character" establish his suitability for full probation under the principles of misdemeanor sentencing in the Sentencing Act. The State responds that the trial court considered the appropriate sentencing factors and that the "horrifying facts of this case" justify the Defendant's sentence.

Misdemeanor sentences must be specific and in accordance with the principles, purposes, and goals of the Criminal Sentencing Reform Act. T.C.A. §§ 40-35-104, -302 (2006); *State v. Palmer,* 902 S.W.2d 391, 393 (Tenn.1995). We review misdemeanor sentencing de novo with a presumption of correctness. T.C.A. § 40-35-401(d) (2006). "[T]he presumption of correctness ... is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." *State v. Ashby,* 823 S.W.2d 166, 169 (Tenn.1991). As the Sentencing Commission Comments to this section note, the burden is now on the appealing party to show that the sentencing is improper. T.C.A. § 40-35-401, Sentencing Comm'n Cmts (2006).

The misdemeanor offender must be sentenced to an authorized determinant sentence with a percentage of that sentence designated for eligibility for rehabilitative programs. T.C.A. § 40-35-302. A convicted misdemeanant has no presumption of entitlement to a minimum sentence, and trial courts are afforded considerable latitude in misdemeanor sentencing. *State v. Johnson,* 15 S.W.3d 515, 518 (Tenn.Crim.App.1999); *State v. Baker,* 966 S.W.2d 429, 434 (Tenn.Crim.App.1997); *State v. Creasy,* 885 S.W.2d 829, 832 (Tenn.Crim.App.1994).

***16** At the conclusion of the sentencing hearing, the trial court noted that the jury's finding of guilt as to attempted aggravated animal cruelty implied that it credited the Defendant's testimony that he anesthetized **Lucas** before filing his teeth. The trial court expressed perplexity that the Defendant, an educated, middle-aged man with extensive experience with animals and little to no criminal history, "just did something totally out of line and out of character." The trial court said sentencing the Defendant was very difficult given the contrast between his sparse criminal history and the gravity of his conduct toward **Lucas**:

> [I]t is a very unusual incident. There was no proof, that I know of, of any other acts like this and, in fact, the defendant had worked for a veterinarian who testified that he was good with the animals. And the gravity of this instance, the gravity of this act is just bizarre compared to everything else I know which is why it makes it very difficult to sentence.
>
> The only thing I can figure ... is that you really lost it one day. I don't know your normal demeanor but I can't imagine someone doing this to an animal who knows animals and ha[s] worked with a veterinarian and so forth. It was obviously-there is no way that this was just mistake or happenstance, you just went a little too far. This was certainly above and beyond that and the Jury so found you attempted to do that.

The trial court then noted that while the severity of **Lucas's** injuries were troubling, it was obligated to adhere to the sentencing guidelines:

> I considered all the facts and circumstances. I've considered the sentencing guidelines. A pretty wide range in discretion in misdemeanor cases but I can't just ignore the sentencing guidelines because of the act regarding the teeth of this animal.

The trial court then sentenced the Defendant to eleven months and twenty-nine days at 75%, with seventy-five days to be served in the **Warren County** Jail and the remainder on probation.

The Defendant contends the trial court erred when it ordered him to serve seventy-five days of his sentence in the **Warren County** jail. Our review of the record reveals, however, that the trial court undertook a careful examination of the Defendant's background as well as the details of his conduct in this case when it sentenced the Defendant. The trial court noted the Defendant's lack of a criminal history, his considerable education, his history of dealing with animals peacefully, and then it expressed its dismay over the Defendant's markedly divergent conduct in this case. The court explicitly said that, although it was taken aback by the striking violence of the Defendant's

acts, it would constrain itself to the Sentencing Guidelines. With these considerations and limitations in mind, the trial court then ordered the Defendant to serve part of his sentence in jail. The trial court, therefore, considered the sentencing principles and all relevant facts and principles when it sentenced the Defendant. *Ashby,* 823 S.W.2d at 169. We, therefore, presume the trial court's sentence to be correct and conclude that it did not err when it sentenced the Defendant. *Id.* He is not entitled to relief on this issue.

III. Conclusion

***17** After a thorough review of the record and relevant authorities, we conclude that the evidence is sufficient to support the Defendant's conviction for attempted cruelty to animals and that the trial court properly sentenced the Defendant. As such, we affirm the trial court's judgment.

All Citations

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End of Document

From Call to Court – What is Needed to Prosecute a Case.

By
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Case Building

- I didn't think it would go this far....
- Treat EVERY case like it will go that far.

Who Carries the Burden of Proof

- We do. We have to do all the work.
- Criminal defendants do not have to do anything.
  - No opening, no proof, no closing
  - Don't have to testify

What is Our Burden – Beyond a Reasonable Doubt

- Reasonable doubt is that doubt created by an investigation of all the proof in the case and an inability, after such investigation, to let the mind rest easily as to the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict of any criminal charge, but moral certainty is required, and this certainty is required as to every element of proof necessary to constitute the offense.

TPI 2.03

Prosecution is in a unique position

- The [State's Attorney] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor-indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

  Supreme Court of the United States, BERGER v. UNITED STATES, April 15, 1935.

Striking Blows

- Your prosecutor has a tremendous caseload
- You've got to have a good case to get your prosecutor interested
- If you have a bad case, you will not get the action you want from your prosecutor

Emergencies

- If you have an emergency, treat it like one
- A place smells so bad, you can't stand to be there
  - You leave and come back in 2 days
- Hot car
  - Officer leaves and then comes back
  - Officer stands around for 30 minutes doing nothing but waiting on owner

Who is There?

- Get full names, addresses, and phone numbers for all people present
  - "On Friday, I spoke with Sally, a friend of the suspect's…."
  - Prosecutor needs that information for Arrest Warrant, Indictment, Witness List
  - Don't promise people they can remain anonymous or that they don't have to be involved

What will People Say?

- People Lie!
  - Written Statements
  - Recorded Interview
  - Recorded Conversations
  - Controlled Phone Call
  - Wire
  - Working in Pairs

Visual Evidence

- Photographs
- Diagrams/Maps
- Videos

Collection of Evidence

- You should take items that are evidence of a crime
  - Documenting
    - Put in your report what you took *
  - Organizing
  - Tagging
    - Where, who, what, when
  - Security
    - That no one has touched, rearranged, moved since the offense

Making Good Charging Decisions

- Read statutes ahead of time
- Make a charging decision
- Don't undercharge. Your prosecutor can't readily increase the charges.
- Don't overcharge. It impacts your credibility.

Good Report Writing

- Remember everyone not involved in the investigation starts at zero
- Your report should give a full picture of everything that happened
- Contact notes are not enough. You need a full narrative. If it's not in your report, it didn't happen.
- Use proper grammar, punctuation, and spelling. Your credibility depends on it.

Ways to Obtain Evidence

- Judicial Subpoena
- Search Warrant
- Consent -- But get it in writing and be careful.
- Grand Jury Investigative Subpoena

Giving Testimony

- Having a professional appearance
  - Sunglasses on top of head
  - Being too casual
  - Looking at the prosecutor as you're getting cross examined
  - Posture
  - Confidence – You can be strong and polite all at the same time

Thank You for All You Do.