

FILED
SUPREME COURT
STATE OF WASHINGTON
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No. 97204-4

THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER DREIER,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

PETITION FOR REVIEW

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TABLE OF CONTENTS

A. IDENTITY OF PETITIONER 1
B. OPINION BELOW..... 1
D. STATEMENT OF THE CASE 2
F. CONCLUSION 11

TABLE OF AUTHORITIES

United States Supreme Court

In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d. 368
(1970) 4

Statutes

RCW 16.52.205 4, 6

Court Rules

RAP 13.4..... 1, 3, 9

A. IDENTITY OF PETITIONER

Pursuant to RAP 13.4, Petitioner Christopher Dreier asks this Court to accept review of the opinion of the Court of Appeals in *State v, Dreier*, 77378-0-I.

B. OPINION BELOW

Mr. Dreier contends there was insufficient evidence to convict him of animal cruelty because the State never established his actions were not authorized by law. In the absence of any proof of what acts are authorized by law and what are not, the Court of Appeals concluded the State met its burden of proving Mr. Dreier acted unlawfully.

C. ISSUE PRESENTED

Due process requires the State prove each essential element of an offense beyond a reasonable doubt. To convict an individual of first degree animal cruelty the State must prove the person intentionally and unlawfully inflicted injury. Assuming the State proved Mr. Dreier acted intentionally there was no evidence that his actions were unlawful. Did the

State prove each element of the offense beyond reasonable doubt?

D. STATEMENT OF THE CASE

While Mr. Drier was working on a neighbor's house, his children played near the river that passed the property.

8/8/17 RP 111. On several occasions during the day, another neighbor's dog passed through yard unrestrained.

The dog was known in the neighborhood to roam unleashed and to chase other dogs even when those were accompanied by their owners. In at least one prior instance the dog jumped on one of the owners trying to shield their own dog. A few days earlier, Mr. Dreier had tried to check the dog's tags and it snapped at him. 8/8/17 RP 116. On another occasion, the dog had approached him aggressively while Mr. Dreier had his dog in his yard. *Id.* at 116-17.

As he worked that afternoon, the dog passed through the yard. 8/8/17 RP 115-16. When he heard a neighbor announce the dog was returning, Mr. Dreier became concerned for his children's safety. *Id.* at 129. Mr. Dreier

grabbed the gun he regularly carried and stood between the dog and his children. *Id.*

A long-time member of People for the Ethical Treatment of Animals (PETA), Mr. Dreier attempted to “shoo” the dog to no avail. *Id.* at 130, 265. The dog kept approaching with its tail up. *Id.* at 131. When the dog was about 15 feet away he fired two shots. *Id.* at 131-32. While he had intended only for the dog to leave, he unfortunately hit the dog. *Id.* at 138.

Immediately after the shooting, the dog’ owner Misty Sattler asked Mr. Dreier if he’d shot the dog. 8/7/17 RP 125. Mr. Dreier readily acknowledged he had. *Id.* When a deputy sheriff later arrived, Mr. Dreier readily cooperated, showing the deputy the gun, where he was standing, and where the dog was. 8/8/17 RP 12.

More than nine months later, the State charged Mr. Dreier with a single count of first degree animal cruelty. CP 80. A jury convicted him as charged. CP 34.

On appeal, Mr. Dreier has argued the State did not prove his actions were unlawful as required by statute. The State responded that it was not required to prove there was no legal authority justifying Mr. Dreier's actions.

The Court of Appeals affirmed Mr. Dreier's convictions.

E. ARGUMENT

The State's limited evidence did not establish that Mr. Dreier acted unlawfully.

The Court of Appeals opinion regarding the State's evidence in this case relieves the State of its burden of proof shifting it instead to Mr. Dreier. That opinion warrants review under RAP 13.4

The State was required to prove every element of the charge against Mr. Dreier beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d. 368 (1970). This burden included proving that Mr. Dreier acted unlawfully. RCW 16.52.205; CP 44. The State concedes that this was their burden. Brief of Respondent at 7.

In its opinion, the Court of Appeals also properly recognizes the State was required to prove Mr. Dreier “unlawfully” harmed an animal.

Indeed, in order to convict Mr. Dreier RCW 16.52.205 required the State prove “**except as authorized in law**, he . . . intentionally (a) inflicts substantial pain on, (b) causes physical injury to” and animal. Similarly, the court instructed the jury:

To convict, the defendant of Animal Cruelty in the First degree each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 3rd day of April 2016, the Defendant intentionally and **unlawfully**;
 - (a) Inflicted substantial pain on an animal; or
 - (b) Caused physical injury to an animal

CP 44.

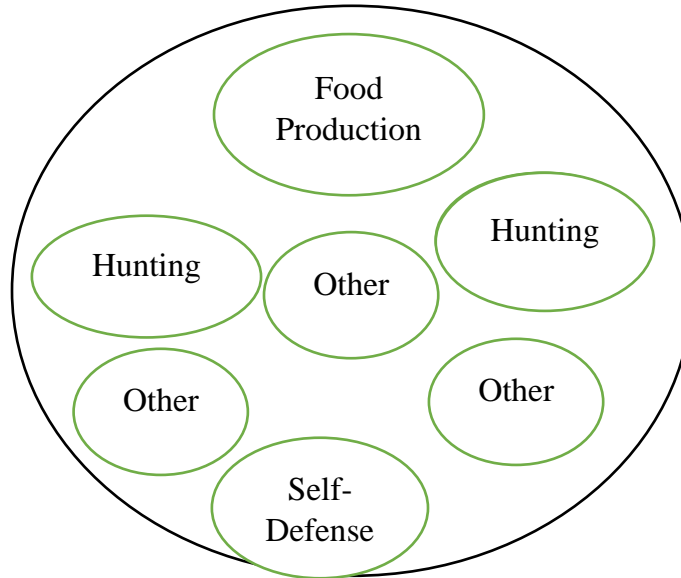
Although it recognized the absence of legal authority is an element the State must prove, the Court of Appeals inexplicably excused the State’s failure to prove that element. In its initial opinion the Court reasoned that because Mr. Dreier sought a self-defense instruction the State met its

burden of showing the absence of legal authority so long as it disproved self-defense.

In a motion to reconsider, Mr. Dreier argued his request for a self-defense instruction did not limit the State's larger obligation of proving there was no lawful basis. The Court then filed an amended opinion concluding Mr. Dreier's acts did not fall within any of the hypothetical exceptions set forth in Mr. Dreier's prior briefing "or any other lawful purpose." Opinion at 5-6. But the state has never undertaken to prove Mr. Dreier's action were not for "any other lawful purpose." There is certainly no evidence in the record establishing what the universe of lawful purposes is or any evidence that Mr. Dreier's conduct falls outside all lawful authority. Instead, the State proved only that it was not self-defense. But that falls well short of the enormous burden RCW 16.52.205 places on the State; the burden to prove it was not authorized by law, presumably any law not just some.

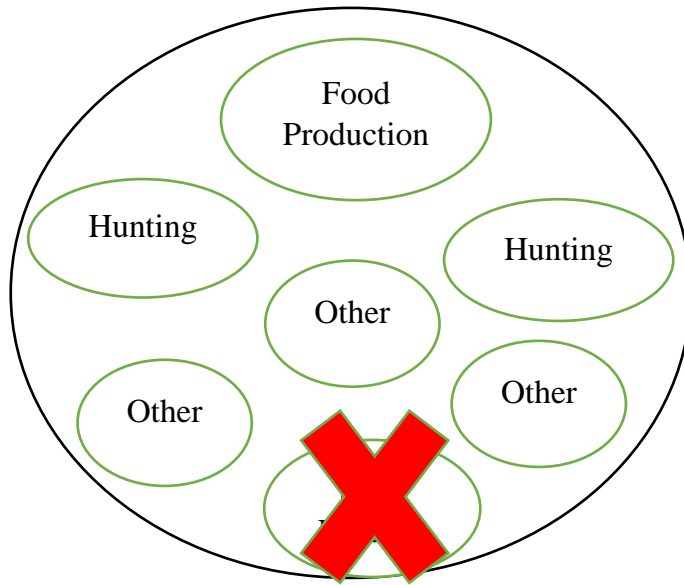
Potential Lawful Reasons for Inflicting

Physical Injury on Animal¹

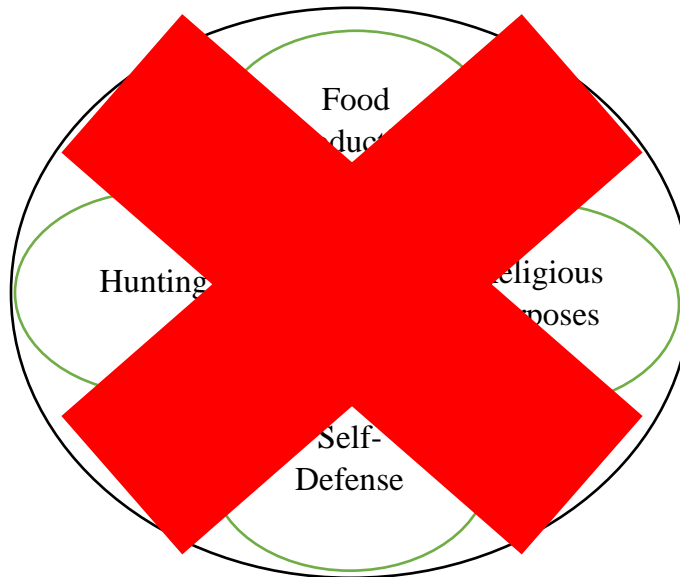


¹ These are only a select number of “lawful” ways. In reality, there are several other, but this small selection is sufficient to demonstrate the point.

What the State Proved



What the State was Required to Prove



Simply put, the State does not meet its burden by showing Mr. Dreier's acts did not fall within some or a few categories in which inflicting injury upon animals is permissible. There are many lawful reasons for intentional injuring an animal. A person is free to swat a fly or mosquito. A homeowner can use a lethal trap to rid her home of rats or mice. Such acts intentionally inflict injury, indeed lethal injury, on animals, yet they are perfectly legal. Numerous other examples exist, and the State is not freed of its burden simply because it rebuts one or two hypotheticals. The State must actually prove what the bounds of legal authority are and show that Mr. Dreier's acts fell outside those limits. The State has never undertaken to meet that burden. The opinion of the Court of Appeals simply excuses that failure

The Court concludes "viewing the evidence in the light most favorable to the State, the State provided sufficient evidence that [Mr. Dreier] shot [the dog] because of a fundamental mistrust of pit bulls." Opinion at 6. Be that as it may, the State has never shown that is "unlawful." People

across the state purposefully shoot dogs to euthanize them. It may disturb some, but it is not unlawful. RCW 16.52.205 does not criminalize the intentional infliction of injury on an animal, it criminalizes the intentional infliction of injury on an animal only when it not authorized by law. The State is thus required to prove when infliction of injury is authorized in order to show a defendant's actions fall outside that authority. The State never did that and the opinion of the Court of Appeals creates a significant constitutional issue when it relieves the State of its burden. Review is warranted under RAP 13.4.

F. CONCLUSION

The State fundamentally misunderstood its burden in this case and subsequently failed to provide sufficient evidence establishing that Mr. Dreier's actions were unlawful. as set forth above this court should grant review under RAP 13.4.

DATED this 15th day of May 2019.

A handwritten signature in black ink, appearing to read "Gregory C. Link". The signature is written in a cursive style with a large initial "G" and "L".

Gregory C. Link - 25228
Washington Appellate Project - 91052
Attorneys for Petitioner

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER GEORGE DREIER,

Appellant.

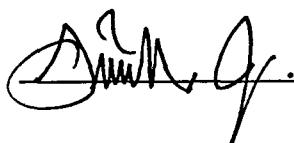
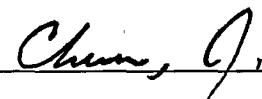
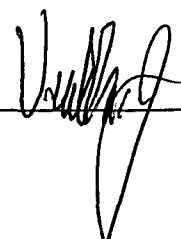
No. 77378-0-1

ORDER DENYING MOTION FOR
RECONSIDERATION, WITHDRAWING
OPINION, AND SUBSTITUTING
OPINION

Appellant, Christopher George Dreier, filed a motion for reconsideration of the opinion filed on March 11, 2019. Respondent, State of Washington, filed a response. A panel of the court has determined that the motion should be denied and that the opinion filed on March 11, 2019, shall be withdrawn and a substitute unpublished opinion will be filed. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied; it is further

ORDERED that the opinion filed on March 11, 2019, is withdrawn and a substitute unpublished opinion shall be filed.


_____
_____

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER GEORGE DREIER,

Appellant.

No. 77378-0-1

DIVISION ONE

UNPUBLISHED OPINION

FILED: April 15, 2019

CHUN, J. — The State charged Christopher Dreier with first degree animal cruelty after he shot and injured a dog. Dreier claimed self-defense, but the jury convicted him as charged. On appeal, Dreier contends the State failed to prove beyond a reasonable doubt that his actions were unlawful. Because sufficient evidence supports the conviction, we affirm.

BACKGROUND

One April evening in 2016, Dreier was helping his neighbors with work on their home. His three young children played near the river that passed through the property. His small Pomeranian dog was also on site with them.

On previous days, Dreier had seen a pit bull mix dog roaming unleashed on the property. Dreier claimed the dog had acted aggressively toward him and his Pomeranian, and had chased a deer with seemingly lethal intent. Dreier had a negative history with pit bulls, having witnessed a different pit bull attack and kill one of his dogs the year before.

On this day, the pit bull mix passed through the yard, roaming unleashed. Upon seeing the dog walk through the property, Dreier went to his home for his .22 caliber rifle. He returned to the property with the gun. When a neighbor announced the return of the dog, Dreier became concerned about the safety of his children. He retrieved the gun and stood between the dog and his children. Dreier attempted to "shoo" the dog away, but the dog continued to approach with its tail up. When the dog was 15 feet away, Dreier fired the gun at least twice.

Neighbors, Misty Sattler and her family, heard the gunshots and a dog yelping. They found their dog, Lailay, lying in a pool of blood. Sattler saw Dreier standing nearby with the gun, and he admitted that he had shot her dog. Sattler called 911 and a deputy with the Snohomish County Sheriff's Office responded to the incident. Dreier readily cooperated with the deputy, believing he had done nothing wrong.

Sattler took Lailay to the veterinarian who found multiple puncture wounds, bullet fragments, and a fracture of the humerus in her left leg. Lailay's injuries required surgery. She survived the shooting but almost lost her leg and still has deeply embedded bullet fragments in her body. She spent approximately 12 weeks in a cast but regained little use of her leg.

Nine months after the incident, the State charged Dreier with one count of first degree animal cruelty. During the jury trial, Dreier argued that he was defending himself and his children. The jury found him guilty as charged.

Dreier appeals.¹

ANALYSIS

Dreier contends the State failed to prove all the essential elements of first degree animal cruelty beyond a reasonable doubt. Specifically, he claims the State did not meet its burden of proving that he acted unlawfully. We disagree and affirm.

Due process requires that the State prove every element of a crime beyond a reasonable doubt. State v. Johnson, 188 Wn.2d 742, 750, 399 P.3d 507 (2017). Under Washington’s “law of the case” doctrine, this burden includes “otherwise unnecessary elements of the offense when such added elements are included without objection in the ‘to convict’ instruction.” State v. Hickman, 135 Wn.2d 97, 102, 954 P.2d 900 (1998); Johnson, 188 Wn.2d at 756. On appeal, a defendant may challenge the sufficiency of the evidence of the added element. Hickman, 135 Wn.2d at 102.

To determine whether sufficient evidence supports a conviction, an appellate court must “view the evidence in the light most favorable to the prosecution and determine whether any rational fact finder could have found the elements of the crime beyond a reasonable doubt.” State v. Homan, 181 Wn.2d 102, 105, 330 P.3d 182 (2014). A claim of insufficient evidence admits the truth of the State’s evidence and all reasonable inferences from that evidence, and those inferences must be interpreted in favor of the State and most strongly

¹ Initially, the State filed a cross-appeal. The State withdrew its cross-appeal on July 10, 2018.

against the defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Additionally, an appellate court “must defer to the trier of fact for purposes of resolving conflicting testimony and evaluating the persuasiveness of the evidence.” Homan, 181 Wn.2d at 106.

A person commits first degree animal cruelty when, “except as authorized in law, he or she intentionally (a) inflicts substantial pain on, (b) causes physical injury to, or (c) kills an animal by a means causing undue suffering or while manifesting an extreme indifference to life.” RCW 16.52.205(1). The trial court provided the jury with a to-convict instruction articulating these elements:

To convict the defendant of the crime of Animal Cruelty in the First Degree, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about the 3rd day of April, 2016, the Defendant intentionally and unlawfully;
 - (a) Inflicted substantial pain on an animal; or
 - (b) Caused physical injury to an animal; and
- (2) That any of these acts occurred in the State of Washington.

As an attempt to translate the statutory element of “except as authorized by law,” the jury instruction included the requirement that Dreier acted “unlawfully.” As a result, the to-convict instruction established “unlawfully” as an additional element requiring proof beyond a reasonable doubt by the State. See Johnson, 188 Wn.2d at 756.

The jury instructions also instructed that “[i]t is a defense to the charge of Animal Cruelty in the First degree that the force used was lawful as defined in

this instruction.” The instruction required the State to prove beyond a reasonable doubt that the force used by Dreier was not lawful.

The State argues it presented sufficient evidence that Dreier did not act in self-defense or defense of others, thereby proving beyond a reasonable doubt that Dreier unlawfully inflicted pain on the dog. Dreier contends the State conflates “unlawfulness” with “not acting in self-defense,” when numerous other statutorily acceptable ways exist to lawfully inflict pain or injury on an animal. Specifically, Dreier cites food production, hunting, laboratory testing, and religious reasons as lawful means of causing pain or injury to an animal. See RCW 16.58.040; RCW 77.32.450; RCW 16.52.220; RCW 16.50.150. According to Dreier, the State may have proved he did not act in self-defense or defense of others, but failed to demonstrate he violated any of the statutes allowing injury to animals.

Dreier invoked self-defense and defense of others as the only lawful reasons for his conduct. The jury instructions adhered to this choice of defense by providing, “It is a defense to the charge of Animal Cruelty in the First Degree that the force used was lawful as defined in this instruction.” This was the only jury instruction provided on the issue of lawfulness. Dreier does not argue, nor does the record show, that he requested further instruction on other lawful reasons to cause pain or injury to an animal such as food production, hunting, laboratory testing, or religious reasons.

Dreier does not dispute the State met its burden of proving that the use of force was not lawful for self-defense or defense of others. Furthermore, viewing

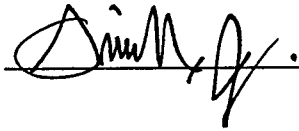
the evidence in the light most favorable to the State, the State provided sufficient evidence that Dreier shot Lailay because of a fundamental distrust of pit bulls.

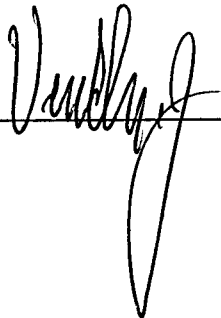
The circumstances clearly demonstrate that Dreier did not shoot the dog for food production, hunting, laboratory testing, ritual slaughter for religious purposes, or any other lawful purpose. As such, a rational fact finder could find the elements of the crime beyond a reasonable doubt, including that Dreier acted "unlawfully."

Affirmed.



WE CONCUR:





DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document **Petition for Review** was filed in the **Washington State Supreme Court** under **Case No. 97204-4**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office/residence/e-mail address as listed on ACORDS:

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Snohomish County Prosecuting Attorney
- petitioner
- Attorney for other party



MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: May 16, 2019

WASHINGTON APPELLATE PROJECT

May 16, 2019 - 4:42 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 97204-4
Appellate Court Case Title: State of Washington v. Christopher George Dreier
Superior Court Case Number: 17-1-00152-4

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Comments:

***THIS REPLACES THE PETITION FILED YESTERDAY WHICH WAS MISSING THE TABLES.

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