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SUPREME COURT NO. 99581-8
COURT OF APPEALS NO. 80024-8-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner,

v.

CHARMARKE ABDI-ISSA,

Respondent.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

The State of Washington, Petitioner here and Respondent below, respectfully requests that this Court review the unpublished decision of the Court of Appeals in State v. Abdi-Issa, No. 80024-8-I (February 16, 2021), a copy of which is attached as Appendix A.

B. ISSUES PRESENTED FOR REVIEW

When a domestic violence abuser deliberately and brutally kills his girlfriend's dog, is the girlfriend a "victim" of his crime for purposes of domestic violence law under chapter 10.99 RCW as well as for purposes of imposing an aggravated sentence under chapter 9.94A RCW?

C. STATEMENT OF THE CASE

Julie Fairbanks loved her dog, Mona.¹ Fairbanks got Mona as a three-week-old puppy and bottle-fed her until she was old enough to eat on her own. RP 1045. Mona was a "Chiweenie," a cross between a Chihuahua and Dachshund. RP 1044. As an adult, Mona was approximately 8-10 inches tall and weighed 12 pounds. RP 977, 1044. Fairbanks doted on Mona. RP 1045. She "spoiled" her and would "take her everywhere." Id. Mona was Fairbanks' "companion" and "baby." Id.

¹ Mona, which is short for Monica, was referred to by several names and nicknames throughout the trial. RP 1043. The State uses "Mona" throughout this petition because it was the name adopted in the charging document, certification for determination of probable cause, jury instructions, and the Court of Appeals decision. CP 20-23, 136, 143.

When Fairbanks had anxiety attacks, Mona calmed her down. Id. When Fairbanks' muscles ached, Mona eased her pain. Id.

In 2018, following the death of her mother, Fairbanks moved to Seattle. RP 1042-43. Mona was seven years old at the time. Id. While in Seattle, Fairbanks met Abdi-Issa through a friend and the two started dating. RP 1046-47. During their relationship, Abdi-Issa would get "mad and then he'd get hateful." RP 1009. Fairbanks continued to lavish her love and attention on Mona and took her everywhere. RP 1017, 1045. But Abdi-Issa tried to control how Fairbanks treated her dog and did not want Mona around. RP 1007-08, 1012. Abdi-Issa began taking out his anger on both Fairbanks and Mona. RP 1008-09. Twice, Abdi-Issa told Fairbanks that he was going to kill her and Mona. Id. When Abdi-Issa was around, Mona trembled and growled. RP 1007, 1010.

Outside of Fairbanks' presence, Abdi-Issa harmed Mona. RP 1011-15. When Fairbanks left Abdi-Issa and Mona together in a room, she returned to find Mona limping. RP 1014-15. Abdi-Issa told Fairbanks that Mona had hurt herself. Id. Abdi-Issa later drove Fairbanks and Mona to his storage unit. RP 1047-48. While Fairbanks went into the storage unit, she left Mona in the car with Abdi-Issa. RP 1049. When Fairbanks returned, Mona had two fresh gashes on the top of her head. RP 1050. Fairbanks asked Abdi-Issa how Mona had been hurt. Id. Abdi-Issa became

“angry” and claimed that Mona had injured herself trying to crawl under the car seat. RP 1051. Fairbanks did not believe Mona could have fit under the car seat. Id. Abdi-Issa was holding a rope with a hook on it that looked like it could have caused Mona’s injuries. Id. Fairbanks took Mona to see a veterinarian for medical care. Id. To avoid “trouble or drama” with Abdi-Issa, Fairbanks lied to the veterinarian about how Mona had been injured by claiming that something had fallen on Mona’s head. RP 1052.

A few days later, Abdi-Issa, Fairbanks, and Mona were sitting in a parked vehicle in Seattle’s International District. RP 1053-54. Abdi-Issa said that he wanted to take Mona for a walk because he “needed time to bond” with Mona. RP 1054-55. Fairbanks said no, but over her objection, Abdi-Issa left with Mona. RP 1055. Fairbanks felt powerless to stop Abdi-Issa, “it didn’t matter, he wanted to do [it]; he was going to do it either way.” Id.

Shortly thereafter, Abdi-Issa called Fairbanks and told her that Mona had broken out of her harness and he could not find her. RP 1057-58. Mona was wearing a harness that went around her chest and front legs, which she had never slipped out of before. RP 1057. Fairbanks tried to get more information from Abdi-Issa, but he would not provide his location or give her a “straight answer.” RP 1058, 1076. Fairbanks could hear Mona

yelp two times. RP 1058. She panicked and “knew things weren’t okay.”
RP 1058, 1076.

Around the same time, Melissa Ludin and William Moe were walking in the International District. RP 1083. They had dined nearby and were walking back from getting groceries at Uwajimaya. Id. Ludin and Moe heard a dog yelping loudly in “intense distress.” RP 1085, 1120. When they located where the sound was coming from, they saw Abdi-Issa beating Mona in a bank parking lot. RP 873, 1087. Abdi-Issa punched Mona multiple times using a “brutal stabbing motion toward the ground.” RP 1124. Abdi-Issa was holding a leash in his hand; Moe could not tell if Abdi-Issa was using his hand or something else in his hand to hit Mona. RP 1088.

Each time Abdi-Issa struck Mona, she made a “screeching screaming pained awful sound.” RP 1124. Abdi-Issa started kicking Mona using “full energy, full brutality kicking” motions. RP 1125. At one point, Abdi-Issa kicked Mona so hard that she flew several feet through the air and into nearby bushes. RP 1125-26. Around that moment, Abdi-Issa held a phone up to his ear. RP 1127. Abdi-Issa continued to hit Mona once she was in the bushes and Mona continued to yelp in distress. RP 1088. As the beating progressed, Mona’s cries went from “wild, painful sounds to silence.” RP 1125.

While Abdi-Issa continued to strike Mona, Ludin called 911. RP 1127. Moe yelled at Abdi-Issa to stop hitting Mona. RP 1091. Abdi-Issa turned toward Moe and angrily threatened him by saying either, “do you want some, or do you want to get some[?]” Id. Moe again told Abdi-Issa to stop hitting Mona, and Abdi-Issa started to walk away. RP 1092.

Seattle Police Officers Young Lim and Kyle Corcoran spotted Abdi-Issa holding a dog leash and a cell phone a half block away from the bank parking lot. RP 701, 879, 885, 888. Ludin was pointing to Abdi-Issa as the officers arrived. RP 1128. When the officers walked up to Abdi-Issa, he dropped the dog leash to the ground. RP 888. Corcoran tried to locate Mona while Lim spoke to Abdi-Issa. RP 869, 935. After being told that he was accused of harming a dog, Abdi-Issa said, “they’re lying to you.” Ex. 10. Abdi-Issa claimed that Mona had been fighting with two big rats in a nearby alley. Id. When asked about the size of his dog, Abdi-Issa described Mona as a “small, tiny dog” and clarified that she was his girlfriend’s dog that he “just went on a walk with.” Id. Abdi-Issa said that Mona had freed herself from her harness and he was merely using a stick to try to pull her out of the bushes. Id. Abdi-Issa said that he was trying to call his girlfriend because “my girl loves that dog to death.” Id. When asked for his girlfriend’s name, Abdi-Issa provided a false first name and said he could not remember her last name. Id.

While Lim was speaking with Abdi-Issa, Ludin directed Corcoran to the bushes in the Washington Federal Bank parking lot. Ex. 25. Corcoran located Mona in the bushes laying on top of an old beer bottle. RP 938. Corcoran could tell that Mona was still alive because she was able to blink slowly and make a faint whimper. RP 942. He tried to call out to Mona while whistling and speaking gently to her. RP 938. Corcoran contacted a supervisor to find out how he could get medical care for Mona. RP 942. A K-9 Unit officer arrived and transported Mona to a nearby emergency veterinary clinic. RP 1149-50, 1154.

After getting off the phone with Abdi-Issa, Fairbanks was “going crazy.” RP 1076. She started walking around looking for Abdi-Issa and Mona. Id. When she saw police officers, she asked if they had seen a dog. RP 1078. The officers realized that she was the owner of the injured dog and directed her to the veterinary clinic. RP 1078.

When Mona arrived at the emergency clinic, she was in shock and unable to breath normally. RP 633, 637. Veterinarian Michelle Gates described Mona as “basically comatose.” RP 637. Mona had injuries and bruising over much of her body and severe swelling of the brain. RP 640-45. Mona was given medication to stop the brain swelling. RP 645-46. After several minutes, she had a seizure and stopped breathing. Id. Dr. Gates attempted CPR, which was ultimately unsuccessful. RP 646. When

Fairbanks arrived at the veterinary hospital, Mona had already died. RP 664-65. Dr. Ramona Skirpstunas later performed a necropsy on Mona and determined that Mona died from “multiple blunt force trauma to various parts of the body” that led to life-ending internal hemorrhaging. RP 970-71, 986.

The State charged Abdi-Issa with Animal Cruelty in the First Degree, RCW 16.52.205, with a domestic violence designation, RCW 10.99.020, 9A.36.041(4). CP 45-46. The State also charged two sentencing aggravators – that the crime had a destructive and foreseeable impact on persons other than the victim, RCW 9.94A.535(r), and that the defendant’s conduct during the crime of domestic violence manifested deliberate cruelty or intimidation of the victim, RCW 9.94A.535(3)(h)(iii). CP 45-46. Abdi-Issa repeatedly moved to dismiss the domestic violence designation and aggravators, and the trial court denied those motions. CP 8-25, 43, 47-69, 70-77; RP 672-96.

The jury found Abdi-Issa guilty of animal cruelty, found that there was a domestic violence relationship between Abdi-Issa and Fairbanks prior to or at the time of the crime, and found that the crime involved a destructive and foreseeable impact on persons other than the victim. CP 151, 153, 159. The jury did not find that Abdi-Issa’s conduct during the crime of domestic violence manifested deliberate cruelty or intimidation

of the victim. CP 152. The trial court indicated that “the egregious facts of this case” and Abdi-Issa’s “extensive criminal history” warranted the maximum sentence for animal cruelty of 12 months. CP 165; RP 1338-39. Based on the aggravating factor, the court imposed an additional 6 months of confinement as an exceptional sentence. CP 160-62.

Abdi-Issa appealed. The Court of Appeals reversed his sentencing aggravator and the domestic violence designation. State v. Abdi-Issa, No. 80024-8-I (February 16, 2021), attached as Appendix A. The State timely seeks review of this decision.

D. ARGUMENT

This case presents the question of whether a woman is a victim of domestic violence when her boyfriend kills her dog. Review is warranted because the decision below conflicts with precedent from this Court and the Court of Appeals on principles of statutory interpretation, namely that legislative intent is discerned from the whole of the statutory scheme rather than from a single statute. RAP 13.4(b)(1), (2). Review is also warranted because recognizing that animal abuse can be a tool of coercive control in a domestic violence relationship and thus should be eligible for designation as a crime of domestic violence and a basis for an exceptional sentence are issues of substantial public interest. RAP 13.4(b)(4).

1. THE COURT OF APPEALS ERRED IN CONCLUDING THAT ANIMAL CRUELTY CANNOT BE A CRIME OF DOMESTIC VIOLENCE.

The meaning and purpose of a statute is a question of law, subject to *de novo* review. State v. Bunker, 169 Wn.2d 571, 577-78, 238 P.3d 487 (2010). An appellate court’s “function in interpreting a statute is to discover and give effect to the intent of the legislature.” State v. Munoz-Rivera, 190 Wn. App. 870, 884, 361 P.3d 182 (2015) (quoting State v. Hansen, 122 Wn.2d 712, 717, 862 P.2d 117 (1993)). The inquiry begins by examining the statute’s plain language. Bunker, 169 Wn.2d at 578. The statute’s meaning may be discerned from “all that the legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.” Id. (quoting Chadwick Farms Owners Ass’n v. FHC LLC, 166 Wn.2d 178, 186, 207 P.3d 1251 (2009)).

Here, to answer the question of whether Washington statutorily permits animal cruelty to be designated a domestic violence crime, this Court must consider the plain language of *several* statutes, not just one. Abdi-Issa was charged with Animal Cruelty in the First Degree, in violation of RCW 16.52.205. That provision is contained in chapter 16.52 RCW, on prevention of cruelty to animals. But that chapter does not stand alone; it does not have its own sentencing scheme. RCW 16.52.205 designates the crime as a Class C felony, but nowhere in RCW 16.52 can

be found the penalties for a Class C felony or any other guidance on sentencing. Sentencing is governed by chapter 9.94A RCW, the Sentencing Reform Act of 1981 (SRA).

The SRA incorporates two related statutes in defining and prescribing penalties for domestic violence – chapter 10.99 RCW, on domestic violence, and chapter 26.50 RCW, on domestic violence prevention. RCW 9.94.A.030(20) (defining “domestic violence” for the purposes of the SRA by reference to RCW 10.99.020 and RCW 26.50.110). See also, e.g., RCW 9.94A.525(21) (describing calculation of offender score for felony domestic violence crimes, as defined in RCW 10.99.020 and RCW 26.50.110).

Chapter 10.99 RCW lists the crimes eligible to be designated crimes of domestic violence. RCW 10.99.020(4). The designation, if “pleaded and proven,” triggers greater penalties for ranked felonies, increases future penalties, provides for no-contact orders to protect victims, and more.² The list is explicitly illustrative, not exhaustive. To be designated, the crime must be “committed by one family or household

² See, e.g., RCW 9.94A.525(21). The Court of Appeals relied on State v. Hagler, 150 Wn. App. 196, 201, 208 P.3d 32 (2009), to suggest that the domestic violence designation need not be proved to a jury, slip op. at 9, but that portion of Hagler relied on by the court has been deliberately superseded by statute. LAWS OF 2010, ch. 274, § 403.

member against another.” Former RCW 10.99.020(5) (2004).³ A “family or household member” is defined as a *person* with specified family relationships. RCW 10.99.020(7), 26.50.010(6). As the Court of Appeals concluded, and as the State agrees, domestic violence crimes are committed against a *person*.

With little analysis, however, the Court of Appeals declared that Abdi-Issa “committed the crime of animal cruelty against Mona, not Fairbanks.” Slip op. at 10. The court defined Mona as the “object” of Abdi-Issa’s crime, to the exclusion of any others. Slip op. at 6. But Washington law defines pets as *property of people*, not as independent legal entities. Sherman v. Kissinger, 146 Wn. App. 855, 870, 195 P.3d 539 (2008). In killing Mona, Abdi-Issa destroyed Fairbanks’ property and, by design, inflicted harm on her. Animal cruelty, when directed at an animal owned by a family or household member as a pet, is a crime of domestic violence, just as malicious mischief (a listed crime in RCW 10.99.020) is.

This interpretation – that Abdi-Issa committed the crime against Fairbanks, not just Mona – comports with the SRA’s broad definition of who counts as a “victim”: “any person who has sustained emotional, psychological, physical, or financial injury to person or property as a

³ The definition of “domestic violence” in RCW 10.99.020 has since been amended to add “one intimate partner against another intimate partner.” This amendment does not change the substance of the analysis here.

direct result of the crime charged.” RCW 9.94A.030(54). Fairbanks fits that plain language. She suffered enormously because her beloved dog was killed. She, too, is a victim of Abdi-Issa’s crime.

Elsewhere in its opinion, the Court of Appeals rejected this argument because “the definition of ‘victim’ under the SRA does not apply to the charge of animal cruelty.” Slip op. at 7. It so found because the term “victim” does not appear in RCW 16.52. Slip op. at 7. That holding is contrary to this Court’s precedent on statutory interpretation, which requires looking at the whole statutory scheme, not just one chapter in isolation. “To determine the plain meaning of a statute, [this Court] look[s] to the text, as well as the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.” State v. Haggard, 195 Wn.2d 544, 548, 461 P.3d 1159 (2020). RCW 16.52 is inextricably related to the SRA. It relies on the SRA’s sentencing scheme. A “victim” may be “any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.” RCW 9.94A.030(54). The plain language of this definition applies to *any* crime that is sentenced under the SRA, including animal cruelty. Because Fairbanks suffered emotional and psychological trauma upon Mona’s death, she is a “victim” of Abdi-Issa’s crime, he committed the crime against her, and, because she

was his girlfriend, the crime qualified as a domestic violence offense. Reading the plain language of chapters 16.52, 10.99, 26.50 and 9.94A together, it is clear that the legislature intended animal cruelty could be designated a crime of domestic violence, and thus subject to greater consequences than if the crime had been committed by people unknown to each other.

Indeed, the Court of Appeals has previously recognized that crimes directed against property can be crimes of domestic violence. In State v. Goodman, Division Two of the Court of Appeals held that arson was a crime of domestic violence where the purpose of Goodman's arson was to harm his wife's property and pet. 108 Wn. App. 355, 361, 30 P.3d 516 (2001). Out of jealousy, Goodman burned his wife's home down, killing his wife's dog, which Goodman knew was inside the home. Id. On appeal, Goodman argued the arson could not be considered a crime of domestic violence because it was committed against their jointly owned marital property and not directly against his wife. Id. The court determined that Goodman's arson went beyond destroying property and was intended to cause his wife emotional harm by destroying her home and killing her pet. Id. In rejecting Goodman's argument, the court noted that "the definition of a domestic violence victim is broader than the definition of one whose property is destroyed[.]" Id. at 364, n.1. Citing to the SRA's definition of

“victim,” the court held that Goodman’s wife was a victim of domestic violence arson because she “sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.” Id. at 361.

The instant case is no different. Abdi-Issa killed Fairbanks’s pet knowing Mona’s death would cause her emotional harm. Like he told police just after killing Mona, he knew Fairbanks “love[d] that dog to death.” Ex. 10. He knew that killing her would devastate Fairbanks. He knew he was following through on his threat to kill Mona, making his threat to kill Fairbanks all the more real to her. As in Goodman, Fairbanks was inescapably the emotional and psychological target – the victim of the crime.

The Court of Appeals’ narrow, hypertechnical reading of these statutes in isolation also runs counter to the expressed intent of the legislature to protect domestic violence victims broadly, which is enshrined in chapters 10.99 and 26.50 RCW. In enacting RCW 10.99, which gives the illustrative list of crimes of domestic violence, the legislature intended “to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide.” RCW 10.99.010. In enacting amendments to RCW 26.50 and providing for pet protection in court orders, the legislature

explicitly noted the “considerable research” documenting the “strong correlation between animal abuse, child abuse, and domestic violence.” LAWS OF 2009, ch. 439, § 1. Given that link, the legislature “intend[ed] that perpetrators of domestic violence not be allowed to further terrorize and manipulate their victims, or the children of their victims, by using the threat of violence toward pets.” Id. The legislature’s desire to give broad protection to domestic violence victims and specifically to prevent abusers from using violence toward pets to control and manipulate their victims supports the designation of animal cruelty as a domestic violence offense.

Because Fairbanks is a victim of Abdi-Issa’s crime according to the plain language of the SRA, he committed his crime against Fairbanks, not just against Mona. Thus, the crime can be designated a crime of domestic violence.

2. THE COURT OF APPEALS ERRED IN CONCLUDING THAT THE AGGRAVATOR CANNOT APPLY TO ANIMAL CRUELTY.

Review is warranted for the same reasons identified above. The analysis of both issues hinges on the same question: whether Fairbanks was a victim of Abdi-Issa’s crime.

According to the SRA, a court may sentence a defendant to an exceptional sentence above the standard range if an aggravating circumstance applies, including for unranked felonies like animal cruelty.

RCW 9.94A.505(2)(b), 9.94A.535. Here, the aggravator charged and found by the jury was RCW 9.94A.535(3)(r): The offense involved a destructive and foreseeable impact on persons other than the victim. The language of the aggravator presupposes a “victim” of the crime for there to be a “person other than the victim.” Because the SRA’s definition of “victim” refers to a person, the Court of Appeals concluded that the aggravator can never apply to animal cruelty because it refused to see Fairbanks as a victim. In other words, the Court of Appeals found that animal cruelty is a victimless crime.

This conclusion is unwarranted. While animal cruelty may be a victimless crime when a stray animal, not owned by or connected to any person, is harmed, it is not a victimless crime when a human owner “sustain[s] emotional, psychological, physical, or financial injury” as a direct result of the crime. RCW 9.94A.030(54). Whether the crime has a human victim depends on the facts. As explained at length above, Fairbanks was a victim of Abdi-Issa’s crime. The Court of Appeals erred when it adopted a *per se* rule that RCW 9.94A.535(3)(r) can never apply to animal cruelty.

E. CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to grant review.

DATED this 18th day of March, 2021.

Respectfully submitted,

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APPENDIX A

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

THE STATE OF WASHINGTON,)	No. 80024-8-I
)	
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
CHARMARKE ABDI-ISSA,)	
)	
Appellant.)	

BOWMAN, J. — Charmarke Abdi-Issa beat his girlfriend's dog to death in a bank parking lot. A jury convicted him of domestic violence animal cruelty in the first degree with a “foreseeable impact” on others aggravator. Abdi-Issa appeals his exceptional sentence based on the aggravator. He also appeals the State’s designation of his case as domestic violence and the resulting domestic violence no-contact order. We conclude that the plain language of the applicable statutes does not support application of the aggravator for the exceptional sentence or the domestic violence designation, and remand for resentencing and to vacate the postconviction domestic violence no-contact order.

FACTS

Abdi-Issa and Julie Fairbanks met in summer 2018 and dated for a few months. Fairbanks owned a “Chiweenie” dog named Mona.¹ Mona was

¹ A “Chiweenie” is a mixed breed Chihuahua and dachshund dog. The record includes several versions of the dog’s name. The charging documents call the dog “Mona,” while the reports of proceedings use “Mona,” “Monica,” and a phonetic spelling of “Monyaka.” Fairbanks testified that her dog’s name was “Monica” and that “Mona” was one of several nicknames.

Fairbanks' "baby," whom she loved very much and "spoiled." Mona did not like Abdi-Issa, and Abdi-Issa did not want Mona around. He threatened to kill both Fairbanks and her dog twice. Fairbanks became concerned about Abdi-Issa's treatment of Mona when she found "two gashes on her head" after Mona spent time alone with Abdi-Issa.

On the night of October 17, 2018, Abdi-Issa and Fairbanks were sitting in a parked car in downtown Seattle with Mona. Abdi-Issa pressured Fairbanks to let him take Mona for a walk so they could "bond." Fairbanks said no, but Abdi-Issa left with the dog anyway.

Melissa Ludin and William Moe were leaving a nearby grocery store when they heard a dog yelping in "intense distress." The sound came from a nearby bank parking lot, where they saw a man, later identified as Abdi-Issa, beating Mona. They watched as Abdi-Issa kicked Mona "hard enough to go into the air" and land in some bushes. He continued to kick and hit her repeatedly. Mona was yelping and screaming in pain. Ludin called 911. Moe yelled at Abdi-Issa to stop hitting the dog and Abdi-Issa responded with a threat "like, do you want some." Eventually Mona "went from just wild, painful sounds, to silence." Abdi-Issa then walked away and appeared to make a cell phone call.

Abdi-Issa called Fairbanks to say that Mona "got loose or something." He told Fairbanks that Mona "got away" and that he could not find her. Fairbanks questioned Abdi-Issa but he would not give her a "straight answer" about what happened.

When police officers arrived, Ludin pointed to Abdi-Issa, who was walking away. The police saw Abdi-Issa carrying a cell phone and a dog leash. As the police approached, Abdi-Issa dropped the leash. Abdi-Issa told an officer that Mona had been fighting with two “really huge” rats in the park near the bank and that he had tried to coax her out of the bushes with a stick. He claimed that Mona got out of her leash and that he “was just really trying to help the dog,” but he could not, so he left to find Fairbanks.

One officer went looking for Mona. At Ludin’s direction, the officer found Mona in a bush near the bank parking lot. The dog could blink “very slowly” and whimper faintly but was otherwise “motionless.” A K-9 unit officer arrived and transported Mona to an emergency veterinary hospital.

On arrival at the emergency room, Mona was alive but “basically comatose.” “She had some changes with her eyes which were consistent with brain trauma or swelling in her brain.” Despite treatment efforts, Mona died within 20 minutes of arriving at the hospital. A necropsy showed multiple areas of external bruising; several rib fractures, including two ribs “completely snapped in half”; a fractured liver; and bruising to the right lung and tissue between the spine and kidney.² A veterinary anatomic pathologist concluded that internal hemorrhaging from “multiple blunt force trauma to various parts of the body” caused Mona’s death. The pathologist did not “find any evidence of animal bites” on Mona.

² The necropsy also showed two large cuts on the top of Mona’s head.

The State charged Abdi-Issa with animal cruelty in the first degree with a domestic violence designation. It also alleged two aggravating factors—that the offense was “a destructive and foreseeable impact on persons other than the victim,” namely, Ludin; and that it was an aggravated domestic violence offense because Fairbanks and Abdi-Issa were “in a dating relationship” and Abdi-Issa’s conduct “manifested deliberate cruelty or intimidation of the victim.”

Abdi-Issa moved to dismiss the domestic violence designation and both aggravating factors. The trial court denied the motion, concluding that sufficient facts supported the domestic violence designation and the alleged aggravators. Abdi-Issa moved to reconsider, which the court denied.

At trial, Abdi-Issa moved to dismiss the charge after the State rested its case in chief. He also renewed his motion to dismiss the domestic violence designation and two aggravating factors. The trial court denied the motions. The jury convicted Abdi-Issa of first degree animal cruelty and found that the crime involved the aggravating circumstance of “a destructive and foreseeable impact on persons other than the victim.”³ But the jury did not find that the crime was “an aggravated domestic violence offense.”

Before sentencing, Abdi-Issa moved to arrest the judgment, arguing that the destructive and foreseeable impact aggravator “does not apply to victimless crimes and the [S]tate did not prove that any person was the victim of the underlying offense.” The court denied the motion. The court imposed an

³ Ludin testified that seeing Abdi-Issa beat Mona to death was “a traumatic event that has really just . . . stuck with me,” including “[v]isual flashbacks,” nightmares, insomnia, panic attacks if she hears “a high pitch squeaky sound the way that I heard the dog screaming,” and “feeling hypervigilant” about “my own safety and the people around me” when she walks on the street.

exceptional sentence above the 12-month standard range of 18 months of confinement. The court also issued a separate postconviction domestic violence no-contact order under chapter 10.99 RCW restricting Abdi-Issa from contacting Fairbanks.⁴

Abdi-Issa appeals.

ANALYSIS

Exceptional Sentence

The court imposed an exceptional sentence based on the jury's finding of a destructive and foreseeable impact on persons other than the victim because of the lasting emotional effects on Ludin. Abdi-Issa argues that the law does not justify an exceptional sentence because the aggravator requires a crime with a "human victim." The State contends that the plain language of the aggravator does not limit its application in this case. We agree with Abdi-Issa.

A trial court may impose an exceptional sentence if it finds "substantial and compelling reasons" to justify punishment beyond the standard range. RCW 9.94A.535; State v. Gaines, 121 Wn. App. 687, 697, 90 P.3d 1095 (2004). A jury's determination that an "[a]ggravating [c]ircumstance[]" exists is a "substantial and compelling reason[]" to impose an exceptional sentence. RCW 9.94A.535(3).

We review the meaning and applicability of a statutory aggravating factor as a matter of law. State v. Davis, 182 Wn.2d 222, 229, 340 P.3d 820 (2014). Statutory interpretation is a question of law we review de novo. State v. Hayes,

⁴ The judgment and sentence also directed Abdi-Issa to have no contact with Ludin and Moe. This is not an issue on appeal.

182 Wn.2d 556, 560, 342 P.3d 1144 (2015). When seeking to determine and implement the intent of the legislature, we first look to the plain language of the statute. State v. Armendariz, 160 Wn.2d 106, 110, 156 P.3d 201 (2007). Our inquiry ends if the plain language of the statute is unambiguous. Armendariz, 160 Wn.2d at 110.

RCW 9.94A.535(3)(r) is an aggravating circumstance that supports imposing an exceptional sentence if a jury finds that the “offense involved a destructive and foreseeable impact on persons other than the victim.” The legislature defines “victim” as “any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.” RCW 9.94A.030(54). So, under the plain language of RCW 9.94A.535(3)(r) and .030(54), the aggravator applies only if the victim of the charged crime is a person.

Here, the charged crime is animal cruelty in the first degree. A person is guilty of 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). RCW 16.52.205(9)(a) defines “animal” as “every creature, either alive or dead, other than a human being.” Under the plain language of RCW 16.52.205, the object of animal cruelty is the animal that suffered pain, injury, or death at the hands of the defendant. Because the object of animal cruelty is not a person, the “foreseeable impact” aggravator does not apply to the charge.

The State argues that “the victims of Abdi-Issa’s animal cruelty include [both] Fairbanks and her dog.” Citing the definition of “victim” under the Sentencing Reform Act of 1981 (SRA), chapter 9.94A RCW, the State contends Fairbanks is also a victim of Abdi-Issa’s cruelty to Mona because “as a direct result of the crime charged, [Fairbanks] personally sustained emotional and psychological injury and because the crime was carried out against her property.” See RCW 9.94A.030(54). But the definition of “victim” under the SRA does not apply to the charge of animal cruelty, which the legislature codified in the prevention of cruelty to animals act, chapter 16.52 RCW. That chapter does not include the term “victim” at all. The plain language of RCW 16.52.205 describes only the animal experiencing pain, injury, or death as the object of the crime, not its owner. “We cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language.” State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003).

We also disagree that Fairbanks’ ownership of Mona makes Fairbanks a victim of animal cruelty under chapter 16.52 RCW. It is true that in Washington, we consider pets personal property as a matter of law. Sherman v. Kissinger, 146 Wn. App. 855, 870, 195 P.3d 539 (2008). But the legislature has created specific crimes to protect pet owners from damage to their property. See RCW 9A.48.070, .080, .090 (first, second, and third degree malicious mischief); RCW 9.08.070 (intent to defraud owner of a pet is a gross misdemeanor). The State chose not to charge Abdi-Issa with any of those crimes. In contrast, the animal cruelty statute punishes a defendant for causing pain and suffering to only an

animal. Indeed, the animal cruelty statute does not mention a human owner. See RCW 16.52.205. The statute serves its purpose whether or not a human owns the animal. See State v. Paulson, 131 Wn. App. 579, 585, 128 P.3d 133 (2006) (first degree animal cruelty statute applied to killing a stray dog).

We conclude the aggravating circumstance in RCW 9.94A.535(3)(r) does not apply to the charge of first degree animal cruelty as a matter of law and cannot justify the exceptional sentence imposed in this case. See Davis, 182 Wn.2d at 231-32. We remand for the trial court to vacate the aggravator and resentence Abdi-Issa accordingly.⁵

Domestic Violence Designation

Abdi-Issa contends that the trial court erred in denying his motion to dismiss the State's designation of his charge as domestic violence under RCW 10.99.020. We agree.

As discussed above, we interpret statutes de novo to determine and implement the intent of the legislature. See Armendariz, 160 Wn.2d at 110. We begin with the plain language of the statute. See Armendariz, 160 Wn.2d at 110. We may also examine “ ‘all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.’ ” State v. Bunker, 169 Wn.2d 571, 578, 238 P.3d 487 (2010)⁶ (quoting Chadwick Farms Owners Ass'n v. FHC LLC, 166 Wn.2d 178, 186, 207 P.3d 1251 (2009)).

⁵ Because we conclude that RCW 9.94A.535(3)(r) does not apply to the charge of animal cruelty as a matter of law, we do not reach Abdi-Issa's challenges to the factual application of the aggravator or the trial court's denial of Abdi-Issa's motion to arrest judgment.

⁶ Internal quotation marks omitted.

The legislature enacted the domestic violence act, chapter RCW 10.99, “to recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide.” RCW 10.99.010. The legislature sought to correct “policies and practices of law enforcement agencies and prosecutors which have resulted in differing treatment of crimes occurring between cohabitants and of the same crimes occurring between strangers.” RCW 10.99.010. The domestic violence act allows the trial court to prioritize scheduling in designated domestic violence cases, issue pretrial no-contact orders, and “impose specialized no-contact orders, violation of which constitutes a separate crime.” State v. Hagler, 150 Wn. App. 196, 201, 208 P.3d 32 (2009); State v. O’Conner, 119 Wn. App. 530, 547, 81 P.3d 161 (2003), aff’d, 155 Wn.2d 335, 119 P.3d 806 (2005); see RCW 10.99.040.

The prosecuting authority often designates a crime as “domestic violence” in charging documents. But “the designation need not be proved to a jury.” Hagler, 150 Wn. App. at 201. Rather, a trial court may make the finding because the designation does not alter the elements of the underlying offense.⁷ State v. O.P., 103 Wn. App. 889, 892, 13 P.3d 1111 (2000).

⁷ Below, the parties mistakenly referred to 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 2.27, at 85 (4th ed. 2016) (WPIC), defining “family or household member,” and “Special Verdict Form A,” asking the jury to determine whether Abdi-Issa and Fairbanks were members of the same family or household, as “relating to” the domestic violence designation. Instead, WPIC 2.27 and Special Verdict Form A related to only the State’s allegation that Abdi-Issa committed an “aggravated domestic violence offense” to support imposing an exceptional sentence. See State v. Felix, 125 Wn. App. 575, 577, 105 P.3d 427 (2005) (A jury must find a crime amounts to “domestic violence” only if it “increases the defendant[s] potential punishment.”). The jury rejected that allegation.

The definition of “domestic violence” includes “but is not limited to” a list of several crimes committed by “one family or household member against another family or household member.” Former RCW 10.99.020(5) (2004).⁸ While the list of crimes does not include animal cruelty, the plain language of the statute leaves discretion to designate unlisted crimes as domestic violence so long as the crime is “committed by one family or household member against another.” Former RCW 10.99.020(5). The definition of “family or household members” includes the following “persons”:

[S]pouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

Former RCW 10.99.020(3). Here, Abdi-Issa committed the crime of animal cruelty against Mona, not Fairbanks. Mona was not a “person.” Under the plain language of former RCW 10.99.020, Mona was not a “family or household member.”

Even so, the State argues that the domestic violence designation should apply to this case because “Abdi-Issa committed animal cruelty as an act of domestic violence to control and inflict emotional abuse on Fairbanks.” We

⁸ The legislature has amended RCW 10.99.020 three times since Abdi-Issa committed the crime in 2018. LAWS OF 2019, ch. 46, § 5014; LAWS OF 2019, ch. 263, § 203; LAWS OF 2020, ch. 296, § 5. The current definition of “domestic violence” adds crimes committed by “one intimate partner against another intimate partner.” RCW 10.99.020(4).

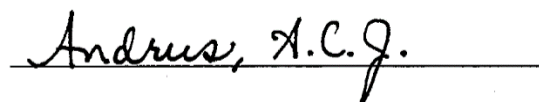
agree that Fairbanks was likely the “ultimate target” of Abdi-Issa’s cruelty to Mona. But the language of chapter 10.99 RCW limits the domestic violence designation to crimes committed by one household member against another. Former RCW 10.99.020(5). While Abdi-Issa likely intended that Fairbanks suffer because of his crime, he committed the crime of animal cruelty against Mona.

We conclude that the trial court erred in instructing the jury as to the “foreseeable impact” aggravator and imposing an exceptional sentence based on the aggravator. The court also erred in denying Abdi-Issa’s motion to dismiss the State’s domestic violence designation. We remand to vacate the aggravator, the domestic violence designation, and the resulting separate postconviction domestic violence no-contact order, and to resentence Abdi-Issa accordingly.

WE CONCUR:







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