

FILED  
Court of Appeals  
Division II  
State of Washington  
5/7/2019 11:47 AM  
No. 52278-1-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

---

**STATE OF WASHINGTON,**

Respondent,

vs.

**LLEWELLYN ROY,**

Appellant.

---

Appeal from the Superior Court of Washington for Lewis County

---

**Respondent's Brief**

---

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney



By:

\_\_\_\_\_  
SARA I. BEIGH, WSBA No. 35564  
Senior Deputy Prosecuting Attorney

Lewis County Prosecutor's Office  
345 W. Main Street, 2nd Floor  
Chehalis, WA 98532-1900  
(360) 740-1240

**TABLE OF CONTENTS**

TABLE OF AUTHORITES ..... ii

I. ISSUE ..... 1

II. STATEMENT OF THE CASE ..... 1

III. ARGUMENT ..... 5

    A. THE STATE PRESENTED SUFFICIENT EVIDENCE TO  
        SUSTAIN THE JURY’S VERDICT THAT ROY  
        COMMITTED ANIMAL CRUELTY IN THE SECOND  
        DEGREE AS CHARGED ..... 5

        1. Standard Of Review..... 5

        2. The State Presented Sufficient Evidence To Sustain  
            the Jury’s Verdict Of Animal Cruelty In The Second  
            Degree..... 6

            a. Animal Cruelty in the Second Degree, contains  
                four alternative means by which a person can  
                commit the crime..... 6

            b. The State presented sufficient evidence to sustain  
                the jury’s verdict of guilty for Count II, Animal  
                Cruelty in the Second Degree ..... 13

IV. CONCLUSION..... 20

## TABLE OF AUTHORITIES

### **Washington Cases**

<i>State v. Camarillo</i> , 115 Wn.2d 60, 794 P.2d 850 (1990).....	14
<i>State v. Colquitt</i> , 133 Wn. App. 789, 137 P.3d 893 (2006) .....	13
<i>State v. Delmarter</i> , 94 Wn.2d 634, 618 P.2d 99 (1980) .....	13
<i>State v. Goodman</i> , 150 Wn.2d 774, 83 P.2d 410 (2004) .....	13
<i>State v. Green</i> , 94 Wn.2d 216, 616 P.2d 628 (1980).....	14
<i>State v. Kitchen</i> , 110 Wn.2d 403, 756 P.2d 105 (1988).....	14
<i>State v. Myers</i> , 133 Wn.2d 26, 941 P.2d 1102 (1997) .....	14
<i>State v. Olinger</i> , 130 Wn. App. 22, 121 P.3d 724 (2005).....	14
<i>State v. Ortega-Martinez</i> , 124 Wn.2d 702, 881 P.2d 231 (1994) ...	15
<i>State v. Owens</i> , 180 Wn.2d 90, 323 P.3d 1030 (2014).....	8, 9
<i>State v. Peterson</i> , 174 Wn. App. 828, 301 P.3d 1060 (2013) ..	10, 11
<i>State v. Peterson</i> , 168 Wn.2d 76, 230 P.3d 588 (2010).....	8
<i>State v. Petrich</i> , 101 Wn.2d 566, 683 P.2d 173 (1984).....	16, 18
<i>State v. Ramos</i> , 163 Wn.2d 654, 184 P.3d 1256 (2008) .....	15
<i>State v. Salinas</i> , 119 Wn.2d 192, 829 P.2d 1068 (1992) .....	6
<i>State v. Sandholm</i> , 184 Wn.2d 726, 364 P.3d 87 (2015).....	8, 9, 16
<i>State v. Smith</i> , 159 Wn.2d 778. 154 P.3d 873 (2007).....	8, 14
<i>State v. St. Clare</i> , 198 Wn. App. 371, 393 P.3d 836 (2017).....	9, 10

**Federal Cases**

*In re Winship*, 397 U.S. 358, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970) .....13

**Washington Statutes**

RCW 9A.82.050(1) .....9  
RCW 16.52.205 .....10  
RCW 16.52.207 .....6, 7, 11, 12, 13, 15  
RCW 46.61.502(1)(b)-(c) .....9

**Constitutional Provisions**

U.S. Constitution, Amendment XIV, § 1 .....13

**Other Rules or Authorities**

WPIC 4.25 .....16

## I. ISSUE

- A. Did the State present sufficient evidence to sustain the jury's verdict for Count II: Animal Cruelty in the Second Degree?

## II. STATEMENT OF THE CASE

Llewellyn Roy lives on Buckner Street in Centralia, Washington. RP 170. Roy owned three dogs and four parrots. RP 171. The parrots consisted of two Congo African grays, one red front macaw, and one cherry head conure. RP 171. The dogs consisted of one bulldog named, Mike, one female Neapolitan mastiff named, Azura, and one male Neapolitan mastiff named, Fausto. *Id.* Mike was an inside dog, while the mastiffs switched off, one being in a kennel and the other being out in the yard because they are not fixed and Roy did not want the dogs to mate. RP 172-73.

Late in the evening on July 15, 2017, Roy was arrested. RP 174. According to Roy, he had fed and watered all of his animals the morning of the 15<sup>th</sup>. RP 178-79. After not seeing Roy's vehicle at his residence for approximately four days, Lisa Wesen, who lives two doors down from Roy, called law enforcement because Roy's dogs were barking. RP 86-88.

Ms. Wesen knocked on Roy's door and there was no answer. RP 87. Ms. Wesen went back to see the dogs and realized they had no food and water. RP 87. A mastiff was in the kennel, the bulldog

was staring at the back door, and the other mastiff was by the fence, barking. RP 88. The kennel “was compacted very high with feces” and Ms. Wesen could smell it emanating from the kennel. RP 89. There was nowhere for the mastiff to stand in the kennel that he was not standing in feces. *Id.* There was no dog food, the dogs’ eyes were red and goopy, and the dogs did not appear healthy. RP 89.

Ms. Wesen retrieved her husband, and they got a five gallon bucket of water and filled it to give to the dogs to drink. RP 90. The mastiff not in the kennel drank the water for 20 minutes, until Ms. Wesen and her husband took the water away from the dog. *Id.* Ms. Wesen got some dog food and put it out for the dogs. RP 91. Another neighbor went in and shoveled out the kennel so there was a place for the dog to lay down. *Id.* They then put water and dog food in the kennel. *Id.*

City of Centralia Community Service Officer (CSO) Jennifer Krueger received an animal complaint for Roy’s residence. RP 104-05. Once CSO Krueger understood the nature of the complaint, she contacted Roy at the Lewis County Jail to find out if there was anyone who could care for his animals in his absence. RP 106-07. Roy requested CSO Krueger contact Roy’s mother and ask if she could take care of the animals. RP 107. Roy told CSO Krueger he could

release a key to give to his mother. RP 107. CSO Krueger contacted Roy's mother but was not successful in getting her to take care of Roy's animals. RP 107-08. CSO Krueger went back to the jail, contacted Roy, and after some discussion Roy released a key to CSO Krueger. RP 108.

CSO Krueger entered Roy's residence around four in the afternoon with CSO Stockdale. RP 109. When CSO Krueger entered the residence the stench of urine, feces, and cigarettes rolled out of the residence. RP 109. There were four birds, the one in the last cage was no longer alive. RP 110. The bird cages were dirty and appeared to not have been cleaned in quite a while. RP 111. There was no bird food located in the house. RP 108, 136.

CSO Krueger located the male mastiff in a kennel on the deck and a female mastiff and a bulldog loose in the yard. RP 112. The mastiffs were not in good shape, they were underweight, had cherry eye, sores on their elbows, were moving slowly and deliberately, and appeared to be in pain. RP 113-14. There was also a strong smell of feces coming from the big enclosed kennel on the deck. RP 114-15. The dogs were fed by the CSOs with dog food located in the house. RP 108, 137. CSO Krueger had never encountered dogs this skinny. RP 130. The animals were removed the following day. RP 121.

Bridget Ferguson is a licensed veterinarian, performed a necropsy on the bird collected from Roy's residence. RP 144, 147. According to Dr. Ferguson the bird appeared severely starved and dehydrated. RP 148. The stomach of the bird was completely empty and the GI tract was filled with blood, which is indicative of starvation. RP 149. The bird had a body score of zero, which would have taken close to two weeks to obtain. RP 149-50. Dr. Ferguson could not rule out natural causes due to the advance decay of the bird when she examined it. RP 151-52.

Roy was charged by information with Count I: Animal Cruelty in the First Degree, and Count II: Animal Cruelty in the Second Degree. CP 1-2. Roy elected to have his case tried by a jury. See RP. Roy testified on his own behalf. RP 17-201. Roy explained the bird was old, the dogs were naturally thin, and Roy regularly cared for his animals. *Id.* The State made it clear that Count I: Animal Cruelty in the First Degree, was only in regards to the dead parrot. RP 272. The jury could not return a verdict on Count I and found Roy guilty as charged in Count II. CP 33-34. The State later dismissed Count I with prejudice after reaching an agreement with Roy. CP 44.

The trial court sentenced Roy to 364 days in jail with 334 days suspended and the 30 days to serve on electronic home monitoring. CP 46-48. Roy timely appeals his conviction. CP 49.

The State will supplement the facts as necessary throughout its argument below.

### **III. ARGUMENT**

#### **A. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUSTAIN THE JURY'S VERDICT THAT ROY COMMITTED ANIMAL CRUELTY IN THE SECOND DEGREE AS CHARGED.**

Roy asserts Animal Cruelty in the Second Degree, as charged in his case, is an alternative means crime, the jury was instructed on all five alternative means, and the State failed to present sufficient evidence to sustain a jury verdict on all five means. Brief of Appellant 8-15. Contrary to Roy's assertion, Animal Cruelty in the Second Degree, charged under a singular subsection does not contain multiple alternative means. Therefore, the facts taken in the light most favorable to the State sustain all of the essential elements of the charged offense. The Court should sustain the jury's verdict.

#### **1. Standard Of Review.**

Sufficiency of evidence is reviewed in the light most favorable to the State to determine if any rational jury could have found all the

essential elements of the crime charged beyond a reasonable doubt.

*State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

**2. The State Presented Sufficient Evidence To Sustain the Jury's Verdict Of Animal Cruelty In The Second Degree.**

Roy asserts the State failed to present sufficient evidence of each alternative mean of Animal Cruelty in the Second Degree. Roy argues because Animal Cruelty in the Second Degree, as charged by the State, contains five alternative means, the State was required to prove each mean for both mastiffs and failed to do so. Subsection (2)(a) of the Animal Cruelty in the Second Degree statute does not set forth five separate alternative means, but contain five means within an alternative mean. There was no requirement the State prove each means within a means.

**a. Animal Cruelty in the Second Degree, contains four alternative means by which a person can commit the crime.**

Roy asserts, Animal Cruelty in the Second Degree, charged under RCW 16.52.207(2)(a) contains five alternative means for committing the offense. The statute in its entirety reads:

(1) A person is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the person knowingly, recklessly, or with criminal negligence inflicts unnecessary suffering or pain upon an animal.

(2) An owner of an animal is guilty of animal cruelty in the second degree if, under circumstances not amounting to first degree animal cruelty, the owner knowingly, recklessly, or with criminal negligence:

(a) Fails to provide the animal with necessary shelter, rest, sanitation, space, or medical attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure;

(b) Under circumstances not amounting to animal cruelty in the second degree under (c) of this subsection, abandons the animal; or

(c) Abandons the animal and (i) as a result of being abandoned, the animal suffers bodily harm; or (ii) abandoning the animal creates an imminent and substantial risk that the animal will suffer substantial bodily harm.

(3) Animal cruelty in the second degree is a gross misdemeanor.

(4) In any prosecution of animal cruelty in the second degree under subsection (1) or (2)(a) of this section, it shall be an affirmative defense, if established by the defendant by a preponderance of the evidence, that the defendant's failure was due to economic distress beyond the defendant's control.

RCW 16.52.207. Roy argues the list contained in subsection (2)(a), failing to provide necessary shelter, rest, sanitation, space, or medical attention are alternative means of committing animal cruelty. Brief of Appellant 8-12. Roy further asserts the State did not present sufficient evidence to prove all five means for both mastiffs, therefore verdict cannot stand because of the unanimity issue. *Id.* at 14-15

Alternative means crimes are not designated by the legislature, nor has the legislature “defined what constitutes an alternative means crime.” *State v. Owens*, 180 Wn.2d 90, 96, 323 P.3d 1030 (2014). The Supreme Court uses guiding principles to determine each case on its own merits. *Owens*, 180 Wn.2d at 96. One principle is alternative means are not necessarily created by “the use of a disjunctive ‘or’ in a list of methods of committing the crime.” *Id.*, citing, *State v. Peterson*, 168 Wn.2d 76, 769-70, 230 P.3d 588 (2010). “Another principle provides that the alternative means doctrine does not apply to mere definitional instructions; a statutory definition does not create a ‘means within a means.’” *Id.*, citing, *State v. Smith*, 159 Wn.2d 778, 787, 154 P.3d 873 (2007). The analysis focuses not on the structure of the statute as much as “whether each alleged alternative describes distinct acts that amount to the same crime.” *State v. Sandholm*, 184 Wn.2d 726, 734, 364 P.3d 87 (2015) (internal quotations and citations omitted). A statute describing minor nuances inherent in the same act is more likely to be facets of the same criminal conduct, while more varied criminal conduct is more likely to describe alternative means. *Sandholm*, 184 Wn.2d at 734. Only when it is determined a statute creates alternative means does the court “proceed to analyze an alleged unanimity issue.” *Id.* at 732.

In *Owens*, the Supreme Court found Trafficking in Stolen Property in the First Degree contained two alternative means, rather than the eight the Court of Appeals determined existed. *Owens*, 180 Wn.2d at 97-99. The Court of Appeals had held each descriptive term in the statute created an alternate means of committing the crime. *Id.* at 97. The Supreme Court held the first seven terms, “initiates, organizes, plans, finances, directs, manages, or supervises the theft of property for sale to others” was one mean and the other mean was “knowingly traffics in stolen property.” RCW 9A.82.050(1); *Owens*, 180 Wn.2d at 98-99.

In *Sandholm* the court addressed whether the DUI statute created alternative means of committing the crime while “under the influence or affected by” either intoxicating liquors and drugs, or a combination of intoxicating liquor or drugs. RCW 46.61.502(1)(b)-(c). The Court held the statute created a single means of committing the crime, “driving while under the ‘influence of’ or ‘affected by’ certain substances that may impair the driver.” *Sandholm*, 184 Wn.2d at 735. The Court describes the two subsections as “facets of the same conduct, not distinct criminal acts.” *Id.*

Division One, has held Animal Cruelty in the First Degree is an alternative means crime. *State v. St. Clare*, 198 Wn. App. 371,

379-82, 393 P.3d 836 (2017); *State v. Peterson*, 174 Wn. App. 828, 851-52, 301 P.3d 1060 (2013). In particular, the Court was referring to subsection (2) of the statute which states:

A person is guilty of animal cruelty in the first degree when, except as authorized by law, he or she, with criminal negligence, starves, dehydrates, or suffocates an animal and as a result causes: (a) Substantial and unjustifiable physical pain that extends for a period sufficient to cause considerable suffering[.]

RCW 16.52.205; See *St. Clare*, 198 Wn. App. at 379-82; *Peterson*, 174 Wn. App. at 851-52. Division One held starvation, dehydration, and suffocation were not merely descriptive but different ways one could commit Animal Cruelty in the First Degree. *Peterson*, 174 Wn. App. at 851. This reasoning was carried forward in *St. Clare* when the Court analyzed if the State presented sufficient evidence to sustain the convictions. *St. Clare*, 198 Wn. App. at 380-82.

Judge Dwyer, in his concurrence in *St. Clare*, raised issue with the Court's analysis of alternative means. *Id.* at 383-86. "However, because this court, in *State v. Peterson*, 174 Wn. App. 828, 301 P.3d 1060 (2013), misidentified the means by which the crime can be committed, and because the majority opinion perpetuates the error, I find it necessary to decline to join the majority opinion." *Id.* at 383. Judge Dwyer asserts there are actually three alternative means for committing Animal Cruelty in the First Degree. *Id.* at 385-86. Each

alternative mean is contained within each subsection heading, (1), (2), and (3). *Id.* “The error made in *Peterson* is that the court confused certain subalternatives (‘means within a means’) for actual alternative means. The words set forth in subsection (2) (‘starves, dehydrates, or suffocates’) are ‘means within a means.’ Jury unanimity guaranty does not attach to these subalternatives.” *Id.* at 386. Judge Dwyer finishes with, “This court, in *Peterson*, got it wrong. The majority opinion perpetuates the error.” *Id.*

Animal Cruelty in the Second Degree has four alternative means by which a person can commit the crime, found in subsections (1), (2)(a), (2)(b), and (2)(c). RCW 16.52.207. Section (1) criminalizes the infliction of unnecessary pain or suffering upon an animal. *Id.* Subsection (2)(c) criminalizes abandoning animals under certain circumstances. *Id.* Subsection (2)(b) criminalizes abandonment in general. *Id.* Subsection (2)(a) criminalizes failing to provide basic life necessities of an animal and thereby causing unjustifiable or unnecessary physical pain. *Id.*

Contrary to Roy’s assertion, subsection (2)(a) of RCW 16.52.207 does not create five separate alternative means. The statute is broken down as follows: Subsection (2) begins with the broad statement, “An owner of an animal is guilty of animal cruelty in

the second degree if under circumstances not amounting to first degree animal cruelty, the owner knowingly, recklessly, or with criminal negligence.” RCW 16.52.207. This section outlines the requisite mens rea necessary for a person to be guilty of the different actions which will follow describing the means by which one can commit animal cruelty, as it applies to each alternative means found in subsections (2)(a)-(c). *Id.* Next, subsection (a) states, “Fails to provide the animal with necessary shelter, rest, sanitation, space, or medical attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure[.]” *Id.* This subsection explains if a person fails to provide basic life necessities to an animal – shelter, rest, sanitation, space, or medical attention – and the result is the animal suffering physical pain that is unjustifiable or unnecessary, this is a criminal act if done with the requisite mens rea listed above. RCW 16.52.207(2)(a). Separating out shelter, rest, sanitation, space, or medical attention would create means within a means.

The five things listed in subsection (2)(a) are closely related, minor variations for which a person must care for their animal. While it is possible to violate one of the items on the list and not others, this does not make them alternative means. Much like a person could

knowingly plan the theft of property for sale to others but not finance it, a person can fail to provide necessary medical attention and still provide shelter. Both are examples of two means contained within an alternative means. Animal Cruelty in the Second Degree, as charged in this case, RCW 16.52.207(2)(a) is not an alternative means crime.

**b. The State presented sufficient evidence to sustain the jury's verdict of guilty for Count II, Animal Cruelty in the Second Degree.**

The State is required under the Due Process Clause to prove all the necessary elements of the crime charged beyond a reasonable doubt. U.S. Const. amend. XIV, § 1; *In re Winship*, 397 U.S. 358, 362-65, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970); *State v. Colquitt*, 133 Wn. App. 789, 796, 137 P.3d 893 (2006). An appellant challenging the sufficiency of evidence presented at a trial “admits the truth of the State’s evidence” and all reasonable inferences therefrom are drawn in favor of the State. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.2d 410 (2004). When examining the sufficiency of the evidence, circumstantial evidence is just as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The role of the reviewing court does not include substituting its judgment for the jury's by reweighing the credibility or importance of the evidence. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). The determination of the credibility of a witness or evidence is solely within the scope of the jury and not subject to review. *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), *citing State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). "The fact finder...is in the best position to evaluate conflicting evidence, witness credibility, and the weight to be assigned to the evidence." *State v. Olinger*, 130 Wn. App. 22, 26, 121 P.3d 724 (2005) (citations omitted).

A criminal defendant has the right to have a jury unanimously agree on a verdict finding him or her guilty. *State v. Smith*, 159 Wn.2d 778, 783, 154 P.3d 873 (2007) (citations omitted). This right applies to the single crime charged not the means in which the crime was carried out. *State v. Kitchen*, 110 Wn.2d 403, 410, 756 P.2d 105 (1988). If there are alternative means in which the charged crime may have been committed, absent a special interrogatory as to which mean or means the jury unanimously agreed upon, there must be sufficient evidence to support each alternative mean submitted to the

jury. *State v. Ortega-Martinez*, 124 Wn.2d 702, 707-08, 881 P.2d 231 (1994).

If the reviewing court determines one of the alternative means is not supported by sufficient evidence the court will reverse the conviction. *Ortega-Martinez*, 124 Wn.2d at 708. The case will be remanded back to the trial court and the State may elect to retry the defendant on the remaining alternative means that were not invalidated by the appellate court. *State v. Ramos*, 163 Wn.2d 654, 660-61, 184 P.3d 1256 (2008).

To convict Roy of Animal Cruelty in the Second Degree the State was required to prove, beyond a reasonable doubt, that Roy, as an owner of an animal, did knowingly, recklessly, or with criminal negligence, fail to provide the animal with the necessary space, shelter, rest, sanitation, or medical attention, and the animal suffered unnecessary or unjustifiable pain as a result. RCW 16.52.207(2)(a); CP 2.

The to-convict jury instruction required the jury to find:

To convict the defendant of the crime of possession of a controlled substance, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about and between July 1, 2017 and July 19, 2017, the defendant knowingly, recklessly, or with criminal negligence failed to provide an animal with

necessary shelter, rest sanitation, space or medical attention; and

(2) This failure caused the animal to suffer unnecessary or unjustifiable physical pain; and

(3) That this act occurred in the State of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

CP 25 (Instruction 11). The jury was also given the *Petrich*<sup>1</sup> instruction, WPIC 4.25, regarding Animal Cruelty in the Second Degree. CP 23. The instruction explains to the jury to convict Roy, “one particular act of animal cruelty in the second degree must be proved beyond a reasonable doubt,” and the jury must unanimously agree as to which act, out of the multiple acts alleged, the State has actually proved. *Id.*

As argued above, Animal Cruelty in the Second Degree as charged by the State here is not an alternative means crime, therefore, there is no need to analyze the unanimity issue raised by Roy. *Sandholm*, 184 Wn.2d at 732. The question then becomes, was

---

<sup>1</sup> *State v. Petrich*, 101 Wn.2d 566, 683 P.2d 173 (1984).

there sufficient evidence of Animal Cruelty in the Second Degree for each mastiff, Azura and Fausto? Simply put, yes.

Fausto was confined to a ten by ten foot kennel outside in the July heat for four days without the availability of food, water, or a place to relieve himself outside of the kennel. RP 87-89, 91, 105, 112, 114, 172-74, 178-79. The kennel “was compacted very high with feces. There was nowhere for the dog to stand that was not standing in it.” RP 89. Fausto also had cherry eye that needed to be medically repaired. RP 113, 244, 248.

Azura, while not confined, was out in heat without food and water for days. RP 87-88, 172-74, 178-79. When given water, Azura drank the water for 20 minutes, until Ms. Wesen and her husband took the water away from the dog. RP 90. Azura also had cherry eye that had to be medically repaired. RP 113, 244, 248.

Both mastiffs were emaciated. RP 89, 113, 137. CSO Stockdale said it was possible to see the mastiffs’ bones due to how skinny they were. RP 137. CSO Stockdale also noted Fausto appeared really sick and could barely walk around. *Id.* CSO Krueger said, “They were very, very skinny. You could see every knob on their spine. They had big sores on their elbows where they lay down.” RP 113. CSO Krueger also described the mastiffs’ movements as

slow and deliberate to avoid sore spots. RP 114. CSO Krueger also classified the dogs as timid and not wanting to be touched. *Id.* Both dogs also had skin and ear infections. RP 247.

According to Dr. Ferguson, the mastiffs were both underweight by an amount that would take weeks for them to lose. RP 154-55. While Roy asserted his dogs were always thin, Kendra Madison from Pasado's Safe Haven gave evidence to the contrary. RP 240-42. Ms. Madison had been in contact with Fausto and Azura since they came to sanctuary in August 2017 and in that time the dogs' appearance had drastically changed. RP 241. Ms. Madison explained how Azura had gained 30 pounds and her ribs are no longer visible. RP 242. The dogs now have energy, they run and play. RP 245.

When viewing this evidence, in the light most favorable to the State, with all reasonable inferences drawn in favor of the State, there is sufficient evidence to support the jury's verdict for Animal Cruelty in the Second Degree for both Fausto and Azura. The *Petrich* instruction required the jury to pick one instance of the multiple possible instances of animal cruelty alleged, which were the two mastiffs. As the State did not specify which mastiff it was electing to present to the jury for the Count, the State must satisfy sufficient

evidence for both dogs. The evidence, outlined above is more than sufficient to prove Roy, with (at a minimum) criminal negligence failed to provide medical care for both mastiffs which caused the dogs to suffer unnecessary or unjustifiable physical pain as a result of the failure. Further, Roy also failed to provide sanitation, space, shelter, and arguably rest (due to the dog's inability to lie down) for Fausto, causing him to suffer unjustifiable or unnecessary physical pain as a result of this failure. Azura also was not provided necessary shelter from the heat and Roy's failure to do so, with criminal negligence, caused her to suffer unnecessary or unjustifiable pain. The State proved with sufficient evidence Roy committed Animal Cruelty in the Second Degree and this Court should affirm the jury's verdict.<sup>2</sup>

//

//

//

//

//

//

//

---

<sup>2</sup> The State acknowledges if this Court finds Animal Cruelty in the Second Degree, as charged is an alternative means crime, there is not sufficient evidence to support each of the means and this Court would have to reverse the conviction and remand.

**IV. CONCLUSION**

Animal Cruelty in the Second Degree, as charged here, is not an alternative means crime. There was sufficient evidence presented to sustain Roy's conviction for Animal Cruelty in the Second Degree. This Court should affirm Roy's conviction.

RESPECTFULLY submitted this 7<sup>th</sup> day of May, 2019.

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney

A handwritten signature in blue ink, appearing to be 'SIB', written over a horizontal line.

by: \_\_\_\_\_  
SARA I. BEIGH, WSBA 35564  
Attorney for Plaintiff

**LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE**

**May 07, 2019 - 11:47 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52278-1  
**Appellate Court Case Title:** State of Washington, Respondent v. Llewellyn Roy, Appellant  
**Superior Court Case Number:** 17-1-00746-8

**The following documents have been uploaded:**

- 522781\_Briefs\_20190507114555D2208706\_4204.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was Roy.lle Response 52278-1.pdf*

**A copy of the uploaded files will be sent to:**

- appeals@lewiscountywa.gov
- maureen@washapp.org
- wapofficemail@washapp.org

**Comments:**

---

Sender Name: Teri Bryant - Email: teri.bryant@lewiscountywa.gov

**Filing on Behalf of:** Sara I Beigh - Email: sara.beigh@lewiscountywa.gov (Alternate Email: teri.bryant@lewiscountywa.gov)

Address:  
345 W. Main Street  
2nd Floor  
Chehalis, WA, 98532  
Phone: (360) 740-1240

**Note: The Filing Id is 20190507114555D2208706**