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NO. 54084-3-II

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

STATE OF WASHINGTON,

Respondent,

v.

SAMUEL BEAM,

Appellant.

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

The Honorable Christine M. Schaller, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. There was insufficient evidence presented at Samuel Adam Beam's stipulated facts trial following drug court termination to sustain a conviction for harming a police dog under RCW 9A.76.200.

2. The trial court erred in entering finding of fact 2. CP 20.

3. The trial court erred in entering conclusion of law 2. CP 21.

Issue Pertaining to Assignments of Error

Following termination from drug court, the trial court proceeded to adjudicate Beam's guilt of five charges, including harming a police dog, on stipulated facts per the drug court agreement. However, the stipulated facts failed to provide any evidence that a police dog was injured, disabled, shot, or killed. Was the trial court's finding that Beam injured, disabled, shot, or killed a police dog unsupported by substantial evidence and does the insufficiency of the evidence to support this charge require reversal of the conviction and remand for dismissal of the charge with prejudice?

B. STATEMENT OF THE CASE

Beam, who faced five charges,¹ entered a drug court contract. CP 7-10. Paragraph 18 of the drug court contract stated what would happen upon Beam's termination from the program:

If he/she is terminated from the program, he/she agrees and stipulates that the Court will determine the issue of guilt on the pending charge(s) solely upon the law enforcement/investigative agency reports or declarations, witness statements, field test results, lab test results, or other expert testing or examinations such as fingerprint or handwriting comparisons, which constitute the basis for the prosecution of the pending charge(s). He/She further agrees and stipulates that the facts presented by such reports, declarations, statements, and/or expert examinations are sufficient for the Court to find him/her guilty of the pending charge(s).

CP 9.

Beam was subsequently terminated from drug court. CP 19. The trial court then found Beam guilty of all charges, including harming a police dog, based on stipulated facts, which were attached to the trial court's findings of fact and conclusions of law following drug court termination. CP 20-37; RP 4-5.

¹ The state charged Beam with harming a police dog, third degree assault, criminal impersonation in the first degree, obstructing a law enforcement officer, and bail jumping. CP 5-6. Beam places only the harming a police dog conviction in dispute in this appeal.

The sole facts as to the charge of harming a police dog were contained in a deputy sheriff's incident report. CP 26-29. According to the report, Beam attempted to run from the deputy, an altercation between them ensued, the deputy felt he was in danger, and the deputy pushed his "door popper button" on his duty belt to allow his police dog to exit the vehicle. CP 27-28. The report pertaining to the police dog reads,

K9 Jaxx exit [sic] the patrol vehicle and came to assist with the assaultive subject.

I push the suspect away from me so I create some distance in between us. I called K Jaxx to me and I could see him coming around the vehicle. At this time, I also see the driver exit the vehicle and start to approach me. I yelled the command for my dog to come to me and he complied without issue. I also yelled at the female [driver] to get back in the vehicle. Once K9 Jaxx observed me fighting with the suspect he began to go to the suspect. I gave K9 Jaxx the command to apprehend the suspect at this time while I was trying to get off the ground.

K9 Jaxx bit the suspect in the thigh area. I observe the suspect punch K9 Jaxx in the head and K9 Jaxx let go of the bite at this time. The suspect attempts to run away from me and the K9 but K9 Jaxx is able to reengage the suspect. K9 Jaxx bit the suspect on his jeans near his thigh. At this time, the suspect's pants fell down and K9 Jaxx bit him on his thigh near where the belt was at. I observe the suspect punch K9 Jaxx 4-5 times more with closed fist but K9 Jaxx maintains contact with the suspect. K9 Jaxx takes the suspect to the ground but the suspect

is still actively fighting with the K9. I give the suspect commands to stop fighting the dog and he then stated that, "I give up." I went and grabbed K9 Jaxx by the harness and outed him.

I still did not have any cover units and I was holding my dog with the suspect on the ground and the female still in the vehicle directly in front of me. K9 Jaxx was barking at the suspect while we were waiting for the cover units. I just held this position until a cover unit would be able to get there and we could safely take the suspect into custody. While waiting for backup, the suspect continued to apologize for his actions and he admitted that he made a mistake. Lacey PD arrived on scene and detained the female while K9 Jaxx and I watched Samuel. Deputy Wall arrived on scene and detained the suspect for me. I am able to secure K9 Jaxx back into my vehicle.

CP 28. Beam was transported to the hospital, ostensibly to be treated for numerous dog bite wounds. CP 29, 31.

With respect to harming a police dog, the trial court entered finding of fact 2: "On June 7, 2017, in Thurston County, Washington, the Defendant did intentionally and maliciously injure, disable, shot [sic], or killed [sic], by any means, any dog that the person knows or has reason to know to be a police dog."

CP 20. The court also entered conclusion of law 2: "The Defendant is Guilty beyond a reasonable doubt of the offense of: Harming a Police Dog, Class C Felony[.]" CP 21.

Beam was sentenced on all five counts with an offender score of 9 for each. CP 40. The trial court imposed a concurrent standard range sentence of 51 months on all counts and 12 months of community custody. CP 41-42. This appeal follows.² CP 51.

C. ARGUMENT

BECAUSE THERE WAS NO EVIDENCE THE POLICE DOG WAS INJURED, DISABLED, SHOT, OR KILLED, THE HARMING A POLICE DOG CONVICTION MUST BE REVERSED FOR INSUFFICIENT EVIDENCE

The state bears the burden of proving all elements of a charged offense beyond a reasonable doubt as a matter of due process. In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980); U.S. CONST. amend XIV; CONST. art. I, § 22. Insufficiency of the state’s proof requires dismissal when, viewing the evidence in the light most favorable to the prosecution, no rational trier of fact could find all elements of the charged crime beyond a reasonable doubt. State v. Vasquez, 178 Wn.2d 1, 6, 309 P.3d 318 (2013). “[I]nferences based on circumstantial evidence

² A November 13, 2019 commissioner’s ruling accepted Beam’s appeal despite the late filing of the notice of appeal, and the state did not move to modify this ruling. See RAP 17.7(a).

must be reasonable and cannot be based on speculation.” Id. at 16; accord Bailey v. Alabama, 219 U.S. 219, 232, 31 S. Ct. 145, 55 L. Ed. 191 (1911) (inferences must “logically be derived from the facts proved, and should not be the subject of mere surmise or arbitrary assumption”). “A presumption is only permissible when no more than one conclusion can be drawn from any set of circumstances. An inference should not arise where there exist other reasonable conclusions that would follow from the circumstances.” State v. Jackson, 112 Wn.2d 867, 876, 774 P.2d 1211 (1989).

“Specifically, following a bench trial, appellate review is limited to determining whether substantial evidence supports the findings of fact and, if so, whether the findings support the conclusions of law.” State v. Homan, 181 Wn.2d 102, 105-06, 330 P.3d 182 (2014). “Substantial evidence’ is evidence sufficient to persuade a fair-minded person of the truth of the asserted premise.” Id. at 106.

Even viewing the evidence of harming a police dog in the light most favorable to the prosecution, there was not substantial evidence presented that the police dog was “maliciously injure[d],

disable[d], sho[t], or kill[ed]” as RCW 9A.76.200 requires. Beam’s conviction must therefore be reversed and the harming a police dog charge must be dismissed.

RCW 9A.76.200(1) states, in pertinent part,

A person is guilty of harming a police dog . . . if he or she maliciously injures, disables, shoots, or kills by any means any dog . . . that the person knows or has reason to know to be a police dog . . . as defined in RCW 4.24.410³ . . . whether or not the dog . . . is actually engaged in police . . . work at the time of the injury.

Mimicking the statute, the trial court found that “the Defendant did intentionally and maliciously injure, disable, shot [sic], or killed [sic], by any means, any dog that the person knows or has reason to know to be a police dog.” CP 20.

The police dog in question here, Jaxx, was not disabled, shot, or killed. Indeed, he continued to attack Beam to the point of Beam’s surrender, then stood guard over Beam, and, after the altercation, was placed back in a police vehicle alive and seemingly well. CP 28. The only question is therefore whether a fair-minded person could conclude from the evidence that Jaxx

³ RCW 4.24.410(a) defines “police dog” as “a dog used by a law enforcement agency specially trained for law enforcement work and under the control of a dog handler.

was injured. Because no evidence was presented about any injury to Jaxx, the trial court's finding that Jaxx was injured, disabled, shot, or killed is not supported by substantial evidence.

"Injure" is not defined in chapter 9A.76 RCW. See RCW 9A.76.010 (definitions section). Nor is it defined in the general criminal code. See RCW 9A.04.110.⁴ When a nontechnical statutory term is undefined, its meaning may be discerned from its dictionary definition. State v. Kintz, 169 Wn.2d 537, 547, 238 P.3d 470 (2010). To "injure" means "to inflict bodily hurt on" or "to impair the soundness of." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1164 (1993). The verb's synonyms include "HARM, HURT, DAMAGE, IMPAIR, MAR, SPOIL." Id.

Moreover, the word "injure" in RCW 9A.76.200 "should not be read in isolation." State v. Flores, 164 Wn.2d 1, 12, 186 P.3d 1038 (2008). Instead, its meaning "may be indicated or controlled

⁴ "Bodily injury," "physical injury," and "bodily harm" are defined by RCW 9A.04.110(4)(a). These definitions accompany definitions of "substantial bodily harm" and "great bodily harm," and all are intended to refer to injuries to people, not dogs. "Injure" or "injury" is defined as a standalone term only three places in the Revised Code of Washington, and two are in the context of worker's compensation. RCW 51.08.100; RCW 70.15.100(3). The third is in the context of victim's compensation actions, but the term "victim" as used in the statute refers to a person who suffers bodily injury or death, not a dog. RCW 7.68.020(10), (16).

by reference to associated words.” Id. “In applying this principle to determine the meaning of a word in a series, a court should take into consideration the meaning naturally attaching to them from the context and . . . adopt the sense of the words which best harmonizes with the context.” Id.

“Injures” is the first word in a series and its meaning should be read in context of the other terms in the series, “disables,” “shoots,” or “kills.” In the context of the series, the legislature intended to punish serious and lasting harm to a police dog rather than mere transient pain that results in no lasting injury. “Injure” harmonized in the context of its associates—a disability, gunshot wound, or death—means a serious or lasting actual injury.

No evidence of injury appears in this record. The entirety of the evidence available is attached to the trial court’s findings of fact and conclusions of law following the stipulated bench trial. CP 22-37. As part of his drug court contract, Beam stipulated that the trial court could use these materials to determine guilt. CP 9. The only portion of the stipulated facts record that pertains to Jaxx the police dog appears in a police report at CP 28.

Nowhere does the report state Jaxx was injured. Jaxx was deployed and bit Beam in the thigh. CP 28. Beam punched Jaxx in the head and Jaxx let go of his bite. CP 28. Undeterred, Jaxx pursued Beam by biting him on his jeans, pulling them down, and then “biting him on his thigh near where the belt was at.” CP 28. Beam punched Jaxx four or five times more but “Jaxx maintain[ed] contact with the suspect” and “t[ook] the suspect to the ground” despite the suspect “actively fighting with” Jaxx. CP 28. Beam then surrendered. CP 28. Jaxx continued to stand guard and bark at Beam while Beam apologized for his actions until another unit arrived. CP 28. At that point, Jaxx was placed back in the vehicle without report or even hint of any injury of any kind. CP 28. Beam, however, went to the hospital for treatment of his injuries. CP 29, 31.

No fair-minded individual could be persuaded that Jaxx was injured. Jax was punched by Beam, but that did not injure him. He let go of one thigh bite only to land a better-holding thigh bite moments later. Once that later thigh bite was secured, Jaxx was punched multiple times with a closed fist but was unfazed. The deputy released Jaxx upon Beam’s surrender and Jaxx

continued to bark and guard the scene. Jaxx was placed back in the vehicle without report of any injury whatsoever, let alone a serious injury as statute's associated terms (disable, shoot, kill) suggest is required. The trial court's finding that Beam was guilty of maliciously injuring, disabling, shooting, or killing a police dog is not supported by substantial evidence. Beam's conviction for harming a police dog must be reversed and the charge must be dismissed.

Perhaps the trial court absolved itself from in engaging in its function of reviewing the stipulated facts to ensure they supported conviction, given that Beam's drug court contract stated, "He/She further agrees and stipulates that the facts presented by such reports, declarations, statements, and/or expert examinations are sufficient for the Court to find him/her guilty of the pending charge(s)." CP 9; see also RP 4-5 (trial court cursorily running through the counts and finding Beam guilty of each without reference to the stipulated facts). However, this language does not bind any court of law and could not have absolved the trial court of performing its basic duty.

Our supreme court considered almost identical language in State v. Drum, 168 Wn.2d 23, 28, 225 P.3d 237 (2010). The court was troubled at the “suggestion that a drug court contract clause stipulating to the sufficiency of the evidence results in the defendant waiving his right to a determination of guilt beyond a reasonable doubt.” Id. at 34. Courts of law are not bound by stipulations to legal conclusions. Id. at 33. “By entering a drug court contract, a defendant is not giving up his right to an independent finding of guilt beyond a reasonable doubt.” Id. at 34. “A court still has the authority to find the defendant not guilty if it determines that the stipulated evidence does not establish all elements of the crime beyond a reasonable doubt.” Id.

As discussed, the stipulated evidence here did not establish that Beam injured, disabled, shot, or killed a police dog. No evidence of any injury to the police dog was presented. The trial court’s finding that Beam injured, disabled, shot, or killed a police dog is not supported by substantial evidence. The state failed to carry its due process burden of proving all elements of harming a police dog beyond a reasonable doubt. Accordingly, Beam’s

harming a police dog conviction must be reversed and the case must be remanded for dismissal of this charge with prejudice.

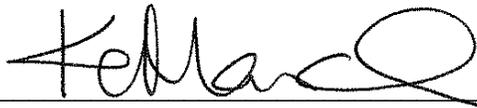
D. CONCLUSION

There was not evidence to persuade a reasonable, fair-minded person that a police dog was injured, disabled, shot, or killed. Accordingly, Beam's conviction for harming a police dog was not supported by substantial evidence and must be reversed. Given the insufficiency of the state's evidence, the harming a police dog charge must be dismissed with prejudice.

DATED this 30th day of March, 2020.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "K. March", written over a horizontal line.

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