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Court of Appeals  
Division II  
State of Washington  
5/28/2020 10:40 AM

No. 54084-3-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

SAMUEL BEAM,

Appellant.

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

The Honorable Christine Schaller, Judge  
Cause No. 17-1-01000-34

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BRIEF OF RESPONDENT

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Joseph J.A. Jackson  
Attorney for Respondent

2000 Lakeridge Drive S.W.  
Olympia, Washington 98502  
(360) 786-5540

**TABLE OF CONTENTS**

A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR..... 1

B. STATEMENT OF THE CASE ..... 1

C. ARGUMENT.....2

    1. When all of the evidence submitted to the trial court is considered in a light most favorable to the State, sufficient evidence supports the trial court’s finding that the Beam is guilty of harming a police dog.....2

D. CONCLUSION .....6

**TABLE OF AUTHORITIES**

**Washington Supreme Court Decisions**

State v. Clark,  
78 Wn. App. 471, 898 P.2d 854 (1995).....3

State v. Galisia,  
63 Wn. App. 833, 822 P.2d 303 (1992).....2

State v. Kisor,  
68 Wn. App. 610, 844 P.2d 1038 (1993).....3

State v. Perry,  
6 Wn. App.2d 544, 441 P.3d 543 (2018).....3

**Decisions Of The Court Of Appeals**

State v. Delmarter,  
94 Wn.2d 634, 618 P.2d 99 (1980).....2

State v. Gonzalez-Flores,  
164 Wn.2d 1, 186 P.3d 1038 (2008).....5

State v. Kintz,  
169 Wn.2d 537, 547, 238 P.3d 470 (2010).....3

State v. Roggenkamp,  
153 Wn.2d 614, 106 P.3d 196 (2005).....5

State v. Salinas,  
119 Wn.2d 192, 829 p.2d 1068 (1992).....2

**Statutes and Rules**

RCW 9A.04.110(4)(a).....3, 4, 5

RCW 9A.04.110(12).....3

RCW 9A.76.....3

RCW 9A.76.200.....1, 3, 5, 6

**Other Authorities**

Merriam-Webster.com Dictionary, <http://www.merriam-webster.com/dictionary/injure> (May 13, 2020).....4

A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether punching a police dog in the head causing him to release his grip and then striking him 4-5 more times in the head with a closed fist is sufficient evidence to demonstrate that the defendant “maliciously injured” a police dog pursuant to RCW 9A.76.200.

B. STATEMENT OF THE CASE.

The State generally accepts the statement of the case contained in Opening Brief of Appellant with the exceptions below and additional facts as necessary in the argument section below.

Following his termination from drug court, the trial court found Beam guilty of harming a police dog, assault in the third degree, criminal impersonation in the first degree, obstructing a law enforcement officer and bail jumping in this case and possession of stolen property in the second degree in Thurston County cause number 16-1-02236-34. CP 38-39, RP 4-5. Beam was sentenced to 29 months on cause number 16-1-02236-34 concurrent with the sentence in this case. RP 13. For the charges in this case, the trial court imposed 365 days on the charge of harming a police dog, 51 months on the charge of assault in the third degree, 365 days on the charge of criminal impersonation in the first degree, 365 days

on the charge of obstructing a law enforcement officer, and 51 months on the charge of bail jumping. RP 13, CP 40. The sentences were run concurrent to one another. CP 42, 13-14.

C. ARGUMENT.

1. When all of the evidence submitted to the trial court is considered in a light most favorable to the State, sufficient evidence supports the trial court's finding that the Beam is guilty of harming a police dog.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 p.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." Id. Circumstantial evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). In determining whether the necessary quantum of proof exists, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the State's case. State v. Galisia, 63 Wn. App. 833, 838, 822 P.2d 303 (1992).

A person is guilty of harming a police dog if he 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. RCW 9A.76.200(1), State v. Kisor, 68 Wn. App. 610, 614-615, 844 P.2d 1038 (1993). In this appeal, Beam challenges the sufficiency of the evidence that Beam “maliciously injure[d]” K9 Jaxx.

A person acts maliciously if they act with an evil intent, wish, or design to vex, annoy, or injure. RCW 9A.04.110(12); State v. Clark, 78 Wn. App. 471, 480, 898 P.2d 854 (1995). The State generally agrees that the term “injure” is not defined in RCW chapter 9A.76. However, RCW 9A.04.110(4)(a) defines bodily injury, physical injury or bodily harm as “physical pain or injury, illness, or impairment of physical condition.” In the context of the hit and run statute, this Court has found that the term “injury” “interchangeably means bodily injury, physical injury, or bodily harm as defined in RCW 9A.04.110(4)(a). State v. Perry, 6 Wn. App.2d 544, 554, 441 P.3d 543 (2018).

When a nontechnical statutory term is undefined, its meaning may be defined from its dictionary definition. State v. Kintz, 169 Wn.2d 537, 547, 238 P.3d 470 (2010). Injure is defined as “to inflict bodily hurt on” or “to impair the soundness of” or “to

harm, impair, or tarnish the standing of” or “to give pain to.” “Injure,” Merriam-Webster.com Dictionary, <http://www.merriam-webster.com/dictionary/injure> (May 13, 2020).

“Hurt” is defined as “to inflict with physical pain” or “to do substantial or material harm to” or “to cause emotional pain or anguish to” or “to be detrimental to.” “Hurt,” Merriam-Webster.com Dictionary, <http://www.merriam-webster.com/dictionary/hurt> (May 13, 2020). Taking the definition in RCW 9A.04.110(4)(a) together with the dictionary definitions of injury and hurt, it is clear that the term “injures” means to inflict with physical pain.

The evidence presented at bench trial supported a rational conclusion that Beam gave “pain to” or “inflicted bodily hurt” on K9 Jaxx. The report relied upon states, “I observe the suspect punch K9 Jaxx in the head and K9 Jaxx let go of the bite at this time.” CP 28. The report indicates that after the initial punch, “The suspect attempts to run away from me and the K9 but K9 Jaxx is able to reengage the suspect.” CP 28. After K9 Jaxx reengaged, Beam struck K9 Jaxx “4-5 more times with closed fist.” CP 28. The report also indicated that Beam is 5’11 and weighed 145 lbs. CP 23. It is reasonable to infer that a person that sized striking a dog with a closed fist is inflicting physical pain upon the dog. The fact that Jaxx

let go of his first bite following the first punch supports that inference. CP 28.

When interpreting the meaning of a word contained in a list, a court should “take into consideration the meaning naturally attaching to them from the context and ... adopt the sense of the words which best harmonize the concept.” State v. Gonzalez-Flores, 164 Wn.2d 1, 12, 186 P.3d 1038 (2008); State v. Roggenkamp, 153 Wn.2d 614, 623, 106 P.3d 196 (2005). The list in RCW 9A.76.200 demonstrates an intent from the legislature to show acts by degree of severity. Disables is generally less severe than shoots, which is less severe than kills. In context, it stands to reason that the term injures would mean something less severe than disables. When the dictionary definition and the definition in RCW 9A.04.110(4)(a) are considered, the infliction of pain, even if no disability is caused, is consistent with RCW 9A.76.200(1).

When the facts are considered in a light most favorable to the State, there exists a rational inference that the 5-6 punches that Beam used on K9 Jaxx inflicted some pain to K9 Jaxx. Additionally, it was clear that the strikes were delivered with the malicious intent of escaping arrest. The evidence was sufficient to

support the trial court's conclusion that Beam "maliciously injured" K9 Jaxx.

D. CONCLUSION.

The evidence was sufficient to support a conclusion that Beam maliciously injured K9 Jaxx as required to support the conviction for harming a police dog, RCW 9A.76.200. The State respectfully requests that this Court affirm Beam's conviction and sentence.

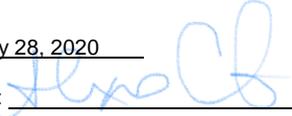
Respectfully submitted this 28th day of May, 2020.

  
\_\_\_\_\_  
Joseph J.A. Jackson, WSBA# 37306  
Attorney for Respondent

**DECLARATION OF SERVICE**

I hereby certify that on the date indicated below I electronically filed the foregoing document with the Clerk of the Court of Appeals using the Appellate Courts' Portal utilized by the Washington State Court of Appeals, Division II, for Washington, which will provide service of this document to the attorneys of record.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Date: May 28, 2020  
Signature:  \_\_\_\_\_

**THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE**

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