SUPREME COURT NO. 99700-4

COURT OF APPEALS NO. 54084-3-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

SAMUEL ADAM BEAM,

Petitioner.

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

The Honorable Christine M. Schaller, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER/COURT OF APPEALS DECISION

Petitioner Samuel Adam Beam, the appellant below, seeks review of the Court of Appeals decision in State v. Beam, noted at ___ Wn. App. 2d ___, 2021 WL 1109999, No. 54084-3-II (Mar. 23, 2021).

B. ISSUES PRESENTED FOR REVIEW

1. Was there insufficient evidence presented at Mr. Beam's stipulated facts trial to sustain a conviction for harming a police dog under RCW 9A.76.200 given that no evidence showed the dog was "injured" under the statute, let alone disabled, shot, or killed?

2. Does the Court of Appeals decision violate basic principles of statutory interpretation by using a results driven dictionary definition of the term "injure" without reading (or even acknowledging) the term "injure" in the context of RCW 9A.76.200(1)'s list, "injures, disables, shoots, or kills"?

3. In the event that the Court of Appeals noncontextual definition of the term "injure" is a plausible reading of the statute, is a reading placing that term in the context of its associated terms also reasonable, requiring application of the reasonable interpretation that favors Mr. Beam under the rule of lenity?

C. STATEMENT OF THE CASE

Upon termination from drug court, the trial court found Mr. Beam guilty of harming a police dog based on stipulated facts.[1] CP 19-37; RP 4-5. The sole facts as to the harming a police dog charged were contained in a deputy sheriff's incident report, which reads, in pertinent part,

> 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 K9 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.

[1] Mr. Beam was convicted of four other crimes, none of which were challenged in the Court of Appeals and therefore none of which receive any discussion in this petition for review.

> 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. Mr. Beam was subsequently hospitalized to be treated for numerous bite wounds. CP 29, 31.

The trial court entered finding of fact 2, which reads, "On June 7, 20217, 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 trial court 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.

Mr. Beam appealed, challenging his conviction for harming a police dog on sufficiency grounds. CP 51; Br. of Appellant at 5-11. He specifically asserted that the term "injure" in RCW 9A.76.200 should not be read in isolation but must be read by refence to associated words in a list, i.e., read by reference to "disables," "shoots," and "kills." Br. of Appellant at 8-

9. Albeit favoring a different interpretation, the state agreed that the term "injure" should be read in the context of the statute's other terms. Br. of Resp't at 5. The Court of Appeals ignored the parties' arguments completely. Instead, it defined the term "injure" as "to give pain to" through a dictionary definition. Slip op., 3-4. Using only this definition, it concluded, "A reasonable inference can be drawn from this evidence that punching a police dog several times in the head with a closed fist and causing the police dog to release its grip caused pain to the dog." Slip op., 4.

D. ARGUMENT IN SUPPORT OF REVIEW

The Court of Appeals decision conflicts with basic statutory interpretation principles pertaining to reading words in a list, necessitating review of the constitutional sufficiency claim under a thorough and correct interpretation of the harming a police dog statute

The prosecution bears the burden of proving all elements of a charged offense beyond a reasonable doubt. 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 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).

The central question in this case is whether the police dog was injured, disabled, shot, or killed under RCW 9A.76.200(1), the harming a police dog statute. This requires interpretation of the meaning of these words under basic statutory interpretation principles. Because there is no dispute that the police dog was not disabled, shot, or killed, the interpretation of the word "injures" in the statute is the only interpretative question at issue.

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 4.24.410[2] . . . whether or not the dog . . . is actually engaged in police . . . work at the time of the injury.

[2] 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.

The trial court was not specific in its findings, indicating only that Mr. Beam "did intentionally and malicious 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 fundamental objective in statutory interpretation is to ascertain and carry out the legislature's intent. State v. Veliz, 176 Wn.2d 849, 854, 298 P.3d 75 (2013). The plain meaning of a statute must be discerned from the ordinary meaning of the language at issue as well as from the context of the statute. State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005) (citing Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 10-12, 43 P.3d 4 (2002)).

Mr. Beam acknowledges that nontechnical terms in a statute may be given their dictionary definitions. State v. Kintz, 169 Wn.2d 537, 547, 238 P.3d 470 (2010). Even so, "a single word in a statute should not be read in isolation." State v. Gonzales Flores, 164 Wn.2d 1, 12, 196 P.3d 1038 (2008). "Rather, the meaning of a word may be indicated or controlled by reference to associated words." Id. (citing State v. Roggenkamp, 153 Wn.2d 614, 623, 106 P.3d 196 (2005); State v. Van Woerden, 93 Wn. App. 110, 117, 967 P.2d 14 (1998)).

"Under the doctrine of noscitur a sociis, the meaning of a word may be determined by reference to its relationship to other words in the statute."

Van Woerden, 93 Wn. App. at 117. "And under the doctrine of ejusdem generis, general words accompanied by specific words are construed to embrace only similar objects." Id.

The Court of Appeals decision conflicts with the cases cited in the previous two paragraphs by reading the word "injures" in isolation and defining that term as "'to give pain to'" and synonymous with "'stresses the inflicting of pain, suffering, or loss.'" Slip op., 3-4 (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1164). These definitions fail to read the term "injures" in the context of the statute and the list of other terms contained in RCW 9A.76.200(1). Because the Court of Appeals decision fails to apply basic statutory principles, in conflict with Washington Supreme Court and Court of Appeals decisions, review should be granted under RAP 13.4(b)(1) and (2).

"Injures" must be read in the context of "disables," "shoots," or "kills." In this context, the legislature intended to punish serious and lasting harm to a police dog rather than mere transient pain that results in no lasting harm. Harmonized in the context of its associates—a disability, gunshot wound, or death—the term "injures" means something serious, something beyond transient pain. In addition, the term "injures" is more general than the terms "disables," "shoots," and "kills." Thus, the term "injures" must be interpreted to "embrace only similar objects" to these more specific terms.

Van Woerden, 93 Wn. App. at 117. Equating "injures" with mere pain does not embrace anything like the terms disables, shoots, or kills. By failing to consider the context of the words in the statute and by failing even to attempt to harmonize the words listed in the statute, the Court of Appeals erred in equating "injures" with mere pain.

The state fully agreed with Mr. Beam that the terms in the statute had to be harmonized, so it is particularly problematic that the Court of Appeals ignored harmonization principles in statutory interpretation. See Br. of Resp't at 5. According to the state, "[t]he 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." Br. of Resp't at 5. Despite the parties' competing interpretations of the statute based on well established interpretation principles, the Court of Appeals did not see fit to address or even acknowledge these principles, necessitating RAP 13.4(b)(1) and (2) review.

In any event, the state's increasing-in-severity interpretation is not a reasonable one. The list "injures, disables, shoots, or kills" is not a progressively serious list as the state claims. One could, for example, disable a dog by drugging it without causing it any injury whatsoever. One could

shoot a dog causing only a graze wound, or one could more severely injure a dog by breaking or severing one of its limbs, thereby causing an injury more serious than a shooting wound. These readily apparently hypotheticals contradict the state's progressively serious theory of interpretation, showing the state's interpretation is not reasonable or correct.

But even assuming the state's interpretation is reasonable, it is not the *only* reasonable interpretation. As Mr. Beam has argued, it is also reasonable to interpret "injures" in association with the other terms to require "injures" to mean lasting harm to the police dog rather than just transient pain. When a statue is susceptible to more than one reasonable interpretation, it is ambiguous and courts may engage in statutory construction and look to legislative history to determine meaning. State v. Evans, 177 Wn.2d 186, 193, 298 P.3d 724 (2013). "[I]f the indications of legislative intent are 'insufficient to clarify the ambiguity,' we will then interpret the statute in favor of the defendant." Id. (quoting In re Post Sentencing Review of Charles, 135 Wn.2d 239, 250 & n.4, 252-53, 955 P.2d 798 (1998)).

Mr. Beam finds no legislative history that sheds light on what the legislature intended by including the term "injures" in RCW 9A.76.200. Mr. Beam and the state, unlike the Court of Appeals, have engaged in an attempted construction of the statute by applying the

harmonization/contextual principles discussed above. Thus, if any question remains about how to interpret "injures" in the statute, that term is ambiguous. Being ambiguous, the interpretation that favors Mr. Beam must prevail. Again, by failing even to acknowledge, let alone address, basic statutory interpretation principles, the Court of Appeals conflicts with numerous Washington Supreme Court and Court of Appeals decisions, warranting RAP 13.4(b)(1) and (2) review.

Under Mr. Beam's interpretation of the term "injure"—requiring something harmful beyond momentary pain—there was no evidence of injury to a police dog. The dog was deployed and bit Mr. Beam in the thigh, Mr. Beam punched the dog and the dog briefly released its bite only to immediately bite Mr. Beam's thigh again with a firmer hold. CP 28. Indeed, Mr. Beam was reported to have punched the dog four or five more times, but the dog was unfazed. CP 28. After Mr. Beam surrendered, the dog stood guard over and barked at Mr. Beam. CP 28. The dog was placed back in the police vehicle without report or even hint of any injury of any kind. CP 28.

Even viewing the evidence in the light most favorable to the state, the dog was not injured. There was clearly no injury in the sense of causing any harm to the dog, as the list "injures, disables, shoots, or kills" suggests is required. Nor is there evidence that the dog experienced any pain. The dog was unfazed and undeterred when Mr. Beam punched it. Although it

released its bite once, seconds later it obtained an apparently firmer bite seconds later despite being punched repeatedly. The prosecution failed to prove beyond a reasonable doubt that the police dog experienced pain or was injured by Mr. Beam. Given that RCW 9A.76.200 has never undergone a sufficiency review for any of the terms "injures, disables, shoots, or kills," the question of constitutional sufficiency presented in this case should be reviewed pursuant to RAP 13.4(b)(3).

E. CONCLUSION

Because he satisfies the RAP 13.4(b)(1), (2), and (3) review criteria, Mr. Beam's petition for review should be granted.

DATED this 22nd day of April, 2021.

Respectfully submitted,

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APPENDIX

Filed
Washington State
Court of Appeals
Division Two

March 23, 2021

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. SAMUEL ADAM BEAM, Appellant.	No. 54084-3-II UNPUBLISHED OPINION

LEE, C.J. — Samuel A. Beam appeals his conviction for harming a police dog, arguing that his conviction is not supported by sufficient evidence. Because the evidence is sufficient to support Beam's conviction, we affirm.

FACTS

On July 17, 2017, Beam was charged with five counts, including harming a police dog.[1] In October, Beam entered into a drug court contract. In January 2019, Beam was terminated from drug court.

On January 22, 2019, the trial court held a bench trial on stipulated facts. The police report contained the following facts relevant to the charge of harming a police dog:

> I push the suspect away from me so I create some distance in between us. I called K9 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 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.

[1] The other four charges are not at issue in this appeal; therefore, we do not address the other four charges against Beam.

> 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 a 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, [sic] "I give up." I went and grabbed K9 Jaxx by the harness and outed him.

Clerk's Papers (CP) at 28. The trial court found,

> 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 at 20. The trial court concluded Beam was guilty of harming a police dog.

Beam appeals his conviction for harming a police dog.

ANALYSIS

Beam argues that there was not sufficient evidence to support his conviction for harming a police dog because there was no evidence that the police dog was injured by Beam's actions. Because there was sufficient evidence to support the trial court's finding that the police dog was injured, we disagree.

Evidence is sufficient to support a conviction if, after viewing the evidence and all reasonable inferences in a light most favorable to the State, a rational trier of fact could find each element of the crime proven beyond a reasonable doubt. *State v. Cardenas-Flores*, 189 Wn.2d 243, 265, 401 P.3d 19 (2017). Our review of a claim of insufficient evidence arising from a bench trial is limited to whether substantial evidence supports the trial court's findings of fact and whether the findings support the conclusions of law. *State v. Alvarez*, 105 Wn. App. 215, 220, 19 P.3d 485 (2001). "Substantial evidence is evidence sufficient to persuade a fair-minded, rational person that the findings are true." *State v. Smith*, 185 Wn. App. 945, 956, 344 P.3d 1244, *review*

denied, 183 Wn.2d 1011, 352 P.3d 187 (2015). Unchallenged findings of fact are verities on appeal. *State v. Homan*, 181 Wn.2d 102, 106, 330 P.3d 182 (2014). Credibility determinations are for the trier of fact and this court does not review credibility determinations on appeal. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). We review the trial court's conclusions of law de novo. *State v. Rawley*, 13 Wn. App. 2d 474, 478-79, 466 P.3d 784 (2020).

A person is guilty of harming a police dog if he "maliciously injures, disables, shoots, or kills by any means any . . . that the person knows or has reason to know to be a police dog[.]" RCW 9A.76.200(1). The term "injures" is not defined by statute. Therefore, we engage in statutory interpretation to determine whether there was substantial evidence supporting the trial court's finding that Beam injured the police dog. *State v. Sullivan*, 143 Wn.2d 162, 174-75, 19 P.3d 1012 (2001).

We review questions of statutory interpretation de novo. *State v. Weatherwax*, 188 Wn.2d 139, 148, 392 P.3d 1054 (2017). "Our 'fundamental objective . . . is to ascertain and carry out the legislature's intent.'" *Weatherwax*, 188 Wn.2d at 148 (alteration in original) (internal quotation marks omitted) (quoting *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010)). "We discern a statute's meaning 'from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.'" *Weatherwax*, 188 Wn.2d at 149 (quoting *State v. Engel*, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009)). And we give nontechnical statutory terms their dictionary meaning. *State v. Kintz*, 169 Wn.2d 537, 547, 238 P.3d 470 (2010).

"[I]njure" is defined as "to give pain to." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1164 (def. 1c). The dictionary also notes that injure is synonymous with harm, which

"stresses the inflicting of pain, suffering, or loss." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY at 1164.

Here, the evidence shows that Beam punched the police dog in the head, causing the dog to break its grip on Beam. The evidence also shows that Beam continued to punch the police dog in the head with a closed fist several more times thereafter. A reasonable inference can be drawn from this evidence that punching a police dog several times in the head with a closed fist and causing the police dog to release its grip caused pain to the dog. Thus, viewing the evidence and all reasonable inferences in the light most favorable to the State, a rational trier of fact could find that Beam injured the police dog. Therefore, the evidence was sufficient to support Beam's conviction for harming a police dog.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Lee, C.J.

We concur:

Worswick, J.

Veljacic, J.

NIELSEN KOCH P.L.L.C.

April 22, 2021 - 11:58 AM

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