

FILED
SUPREME COURT
STATE OF WASHINGTON
9/27/2024 12:55 PM
BY ERIN L. LENNON
CLERK

NO. 1034199

SUPREME COURT OF THE STATE OF WASHINGTON,

STATE OF WASHINGTON,

Respondent,

vs.

ROGER AUGUST ROBATCEK,

Appellant.

RESPONSE TO PETITION FOR REVIEW

RYAN P. JURVAKAINEN
Cowlitz County Prosecuting Attorney

MEGHAN E. DUNLAP, WSBA #52619
Deputy Prosecuting Attorney
Attorneys for Respondent

Cowlitz County Prosecuting Attorney
Hall of Justice
312 SW First Avenue
Kelso, WA 98626
(360) 577-3080
Office ID No. 91091

TABLE OF CONTENTS

	PAGE
I. IDENTITY OF RESPONDENT	ii
II. COURT OF APPEALS' DECISION	1
III. ISSUES PRESENTED FOR REVIEW	1
IV. STATEMENT OF THE CASE	2
A. This Supreme Court should deny review of the Court of Appeals' Decision because it does not present an issue of substantial public interest.	5
B. The Court of Appeals correctly held that the trial court did not err applying the RCW 9A.04.110(4)(a) definition of "physical injury" to the first-degree animal cruelty statute	8
C. The Court of Appeals correctly concluded that there was sufficient evidence proving Robatcek's conviction.	10
V. CONCLUSION	12

Cases

<i>Sorenson v. City of Bellingham</i> , 80 Wn.2d 547, 496 P.2d 512 (1972)	6
<i>State of Washington v. Roger August Robatcek</i> , Court of Appeals No. 57795-0-II	1, 4
<i>State v. Frahm</i> , 193 Wn.2d 590, 444 P.3d 595 (2019)	10
<i>State v. Kintz</i> , 169 Wn.2d 537, 238 P.3d 470 (2010)	8
<i>State v. Salinas</i> , 119 Wn.2d 192, 829 P.2d 1068 (1992)	10

Statutes

RCW 9A.04.110(4)	8
RCW 9A.04.110(4)(a)	2, 8, 9, 10, 11
RCW 16.52.205	8
RCW 16.52.205(1)	9

Rules

RAP 13.4(b)	1, 5, 7, 11, 12
RAP 13.4(b)(4)	6

I. IDENTITY OF RESPONDENT

The Respondent is the State of Washington, represented by Meghan E. Dunlap, Deputy Prosecuting Attorney, Cowlitz County Prosecuting Attorney's Office.

II. COURT OF APPEALS' DECISION

The Court of Appeals correctly decided this matter. The Respondent respectfully requests the Court deny review of the July 30, 2024, Court of Appeals' Opinion in *State of Washington v. Roger August Robatcek*, Court of Appeals No. 57795-0-II.

III. ISSUES PRESENTED FOR REVIEW

(1) Should the Supreme Court accept review of Robatcek's

Petition for Review, when he has failed to meet any of the grounds governing review pursuant to RAP 13.4(b)?

(2) Was the evidence sufficient to prove Robatcek committed Animal Cruelty in the First Degree?

(3) Did the trial court error in applying the RCW 9A.04.110(4)(a) definition of “physical injury” to the first-degree animal cruelty statute?

IV. STATEMENT OF THE CASE

On April 5, 2022, around 3:00 p.m., Nicholas Scardino was outside in his backyard in Longview, tuning up his lawn mower so that he could mow the lawn. RP 22. Mr. Scardino lived at the residence with his mother, Sheila Scardino who was at work at the time. RP 9. The Scardinos had a dog named Peppy. RP 9. Peppy was a Shih Tzu that was approximately 12-years-old. RP 22. Because Mr. Scardino intended to mow his back yard, he had left Peppy on a runner in the front of his house next to his carport. RP 22.

Before Mr. Scardino could start his lawn mower, he heard noises coming from the side of the house, so he went to see what was going on. RP 22. He went to his fence and looked around the side of the house into Robotcek’s back yard. RP 26. Robotcek was in his back yard on the other side of the fence, aiming what

looked like a rifle toward Peppy. He then fired it at Peppy, striking him directly in the eye. CP 27.

Mr. Scardino asked Robatcek what he was doing, and Robatcek told him that he had shot Peppy because he was barking. RP 27. Robatcek then walked back inside his house. RP 27.

At trial, Robatcek testified that he aimed at Peppy's "ass." RP 60. He stated that he meant to hit Peppy, as his intent was to hit Peppy to "tap" the dog to get him to be quiet. RP 59.

Dr. Janine Hart, a veterinarian, treated Peppy and determined that his eye had to be removed. RP 12-13. She described Peppy's eye as a "penetrating injury to the eye that was rather catastrophic." RP 14. She further explained that the injury had collapsed the eye and that if the eye were not removed, Peppy would not be able to see what he was doing. If that were the case, he ran the risk of running into things and causing further injury. RP 14-15. Dr. Hart testified that the injury was consistent with being shot in the eye with an object. RP 17.

Dr. Hart also used various pain scales to determine that Peppy needed pain medication. RP 19. She testified that she had determined that “the eye was definitely painful and was causing him a lot of discomfort.” RP 20.

On cross examination, Robatcek testified that he had owned his airsoft rifle for approximately 10 years and used it to shoot at birds in his garden. RP 64-65. When asked if he had ever been able to hit any of the birds, he responded that he “touched their tail feathers enough to drive them off.” RP 65.

On December 8, 2022, the Court found Robetcek guilty of Animal Cruelty in the First degree after a bench trial. Robetcek appealed. The Court of Appeals Division II affirmed Robetcek’s conviction and remanded for the trial court to strike the VPA and DNA fees. *State of Washington v. Roger August Robatcek*, Court of Appeals No. 57795-0-II. Robatcek then petition for review by this court.

A. This Supreme Court should deny review of the Court of Appeals' Decision because it does not present an issue of substantial public interest.

Because Robatcek's petition fails to raise any of the grounds governing review under RAP 13.4(b), it should be denied. Under RAP 13.4(b) a petition for review will be accepted by the Supreme Court only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

The court uses three factors to determine whether a matter is of substantial public interest. The court considers "the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question."

Sorenson v. City of Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972).

Robatcek claims that there is a substantial public interest that should be determined by the Supreme Court pursuant to RAP 13.4(b)(4). He claims that the Court of Appeals' opinion in this case effectively criminalizes pet owners from training or otherwise disciplining their pets. However, pet training and discipline does not involve shooting an animal with a pellet gun or causing permanent disfigurement.

Looking at the factors, there is no public interest in this case. Pet training and discipline are private matters and are not the issue that was before the Court of Appeals. The opinion did not render pet training illegal. Second, there is no need for an authoritative determination for future guidance. Police officers, lawyers, and judges are not going to read the opinion and believe it is a crime to spray a cat in the face as discipline, or to use an electric fence to keep track of cattle. These practices are done for the purpose of training or containing their own pets. These cause

mild discomfort. The trial court found actual physical injury. There was pain and Peppy suffered permanent disfigurement in losing his eye. Shooting a neighbor's dog in the eye is an entirely different situation.

Last, the likelihood that the question of whether the "physical injury" definition applied in this case is unlikely to come up in the future. The trial court did not find that Peppy suffered "mild discomfort," as Robatcek's claim rests upon. The court found that Peppy suffered actual pain from being shot directly in the eye, which fit the definition of "physical injury" that the court properly applied. Peppy's eye had to be removed, which created a permanent disfigurement.

Robatcek has not met any of the criteria for review under RAP 13.4(b). Because there is no substantial public interest, the court should deny review.

B. The Court of Appeals correctly held that the trial court did not err applying the RCW 9A.04.110(4)(a) definition of “physical injury” to the first-degree animal cruelty statute.

The Court of Appeals correctly held that the trial court properly applied RCW 9A.04.110(4)(a) to the “physical injury” element required by RCW 16.52.205. “If necessary, we may also rely on the dictionary or thesaurus when interpreting statutes.” *State v. Kintz*, 169 Wn.2d 537, 547, 238 P.3d 470 (2010). Robatcek claims that the trial court erred in using RCW 9A.04.110(4) to define “physical injury.” However, “physical injury” is not defined in RCW 16.52.205, so the trial court found it necessary to turn to another source for a definition. The Court of Appeals correctly agreed that turning to another statute was reasonable, when use of a dictionary or thesaurus is sufficient under the law.

There are three different ways for the State to prove Animal Cruelty in the First Degree. One of the ways is to show that the defendant intentionally caused physical injury to the animal.

A person is guilty of animal cruelty in the first degree 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 while manifesting an extreme indifference to life, or forces a minor to inflict unnecessary pain, injury, or death on an animal.

RCW 16.52.205(1). RCW 9A.04.110(4)(a) states: “Bodily injury,” “physical injury,” or “Bodily harm” “means physical pain or injury, illness, or an impairment of a physical condition.”

Robatcek argued that the trial court’s reliance on the “physical injury” definition in RCW 9A.04.110(4)(a) renders RCW 16.52.205(1) superfluous. The Court of Appeals correctly disagreed. It found that it was reasonable to use the definition from RCW 9A.04.110(4)(a) when, absent a definition in the statute, the courts can turn to a dictionary or thesaurus for a definition. Because the Court of Appeals correctly held that the trial court properly applied RCW 9A.04.110(4)(a) to the first-degree animal cruelty statute, this court should deny review of this case.

C. The Court of Appeals correctly concluded that there was sufficient evidence proving Robatcek's conviction.

The Court of Appeals correctly concluded that there was sufficient evidence for the trial court to find Robatcek committed Animal Cruelty in the First Degree. "When reviewing the sufficiency of the evidence, we examine whether, viewing the evidence in the light most favorable to the State, "Any rational trier of fact could have found guilt beyond a reasonable doubt." *State v. Frahm*, 193 Wn.2d 590, 595, 444 P.3d 595 (2019) (quoting *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)). Robatcek claims that because he believes the trial court allowed "mild discomfort" to meet the physical injury element, that a rational trier of fact could not have found guilt beyond a reasonable doubt. However, that argument fails because the trial court did not find that "mild discomfort" fit the definition under RCW 9A.04.110(4)(a). The trial court found that Peppy suffered actual physical pain when Robatcek shot him in the eye. As a

result, Peppy will have to live without the eye for the rest of his life.

The trial court found that the State met all the elements of Animal Cruelty in the First Degree. One of the elements of that offense is “physical injury.” Robatcek argues that because he does not believe that definition should have been used, that evidence was not sufficient. However, the Court of Appeals correctly held that the trial court properly applied RCW 9A.04.110(4)(a) to the first-degree animal cruelty statute and agreed that there was sufficient evidence to prove all the elements of the State’s case against Robatcek. Therefore, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. The Court of Appeals correctly found that the evidence was sufficient. Because Robatcek did not meet the criteria for review under RAP 13.4(b), his petition for review should be denied.

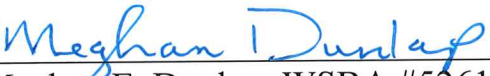
V. CONCLUSION

Because Robatcek.'s petition fails to meet any of the considerations governing acceptance of review under RAP 13.4(b), it should be denied.

CERTIFICATE OF COMPLIANCE

I certify under RAP 18.17(b) that excluding appendices, title sheet, table of contents, table of authorities, certificate of compliance, certificate of service, signature blocks, and pictorial images, the word count of this document is 1855 words, as calculated by the word processing software used.

Respectfully submitted this 27th day of September, 2024.



Meghan E. Dunlap, WSBA #52619
Deputy Prosecuting Attorney

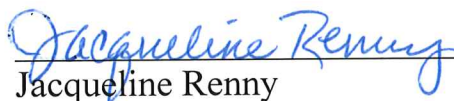
CERTIFICATE OF SERVICE

I, Jacqueline Renny, do hereby certify that the Response to Petition for Review was filed electronically through the Supreme Court Portal and which will automatically cause such filing to be served on the opposing counsel listed below:

Jennifer J. Sweigert
Nielsen Koch & Grannis, PLLC
The Denny Building
2200 Sixth Ave, Ste 1250
Seattle, WA 98121
sweigertj@nwattorney.net
sloanej@nwattorney.net

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on the 27th day of September, 2024.


Jacqueline Renny

COWLITZ COUNTY PROSECUTORS OFFICE

September 27, 2024 - 12:55 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 103,419-9
Appellate Court Case Title: State of Washington v. Roger August Robatcek
Superior Court Case Number: 22-1-00385-2

The following documents have been uploaded:

- 1034199_Briefs_20240927125316SC388532_8795.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Response to Petition for Review.pdf

A copy of the uploaded files will be sent to:

- Sloanej@nwattorney.net
- SweigertJ@nwattorney.net
- appeals@co.cowlitz.wa.us

Comments:

Sender Name: Jacqueline Renny - Email: rennyj@cowlitzwa.gov

Filing on Behalf of: Meghan Elisabeth Dunlap - Email: Dunlapm@co.cowlitz.wa.us (Alternate Email: appeals@cowlitzwa.gov)

Address:

312 SW 1st Avenue

Kelso, WA, 98626

Phone: (360) 577-3080 EXT 6618

Note: The Filing Id is 20240927125316SC388532