No.
Court of Appeals No. 58418-2-II

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

YURI FEITSER,

Petitioner.

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

Petition for Review

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A. Identity of Petitioner

Petitioner Yuri Feitser asks this Court to accept review of the opinion in *State v. Feitser*, 58418-2-II.

B. Opinion Below

Mr. Feitser challenges his conviction for animal cruelty arguing the State did not prove his act was not "authorized in law." The Court of Appeals excuses the State's failure, concluding "authorized in law" refers to other statutory provisions. Yet the court never points to any evidence proving these other statutory provisions were met. The State did not prove the elements of the offense, and yet the Court of Appeals affirmed Mr. Feitser's conviction.

C. Issues Presented

Due process requires the State prove each essential element of an offense beyond a reasonable doubt. To convict a person of first degree animal cruelty the State must prove the person intentionally and unlawfully inflicted injury. Assuming the State proved Mr. Feitser acted intentionally, there was no

evidence that his actions were unlawful. The State did not prove each element of the offense beyond reasonable doubt.

2. A criminal statute which lacks articulable guidelines to guard against arbitrary enforcement is unconstitutionally vague under the Due Process Clause of the Fourteenth Amendment. The animal cruelty statute, RCW 16.52.205, lacks any articulable basis to guide the determination of which acts are lawful and which are not. The statute is unconstitutionally vague.

D. Statement of the Case

Yuri Feitser and Amanda Muggleston dated for several months. RP 200. The lived together for some portion of that time. *Id.* Ms. Muggleston owned a small dog. RP 201.

Ms. Muggleston had arranged a job interview for Mr. Feitser. RP 216. Concerned Mr. Feitser may miss the interview, Ms. Muggleston monitored video footage from cameras in her home to see Mr. Feitser would make the interview. RP 216.

On the video, a dog's whining can heard from off camera. RP 233, 236-37. The video then shows Mr. Feitser carry the dog through the master bedroom to the master bath. RP 239. As he does so, the video captures Mr. Feitser pleading with the dog to wake up. *Id.* Ms. Muggleston later discovered the dog, dead, in that bathroom. RP 217.

A necropsy revealed the dog had numerous broken ribs which like resulted in an inability to breathe, causing death. RP 280, 284.

The State charged Mr. Feitser with first degree animal cruelty. CP 51. The state also charged Mr. Feitser with intimidating a witness. *Id.* A jury convicted him of both counts. CP 84.

E. Argument

The opinion of the Court of Appeals presents a significant constitutional question as it relieves the State of its burden of proving each element of the charge. Morevore, the opinion refuses to address the unconstitutional vagueness of the animal cruelty statute.

1. The State did not prove each of the elements of the offense.

RCW 16.52.205 provides:

> (1) 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 or while manifesting an extreme indifference to life, or forces a minor to inflict unnecessary pain, injury, or death on an animal.

In this case, regardless of whether the State proved Mr. Feitser acted intentionally, the State did not prove Mr. Feitser's actions were not "authorized in law." In fact, the State offered no evidence of when the infliction of injury on an animal is authorized by law much less when it is not.

"'Elements' are the facts that the State must prove beyond a reasonable doubt to establish that the defendant committed the charged crime." *State v. Recuenco*, 163 Wn.2d 428, 434, 180 P.3d 1276 (2008). An element of an offense is a fact which "establish[es] the very illegality of the behavior." *State v. Zillyette*, 178 Wn.2d 153, 158, 307 P.2d 712 (2013). Because the statute only criminalizes the intentional harming or killing of an animal when it is not "authorized in law," whether it is not "authorized in law" is a fact which the State must prove.

The opinion of the Court of Appeals parrots the state's argument that "except as authorized in law" refers to other statutes in Title 16 RCW and does not constitute an element of the offense. First, the conclusion does not flow from the premise. Whether the term refers to other specific statutory provisions or not, it remains true that whatever it refers to defines the "very illegality of the crime." That is, even if "except as authorized in law" refers only to other statutory

exceptions, the State was required prove those exceptions did not apply to this case. The State did not do that.

Concluding the language "except as authorized in law" refers to other statutory provisions does not resolve the question of whether it is an essential element. Instead, it only establishes what the State was required to prove. Again, there is no dispute in this case the State did not prove that no matter what it means.

The legislature has not criminalized every act of intentionally killing or causing harm to an animal. It has only criminalized those acts which are not authorized by law. Because the statute only makes an act animal cruelty if it is not "authorized in law" that is an element of the offense. *Recuenco*, 163 Wn.2d at 434; *Zilyette*, 178 Wn.2d at 158. Whether or not an act is "authorized in law" defines the "very illegality of the behavior." *Zillyette*, 178 Wn.2d at 158. It is hard to imagine what else it could mean. Clearly, if something is authorized by law it cannot be illegal; i.e. the crime has not been committed. Thus, it is an element of the offense.

> *Mullaney* [*v. Wilbur*, 421 U.S. 684, 95 S. Ct. 1881, 44 L. Ed. 2d 508 (1975)] . . . held that a State must prove every ingredient of an offense beyond a reasonable doubt, and that it may not shift the burden of proof to the defendant by presuming that ingredient upon proof of the other elements of the offense. . . . Such shifting of the burden of persuasion with respect to a fact which the State deems so important that it must be either proved or presumed is impermissible under the Due Process Clause.

Patterson v. New York, 432 U.S. 197, 215, 97 S. Ct. 2319, 52 L. Ed. 2d 281 (1977). Relieving the State of the need to prove the act is not legal violates due process.

A court must interpret statutes in order to "avoid constitutional doubt" regarding their operation. *State v. Blake*, 197 Wn.2d 170, 188-89, 481 P.3d 521 (2021). Interpreting RCW 16.52.205 as not requiring the State prove Mr. Feitser's acts were not "authorized in law," regardless of what that term means, creates significant doubt as to the statute's constitutionality.

Beyond that, the statute is broader than the court or prosecutor suggest. The statute's meaning is determined first

from its plain language. *State v. Conover*, 183 Wn.2d 706, 711, 355 P.3d 1093 (2015). The statute only applies to behavior which is not authorized by law. RCW 16.52.205. It does not limit that exception in any fashion. The statute does not limit the term "except as authorized in law" to any specific statute and does even use the term "statute." Because the term "except as authorized in law" is unambiguous this court cannot add any terms. *State v. Delgado*, 148 Wn.2d 723, 795, 63 P.3d 792 (2003). The prosecutor insists the statute is unambiguous all the while insisting it refers to other statute it never mentions. Because the statute does say not anything about the provisions of any other statute it cannot be read as applying only to the authority recognized in those unreferenced statutes. Instead, the plain meaning of "authorized in law" is just what it says: any legal authority.

If a penal statute is subject to more than one interpretation the rule of lenity requires a court adopt the interpretation most favorable to the defendant. *State v.*

Weatherwax, 188 Wn.2d 139, 155, 392 P.3d 1054 (2017). Thus, even if the statute could be construed as the State suggests, Mr. Feitser's interpretation must prevail.

The definition of "animal" for purposes of this crime is extraordinarily broad, and it includes "every creature, either alive or dead, other than a human being." RCW 16.52.205(9)(a). One may trap and intentionally kill a rat in their home merely because of the nuisance it causes. A person may swap and harm a housefly for the same reason. A gardener may spray the aphids on their rose bushes intending to kill them without regard to the attendant suffering. None of these acts are unlawful. There are numerous other instances in which the intentional infliction of injury or death on animals is lawful, *e.g.* hunting, fishing, and food production. While distasteful to some, many people intentionally euthanize their house pets, from goldfish to dogs.[1] Plainly, a person cannot be convicted of

[1] RCW 16.52.190 creates an exemption to the crime of poisoning an animal for the use of poison to euthanize an

animal cruelty simply because they intentionally injure or even kill an animal. Instead, the State must also establish the act was unlawful.

In order to prove Mr. Feitser's act was not authorized by law, the State had to prove a negative. Determining whether an act is not authorized by law requires proof of *all* the circumstances in which the intentional infliction of harm or even death is permissible and evidence of *all* the circumstances in which it is not. And after presenting that evidence, the State was required to prove beyond a reasonable doubt that Mr. Feitser's actions fall within the latter group, rather than the former. The State never even tried to meet that burden.

2. The animal cruelty statute is unconstitutionally vague.

The vagueness doctrine of the Due Process Clause rests on two principles. First, penal statutes must provide citizens

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animal or for pest control. However, no similar exemption exists in RCW 16.52.205 defining first degree animal cruelty or in instances not involving poison.

with fair notice of what conduct is proscribed. Second, laws must provide ascertainable standards of guilt so as to protect against arbitrary and subjective enforcement. *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972). "A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Id*. at 108-09. A "statute fails to adequately guard against arbitrary enforcement where it lacks ascertainable or legally fixed standards of application or invites "unfettered latitude" in its application. *Smith v. Goguen*, 415 U.S. 574, 578, 94 S. Ct. 1242, 15 L. Ed. 2d 447 (1973); *Giacco v. Pennsylvania*, 382 U.S. 399, 402-03, 86 S. Ct. 518, 15 L. Ed. 2d 447 (1966). The vagueness doctrine is most concerned with ensuring the existence of minimal guidelines to govern enforcement. *Kolender v. Lawson*, 461 U.S. 352, 358, 75 L. Ed. 2d 903, 103 S. Ct. 1855 (1983); *O'Day v. King County*, 109 Wn.2d 796, 810, 749 P.2d 142 (1988).

As detailed above there are countless instances every day in which people intentionally kill or injure an animal as that term is defined in RCW 16.52.205(9)(a). From fishing to trapping a mouse to swatting a fly people engage in conduct everyday which satisfies the elements of first degree animal cruelty. The overwhelming majority of those are never prosecuted. And the prosecutor will certainly agree those case should not be prosecuted. Yet that begs the question why not? What objective criteria separate those cases of the intentional infliction of death and substantial pain from a case like this one which is prosecuted and leads to conviction? The statute offers none.

Certainly a requirement of proof that a particular act is not "authorized in law" helps to define when such acts may be prosecuted and when they are not. Of course the State did not even try to prove that here. But that limitation does not solve the entire problem. For instance, there is no statute which

permits someone to swat a fly or trap a mouse. Without a statute are those acts "authorized in law?"

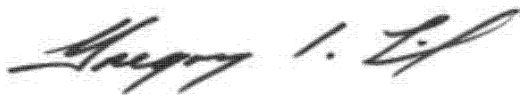
There is no articulable basis in RCW 16.52.205 to distinguish those acts from Mr. Feitser's acts. In each instance the animal was intentionally killed. In each instance the animal suffers substantial pain. What is prosecuted and what leads to conviction is left to the subjective views of prosecutors and juries with unfettered latitude. That renders the statute unconstitutionally vague. *Smith*, 415 U.S. at 578.

F. Conclusion

Because the State did not prove each element of the offense the Court must reverse Mr. Feitser's conviction. This Court should accept review.

This pleading complies with RAP 18.17 and contains 2137 words.

Respectfully submitted this 16th day of September, 2024.



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Filed
Washington State
Court of Appeals
Division Two

August 16, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. YURI ANATOLY FEITSER, Appellant.	No. 58418-2-II ORDER DENYING MOTION TO RECONSIDER

On August 2, 2024, appellant, Yuri Feitser, filed a motion to reconsider the court's July 23, 2024 unpublished opinion. After consideration, the court denies the motion for reconsideration. Accordingly, it is

SO ORDERED

PANEL: Jj. Maxa, Veljacic, Che

FOR THE COURT:

Che, J.

Filed
Washington State
Court of Appeals
Division Two

July 23, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent v. YURI ANATOLY FEITSER, Appellant	No. 58418-2-II UNPUBLISHED OPINION

CHE, J. — Yuri Anatoly Feitser appeals his conviction for first degree animal cruelty.

While dating, Feitser stayed at Amanda Mugleston's house on most nights. Mugleston had a pet dog named Romeo. In a two-month period, Romeo sustained 21 rib fractures. On the day Romeo died, Mugleston—on her home surveillance system—observed Feitser concealing Romeo from a camera. She could hear multiple thuds and Romeo's screams. When she arrived home, Mugleston found Romeo dead in her bathroom with a stereo on top of him.

Feitser argues (1) the State did not prove that his actions were not "authorized in law," which he claims is an essential element of RCW 16.52.205; (2) RCW 16.52.205 is unconstitutionally vague; and (3) the trial court improperly imposed the $500.00 victim penalty assessment (VPA) and $100.00 DNA collection fee.

We hold (1) the phrase "except as authorized in law" is not an essential element of RCW 16.52.205, (2) Feitser has not demonstrated beyond a reasonable doubt that RCW 16.52.205 is void for vagueness, and (3) the VPA and DNA collection fee should be stricken.

Accordingly, we affirm Feitser's conviction for first degree animal cruelty but remand for the trial court to strike the VPA and DNA collection fee.

FACTS

In September 2020, Feitser and Mugleston were in a relationship, and Feitser stayed at Mugleston's house on most nights.[1] Mugleston installed surveillance cameras in her house, including one in her master bedroom, one in the dining room, and one at the door to the garage. Feitser was aware of the cameras.

Mugleston's pet, a three-pound Yorkshire Terrier, was named Romeo. In early October 2020, Mugleston noticed that Romeo was "acting strange." Rep. of Proc. (RP) at 203. Mugleston took Romeo to an emergency veterinary clinic, and the veterinarian missed seeing one rib fracture on a chest x-ray. The clinic administered pain medication to Romeo and sent him home.

In early November, Mugleston came home from a day trip with Feitser and noticed Romeo did not want to relieve himself, appeared to lack energy, felt like "bubble wrap," and had urinated blood. RP at 212. Mugleston took Romeo to a veterinary clinic where she discovered that Romeo sustained 11 rib fractures. The clinic sent Romeo home the next day with medication. By mid-November, Romeo seemed to be healing and doing well.

[1] Feitser and Mugleston's relationship status fluctuates during this period.

On the morning of November 20, 2020, Mugleston went to work and left Romeo in her bathroom per her routine. Mugleston had arranged a job interview for Feitser that day, so she monitored video footage from the cameras in her house to see if Feitser would make it to the interview. Mugleston narrated videos for the jury that showed Feitser carrying Romeo while concealing Romeo from a camera. From the videos, Mugleston could hear thuds and Romeo's screams, Feitser pleading with Romeo to wake up, and the sound of Mugleston's stereo being ripped from the wall of her bathroom.[2] Mugleston immediately left work and upon arriving home, she discovered Romeo, dead, in her bathroom with a stereo on top of him. Feitser was not at the house.

Dr. Emily Ferrell, a shelter medicine and forensic veterinarian, completed a chest x-ray and a necropsy on Romeo. The results showed 21 rib fractures,[3] air within the chest, and air under the skin. Romeo's broken ribs punctured his lungs. Dr. Ferrell also noted Romeo's femur was out of its pelvic joint. The necropsy revealed Romeo's cause of death was likely blunt force trauma, which resulted in respiratory distress, an inability to breath, and a change in air distribution.

The State charged Feitser with first degree animal cruelty.[4]

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[2] The jury appears to have also watched a video in which Feitser is seen attempting to perform CPR on Romeo.

[3] Romeo sustained 21 rib fractures over three separate incidents between October and his death on November 20, 2020, nine of which he sustained on November 20.

[4] The State also charged Feitser with intimidating a witness. Feitser does not challenge his conviction for intimidation of a witness.

A jury found Feitser guilty of first degree animal cruelty. The trial court determined Feitser is indigent. The trial court imposed a $500.00 VPA and $100.00 DNA collection fee.

Feitser appeals.

ANALYSIS

I. ELEMENTS OF FIRST DEGREE ANIMAL CRUELTY

Feitser argues his conviction must be reversed because the State did not prove that his actions were not "authorized in law," which he claims is an essential element of first degree animal cruelty under RCW 16.52.205. Br. of Appellant at 4. We disagree.

A. *Legal Principles*

We review issues of statutory interpretation de novo. *State v. Ingram*, 9 Wn. App. 2d 482, 498, 447 P.3d 192 (2019).

When interpreting a statute, our main goal is to determine the legislature's intent and give effect to it. *Id.* First, we look at the plain meaning of the statute. *Id.* To determine the plain meaning of a provision, we look at its text, the context of the statute in which it is found, related provisions, and the whole statutory scheme. *Id.*

The State must prove each element of the charged crime beyond a reasonable doubt. *State v. Crossguns*, 199 Wn.2d 282, 297, 505 P.3d 529 (2022).

B. *"Except as Authorized in Law" is Not an Element of First Degree Animal Cruelty*

To determine the elements of first degree animal cruelty, we begin by looking at the plain language of the statute. First degree animal cruelty occurs when a person "except as authorized in law . . . intentionally (a) inflicts substantial pain on, (b) causes physical injury to, or (c) kills

an animal by a means causing undue suffering or while manifesting an extreme indifference to life," or forces a minor to do so. RCW 16.52.205(1).

Generally, the legislature did not intend for animal cruelty laws[5] to interfere with hunting laws, the right to destroy venomous or otherwise dangerous reptiles, or the right to kill animals for food, among other exceptions. RCW 16.52.180. RCW 16.52.185 and RCW 16.52.205(7) list additional circumstances that are "explicitly not criminalized under" RCW 16.52.205(1). *Nw. Animal Rts. Network v. State*, 158 Wn. App. 237, 239, 242 P.3d 891 (2010).

RCW 16.52.185 lists exceptions to the animal cruelty laws, including the commercial raising and slaughter of livestock, the use of animals in the normal course of rodeo events, and the exhibition of animals in normal events at fairs, among other exceptions. RCW 16.52.205(7) provides, "Nothing in this section prohibits accepted animal husbandry practices or prohibits a licensed veterinarian or certified veterinary technician from performing procedures on an animal that are accepted veterinary medical practices."

Under the plain language of RCW 16.52.205(1), the phrase "except as authorized in law" refers to the activities authorized by RCW 16.52.180, .185, .205(7), or other laws, and explains that such activities are excluded from the scope of RCW 16.52.205(1). Thus, we hold that the phrase "except as authorized in law" is not an essential element of first degree animal cruelty.[6]

[5] Chapter 16.52 RCW, the Prevention of Cruelty to Animals legislation, criminalizes conduct that constitutes animal cruelty.

[6] Feitser also claims "the State did not offer any evidence that [his] act was unlawful." Br. of Appellant at 3. To the extent that Feitser makes a sufficiency of the evidence claim, it fails because the claim rests on the false premise that "except as authorized in law" is an essential element of RCW 16.52.205(1).

II. CONSTITUTIONAL CHALLENGE

Feitser argues RCW 16.52.205 is unconstitutionally vague. We disagree.

A. *Legal Principles*

We review challenges to the constitutionality of a statute de novo. *State v. Ross*, 28 Wn. App. 2d 644, 646, 537 P.3d 1114 (2023), *review denied*, 2 Wn.3d 1026 (2024).

We presume that a statute is constitutional, and the challenging party bears the burden of proving its unconstitutionality beyond a reasonable doubt. *Id.*

When reviewing a vagueness challenge to a statute, we must determine whether the challenged statute implicates First Amendment rights. *State v. Richards*, 28 Wn. App. 2d 730, 742, 537 P.3d 1118 (2023), *review denied*, 2 Wn.3d 1027 (2024). If the challenge does not involve First Amendment rights, we review the statute as applied to the specific facts of the case. *Id.* When reviewing an as-applied challenge to a statute's constitutionality, we examine the statute in the specific context of the case. *Ross*, 28 Wn. App. 2d at 646. A decision that a statute is unconstitutional as applied to the challenging party bars the future application of the statute in a similar context, but it does not completely invalidate the statute. *Id.*

> Under the due process clause of the Fourteenth Amendment, a statute is void for vagueness if either: (1) the statute does not define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is proscribed; or (2) the statute does not provide ascertainable standards of guilt to protect against arbitrary enforcement.

State v. Halstien, 122 Wn.2d 109, 117-18, 857 P.2d 270 (1993) (internal quotation marks omitted) (quoting *Spokane v. Douglass*, 115 Wn.2d 171, 178, 795 P.2d 693 (1990)).

A statute fails the first prong of the vagueness test if it prohibits conduct with terms that are so vague that ordinary people "must guess at its meaning and differ as to its application."

Richards, 28 Wn. App. 2d at 743 (internal quotation marks omitted) (quoting *Douglass,* 115 Wn.2d at 179). "If [ordinary people] can understand what the [statute] proscribes, notwithstanding some possible areas of disagreement, the [statute] is sufficiently definite." *Douglass,* 115 Wn.2d at 179.

A statute fails the second prong of the vagueness test if it prohibits conduct using "inherently subjective terms" such that the statute "invites an inordinate amount of police discretion." *See Richards*, 28 Wn. App. 2d at 743 (internal quotation marks omitted) (quoting *Douglass,* 115 Wn.2d at 181). A statute that allows for subjective evaluations by law enforcement is not necessarily vague. *State v. Fraser*, 199 Wn.2d 465, 486, 509 P.3d 282 (2022). The focus of our inquiry is whether the statute invites an inordinate amount of police discretion. *See Id.*

B. *Feitser Has Not Demonstrated Beyond a Reasonable Doubt that RCW 16.52.205 is Void for Vagueness*

Feitser contends that RCW 16.52.205 invites unfettered discretion from prosecutors in deciding arbitrarily what conduct to prosecute, which renders the statute unconstitutionally vague. In doing so, Feitser appears to challenge only the second prong of the vagueness test.[7] We disagree that RCW 16.52.205 is unconstitutionally vague as applied to Feitser.

RCW 16.52.205 does not involve freedoms protected by the First Amendment. *State v. Andree*, 90 Wn. App. 917, 920, 954 P.2d 346 (1998). Therefore, Feitser's vagueness challenge must be evaluated as an as-applied challenge.

[7] Because Feitser does not appear to challenge the first prong of the vagueness test, we decline to address it. *See State v. Hand*, 199 Wn. App. 887, 901, 401 P.3d 367 (2017), *aff'd*, 192 Wn.2d 289 (2018) (We do not make arguments for the parties).

Next, we must determine whether RCW 16.52.205 fails the second prong of the vagueness test such that it is void as applied to Feitser. Feitser contends that the statute does not provide "objective criteria" to distinguish Feitser's acts from acts that are generally not prosecuted but nonetheless satisfy the elements of the statute such as fishing, trapping a mouse, or swatting a fly. *See* Br. of Appellant at 9. A statute fails the second prong of the vagueness test if it proscribes conduct using inherently subjective terms such that the statute invites excessive police discretion. But as the State points out, Feitser does not argue that the terms of RCW 16.52.205 are inherently subjective. And we do not make arguments for the parties. *State v. Hand*, 199 Wn. App. 887, 901, 401 P.3d 367 (2017), *aff'd*, 192 Wn.2d 289 (2018).

To the extent that Feitser is arguing that the statute is unconstitutionally vague because it does not provide ascertainable standards of guilt and thus requires prosecutors to subjectively assess what conduct is prosecuted versus not prosecuted, we disagree. A statute is not necessarily vague just because it allows for subjective evaluations from law enforcement. The focus of our inquiry is whether the statute invites an inordinate amount of police discretion. *See Fraser*, 199 Wn.2d at 486.

Feitser appears to argue that because prosecutors *could* charge a person who, for example, swats a fly, with first degree animal cruelty, the statute is vague as to his conduct of killing a pet dog by fracturing the dog's ribs in 21 places, puncturing the dog's lungs, and causing the dog's femur to be displaced from its pelvic joint. Feitser fails to show how his conduct is subject to an inordinate amount of police discretion when the State may charge only those acts that are made with intent to inflict substantial pain on, cause physical injury to, or kill an animal by a means causing undue suffering or while manifesting an extreme indifference to

the animal's life. RCW 16.52.205(1). Feitser has not demonstrated that the statute poses a danger of arbitrary enforcement as it applies to Feitser's conduct. Thus, Feitser's vagueness challenge merits no further consideration. We hold that Feitser has not demonstrated beyond a reasonable doubt that RCW 16.52.205 is void for vagueness as applied to his conduct.

III. LEGAL FINANCIAL OBLIGATIONS

Feitser argues the trial court improperly imposed the $500.00 VPA and $100.00 DNA collection fee. The State agrees that the VPA should be stricken, but does not address whether the DNA collection fee should be stricken. We accept the State's concession as to the VPA, agree with Feitser that the DNA collection fee should also be stricken, and remand to strike these legal financial obligations.

Under amended RCW 7.68.035(4), the trial court cannot impose the VPA if it finds that the defendant is indigent at the time of sentencing. This amendment applies to cases that are on direct appeal. *State v. Ellis*, 27 Wn. App. 2d 1, 16, 530 P.3d 1048 (2023). Because the trial court found Feitser indigent at sentencing and Feitser's case is on direct appeal, we remand for the trial court to strike the VPA.

Under former RCW 43.43.7541(1), the trial court must impose a DNA collection fee unless the state has already collected the offender's DNA as the result of a prior conviction. But the legislature has eliminated this provision. LAWS OF 2023, ch. 449, § 4; *see also Ellis*, 27 Wn. App. 2d 1 at 17 (determining that the DNA collection fee is no longer mandatory). Thus, we remand for the trial court to strike the DNA collection fee.

CONCLUSION

Accordingly, we affirm Feitser's conviction for first degree animal cruelty but remand for the trial court to strike the VPA and DNA collection fee.

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.

Che, J.

We concur:

Maxa, J.

Veljacic, A.C.J.

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division Two** under **Case No. 58418-2-II**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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☐ Attorney for other party

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Washington Appellate Project

Date: September 16, 2024

WASHINGTON APPELLATE PROJECT

September 16, 2024 - 4:11 PM

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