IN THE COURT OF APPEALS OF IOWA

No. 3-436 / 12-0877
Filed July 10, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ZACHARY S. MEERDINK,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Cheryl E. Traum, Judge.

Defendant appeals his conviction for animal torture. **REVERSED AND REMANDED.**

Mark C. Smith, State Appellate Defender, Dennis D. Hendrickson and David A. Adams, Assistant Appellate Defenders, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Michael J. Walton, County Attorney, and Jacob Marshall and Christopher Scott, Student Legal Interns, for appellee.

Heard by Eisenhauer, C.J., and Vaitheswaran and Tabor, JJ.

EISENHAUER, C.J.

Zachary Meerdink appeals his conviction for animal torture arguing the State's evidence is insufficient to support his conviction. We reverse and remand for dismissal of the case.

I. Background Facts and Prior Proceedings.

In January 2012, the State charged Meerdink with animal torture under Iowa Code section 717B.3A(1) (2011): "A person is guilty of animal torture, regardless of whether the person is the owner of the animal, if the person inflicts upon the animal severe physical pain with a depraved or sadistic intent to cause prolonged suffering or death." Meerdink waived a jury trial, and in April 2012, a bench trial commenced.

Jamie Holladay, the mother of three young sons, testified her boyfriend Meerdink stayed at her apartment most of the time. Holladay was still dating Meerdink at the time of trial.

After Meerdink had shoulder surgery, Holladay bought him a four-month-old Boston terrier. Holladay testified the dog had accidents, "a lot of stomach problems," and problems with "jumping up on people and [the dog] was starting to get aggressive and bite people." The dog had bitten Holladay and her kids, and the dog's behavior was getting worse.

Several months later, Meerdink needed a second shoulder surgery. Upon his release from the hospital in December 2011, Meerdink had limited use of his shoulder and arm and was on prescription pain medications. Meerdink and his dog stayed with Holladay, and she helped with his post-surgery care. One

evening, Holladay and her boys left to run an errand. Meerdink called her, asked where the Lysol spray was, and explained his dog had an accident by the door. Holladay testified he did not seem upset.

Upon her return, Holladay met Meerdink walking toward the front door of the apartment with the dog under his arm. She asked Meerdink if he was okay, and he did not respond. Holladay testified:

> Q. At the time [Meerdink] was walking down the stairs to go outside with [the dog], you said he looked at you? A. Before he [got] to the stairs.
> Q. And you told the officers he had a blank look on his face, correct? A. Yeah.
> Q. So he didn't look eager? A. No.
> Q. Happy? A. No. He just looked like he was not conscious, like he was out of it.

A few minutes later, Meerdink returned carrying a baseball bat. Holladay testified Meerdink did not seem happy, nor did he look satisfied, rather "he looked more confused." Further, "He didn't say anything. I asked him where the dog was and he just told me that the dog was dead." She "kind of panicked" and "got hysterical," continued to ask what happened, and got no response from Meerdink. Holladay packed up her kids, drove around, and called Meerdink's mother. Subsequently, Meerdink texted Holladay and asked if she wanted him to leave. She replied, "Yes." Meerdink left.

When Holladay returned to her apartment, she did not see a baseball bat. During a phone conversation the same evening, Holladay told Meerdink, "if the dog was dead . . . he needed to come and get the dog." Meerdink replied, "No," and the conversation ended. Holladay called the police and was crying when the officer arrived. The officer testified he found the dead dog in the tall grass.

Approximately ten feet away from the dog and about twenty yards away from the apartment building, the officer found a pool of blood in the short grass. The officer did not note a blood trail between the pool of blood and the spot where the dog's body was found, and he did not note any injuries to the dog's body other than a head injury.

Holladay testified about her conversation with Meerdink the next day:

> [Meerdink] told me that the dog had bit my son and . . . I had been on him about trying to get the dog to not do that because their dad is kind of protective and I didn't want any problems with [their dad], so I think he kind of felt pressured by me to not have that kind of behavior around my kids . . . .
>
> Q. Did he tell you which one of your children the dog bit? A. Yes.
>
> Q. Did you see any bite marks on that child? A. Yes.
>
> Q. Was it prior to this you had had discussions with him about the dog's biting behaviors? A. Yes.
>
> . . . .
>
> Q. Had [Meerdink] done anything regarding this dog's . . . biting behavior? A. We actually bought some books on the dog and my mom gave us one, and he was reading them while he was at home to try to figure out what he needed to do to stop the behavior.

At the close of the State's evidence, Meerdink moved for a directed verdict arguing the State had not met its burden of proving "the defendant had the specific depraved or sadistic intent to cause the animal prolonged suffering and death." Counsel asserted:

> For sadistic, the [dictionary] definition is sexual perversion in which gratification is obtained by the infliction of physical or mental pain, delight in cruelty or excessive cruelty . . . .
>
> With regard to depraved, the [dictionary] definition is marked by corruption or evil, especially perverted . . . .
>
> The State did not present any medical reports to show what happened. The pictures do not show any other injury other than [a head injury]. There is no proof that the animal lived a long period of time, dragged himself and was suffering a long period of time . . . .

> There was no evidence of a blood trail . . . . It appears the animal was moved out of sight so people would not come upon it and be horrified by . . . seeing that.

The State responded "we are going on death," not prolonged suffering. The court's denial of Meerdink's motion was followed by the parties' closing arguments. The State argued Meerdink's behavior met the "sadistic" intent definition:

> The evidence was [Meerdink] knew that this puppy, who had been unruly, had bitten this nine-year-old child and he took care of the problem . . . . He did it by killing [the dog] with a bat. That was the last straw. He had had talks with [Holladay] in the past. [She] knew the puppy was unruly and asked [Meerdink] to take care of it. The books and training were not taking care of it, so he did it the next best way he knew by killing the dog.
>
> . . . .
>
> Looking at . . . the definitions provided, sadistic, one definition is excessive cruelty. Beating a small puppy with a bat is excessive cruelty.

Defense counsel argued:

> With regard to the elements, and looking at the specific intent—this is a specific intent, since it is a depraved or sadistic intent . . . . There is no evidence to show he took gratification or delight in what he was doing . . . .
>
> . . . [T]he dog was dispatched as quickly as possible . . . [Meerdink] was gone just minutes . . . . There is no evidence that the dog was beaten multiple times for that gratification or for any type of perverted intent or corruption or evil that is part of the definition of depraved in this matter.

The court ruled:

> The Court is not required to use the definitions that were spoken of by both attorneys. In my reading of the statute, there can be depraved or sadistic intent to cause prolonged suffering or death. In this case there was the death of the animal. The justification as far as the dog biting is not enough to justify the killing of a young dog with a baseball bat.
>
> I will find you guilty of . . . animal torture . . . as charged.

The court issued a written ruling finding Meerdink guilty. The court's ruling did not define the statutory terms "depraved" or "sadistic." The court found: Meerdink killed a young dog "with a baseball bat. The photos of the dog show injuries to his head. The act of hitting a dog in the head with a baseball bat would inflict severe physical pain and said action show[s] a depraved intent to cause the death of" the dog.

Meerdink filed a motion for expanded findings of fact. He argued "it is unclear what definition of the terms was used by the Court to find" guilt. The court denied the motion. Meerdink appeals and challenges the sufficiency of the evidence. He requests we reverse his conviction and remand for a dismissal of the case.

II. Standard of Review.

We review Meerdink's challenge to the sufficiency of the evidence for correction of errors at law. *See State v. Hearn*, 797 N.W.2d 577, 579 (Iowa 2011). The district court's findings of guilt are binding if supported by substantial evidence. *Id*. Substantial evidence is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt. *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000). We view all the evidence in the record in the "light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence." *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006). However, evidence that "merely raises suspicion, speculation, or conjecture" is insufficient evidence. *Hearn*, 797 N.W.2d at 580.

Issues regarding the correct interpretation of a statute raise questions of law. *Id*.

III. Merits.

Meerdink argues the evidence is insufficient to support a finding he acted "with a depraved or sadistic intent." He asserts the court's statement after closing arguments, its written ruling, and its failure to define the key terms show the court erred in "reading the words 'depraved or sadistic' as superfluous." The court disregarded the heightened mental state required by the statute and instead found him guilty "based on the act of striking the dog." Meerdink argues the legislature expressly used the words "sadistic" or "depraved" in order to require a heightened proof of a specific, culpable mental state. Consequently, the court's failure to give effect to all the words in the statute led to a conviction unsupported by the evidence.

The State agrees it "must prove a mental state of depraved *or* sadistic," but not both. Noting evidence of intent is seldom susceptible to proof by direct evidence, the State argues the circumstantial evidence sufficiently established Meerdink "acted with depraved intent." *See State v. Taylor*, 689 N.W.2d 116, 132 (Iowa 2004) (ruling intent can be inferred from circumstantial evidence). This circumstantial evidence includes Meerdink showing no emotion upon his return to the apartment after killing the dog, Meerdink leaving the body in the grass, and Meerdink's refusal to return to move the dog's body. The State asserts the district court "implicitly applied" the Black's Law Dictionary definition "by stating in its written ruling, 'The act of hitting a dog in the head with a baseball bat would

inflict severe physical pain and said action show[s] a depraved intent to cause the death" of the dog.

Because the district court used the "depraved" intent element in its written findings, we focus on whether substantial evidence supports the court's finding of a "depraved" intent under Iowa Code section 717B.3A(1) (providing "the person inflicts upon the animal severe physical pain with a depraved . . . intent to cause . . . death"). The Iowa Supreme Court has not discussed the meaning of the "depraved" intent element. However, the applicable standards guiding our resolution were recently detailed by the court:

> In determining the meaning of statutes, our primary goal is to give effect to the intent of the legislature. That intent is evidenced by the words used in the statute. When a statute is plain and its meaning clear, courts are not permitted to search for meaning beyond its express terms. In the absence of legislative definition, we give words their ordinary meaning. In interpreting criminal statutes, however, we have repeatedly stated that provisions establishing the scope of criminal liability are to be strictly construed with doubts resolved therein in favor of the accused.

Hearn, 797 N.W.2d at 583 (citations omitted) (quotation marks omitted).

To determine whether sufficient evidence establishes Meerdink acted with "depraved" intent, we must first interpret the term, "depraved." "Depraved" is not defined by the Iowa legislature. Both parties point us to the definitions of "depraved" found in Black's Law Dictionary 493 (8th ed. 2009) [hereinafter Black's], stating: "1. (of a person or a crime) corrupt; perverted. 2. (of a crime) heinous; morally horrendous." *See* Tenn. Op. Att'y Gen. No. 08-124 (July 16, 2008) (defining "depraved" as used in its "aggravated animal cruelty" statute as "morally corrupt, perverted").

In the first definition, "corrupt; perverted," the term "corrupt" is further defined as "having an unlawful or depraved motive." Black's at 371. This is not helpful because it refers back to "depraved," the term we seek to define. Additionally, the phrase "unlawful *or* depraved motive" indicates the term "unlawful" is not identical to the term "depraved." The term "perverted" is defined as "twisted, corrupt, vicious." Webster's New International Dictionary 1688 (3rd ed. 2002) [hereinafter Webster's].

Turning to the second definition, "heinous; morally horrendous," the descriptor "heinous" is defined as "(of a crime or its perpetrator) shockingly atrocious or odious." Black's at 740. Atrocious is defined as "marked by or given to extreme wickedness, brutality, or cruelty." Webster's at 139. Odious is defined as "hateful." *Id*. at 1564. Lastly, "morally horrendous," is not defined in Black's Law Dictionary. However, the phrase "moral depravity" is listed therein and refers one to "moral turpitude (1)." Black's at 1030. "Moral turpitude" is defined as:

> 1. Conduct that is contrary to justice, honesty, or morality . . . . Also termed *moral depravity*. 2. *Military law* . . . .
>
> "Moral turpitude means, in general, shameful wickedness—so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another or to society in general, contrary to the accepted and customary rule of right and duty between people."

Black's at 1030-31 (quoting 50 Am. Jur. 2d *Libel and Slander* § 165, at 454 (1995)).

In sum, "depraved" is variously defined as (1) corrupt, (2) perverted, (3) heinous/shockingly atrocious ("extreme wickedness, brutality, or cruelty"), (4) heinous/odious ("hateful"), and (5) morally horrendous/moral depravity ("shameful wickedness" or "an extreme departure from ordinary good morals as to be shocking to the moral sense of the community," or "an act of vileness"). The definitions of "depraved" consistently show that "a *depraved* intent to cause death" requires more than an "intent to cause death." *See* Iowa Code § 717B.3A.

Further, while "the title of a statute cannot limit the plain meaning of the text," we can consider the title "in determining legislative intent." *State v. Tague*, 676 N.W.2d 197, 201 (Iowa 2004). The title of Iowa Code section 717B.3A is "Animal torture." "Torture" is "[t]he infliction of intense pain to the body or mind to punish . . . or to obtain sadistic pleasure." Black's at 1528. Therefore, the definitions for "depraved" listed above are consistent with the title of the statute, and this consistency demonstrates a legislative intent to require more for an animal torture conviction under the "*depraved* intent to cause death" elements than mere "intent to cause death."

Finally, our resolution is informed by the overall scheme of Iowa Code chapter 717B, "Injury to Animals Other Than Livestock." *See Tague*, 676 N.W.2d at 201 (stating we find legislative intent from "the statute as a whole" and not from "a particular part only"). The legislature defined *"Threatened animal*" to be "an animal that is abused as provided in section 717B.2, neglected as provided in section 717B.3, or tortured as provided in section 717B.3A." Iowa Code

§ 717B.1(9). "Animal abuse" is an aggravated misdemeanor and occurs when "the person intentionally injures, maims, disfigures, or destroys an animal owned by another person, in any manner, including intentionally poisoning the animal." Iowa Code § 717B.2. "Animal neglect" includes, among other definitions, "a person who impounds or confines" an animal *and* "tortures, deprives of necessary sustenance, mutilates, beats, or kills an animal by any means which causes unjustified pain, distress, or suffering." *Id*. § 717B3(1). Animal neglect is a simple misdemeanor *or* a serious misdemeanor: "A person who negligently or intentionally commits the offense of animal neglect is guilty of a simple misdemeanor. A person who intentionally commits the offense of animal neglect which results in serious injury to or the death of an animal is guilty of a serious misdemeanor." *Id*. § 717B.3(3). In the final section, "Animal torture," the first conviction is an aggravated misdemeanor, and "a second or subsequent conviction" is a class "D" felony. *Id*. § 717B.3A(3)(a)(1)-(2). Therefore, the chapter's overall scheme—also using the term "torture" in the definition of animal neglect and using staggered penalty provisions—demonstrates a legislative intent to require more than the act of intending to kill an animal in order to meet the "*depraved* intent to cause death" elements of animal torture under Iowa Code section 717B.3A(1).

Similarly, a New York felony statute, "aggravated cruelty to animals," proscribes intentionally killing or intentionally causing serious physical injury to a companion animal with aggravated cruelty and no justifiable purpose. *People v. Knowles*, 709 N.Y.S.2d 916, 918 (N.Y. Cnty. Ct. 2000). The New York

legislature defined "aggravated cruelty" as (1) conduct intended to cause extreme physical pain, or (2) conduct "done or carried out in an especially depraved or sadistic manner." *Id*. The *Knowles* court ruled the phrase "depraved or sadistic manner" conveys "the clear intent to punish only the most serious and egregious conduct." *Id*. at 978 (ruling the undefined terms "depraved or sadistic" are not unconstitutionally vague).

When we apply this analysis to the district court's ruling, we note the court failed to define "depraved intent," even after receiving a specific post-ruling request to do so and after telling the parties a definition was unnecessary. We conclude the court erred, and a definition is necessary. *See Hearn*, 797 N.W.2d at 583 ("In interpreting criminal statutes . . . provisions establishing the scope of criminal liability are to be strictly construed with doubts resolved therein in favor of the accused."). After considering the definitions of "depraved," we conclude "*depraved* intent to cause death" does not equal an "intent to cause death."

Here, the State proved Meerdink killed the dog; however, no one saw Meerdink kill the dog, and no testimony or exhibits and no reasonable inferences or presumptions from the testimony and exhibits sufficiently prove Meerdink acted with a *depraved intent* to cause death. *See* Iowa Code § 717B.3A(1); *Knowles*, 709 N.Y.S.2d at 920 (stating statute's use of "depraved" shows "the clear intent to punish only the most serious and egregious conduct"). Meerdink killed the dog in response to the dog biting a child and only after the dog had become more aggressive over time and unresponsive to remedial measures. Meerdink was gone for only a few minutes and did not look happy or eager;

instead he looked confused. The evidence at trial does not establish nor allow an inference as to how many times the dog was struck. *See Hearn*, 797 N.W.2d at 580 (stating evidence that "merely raises suspicion, speculation, or conjecture" is insufficient evidence). Finding insufficient evidence Meerdink acted with a "*depraved* intent to cause death,"[1] we reverse the trial court's ruling and remand for dismissal of the case.

REVERSED AND REMANDED.

Tabor, J., concurs; Vaitheswaran, J., dissents.

[1] In an earlier case involving the animal torture statute, we stated the "unchallenged jury instructions" defined "depraved" as "evil or perverted." *State v. Wilson*, No. 08-1040, 2009 WL 1913695, at *2 (Iowa Ct. App. July 2, 2009). We found substantial evidence supported the defendant's conviction where: "The jury could reasonably find [defendant] chopped and stabbed his dog to death with a samurai sword. The puppy was yelping in pain for up to nine minutes and, afterwards, [defendant] exhibited a remorseless demeanor." *Id.* Based on the case's procedural posture, we did not discuss the legislature's intent in using the language "*depraved* intent to cause death."

VAITHESWARAN, J. (dissenting)

I respectfully dissent. I agree with the majority that "'depraved intent to cause death' does not equal 'intent to cause death.'" I disagree that the evidence was insufficient to meet the higher standard.

My disagreement is premised on our standards of review and our rules of statutory construction. As the majority states, we are obligated to view the evidence in the light most favorable to the State and consider legitimate inferences and presumptions which may fairly be deduced from the evidence. *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006). As the majority also recognizes, we are to give words their ordinary meaning where there is no legislative definition. *See City of Riverdale v. Diercks*, 806 N.W.2d 643, 655-56 (Iowa 2011).

In my view, a reasonable fact-finder would have understood the meaning of "depraved" and could have found that Meerdink acted in a depraved manner. *See State v. Witham,* 876 A.2d 40, 42-43 (Me. 2005) ("People of common intelligence can understand that in the context of cruelty to animals, the term "depraved indifference" is an objective standard similar to that applied in the context of murder."); *People v. Knowles*, 709 N.Y.S.2d 916, 920 (N.Y. Co. Ct. 2000) ("The next undefined phrase within the definition of aggravated cruelty is 'especially depraved or sadistic manner.' Considering the phrase as a whole, a person of ordinary intelligence would understand what conduct is prohibited by the statute. Depraved and sadistic have a common meaning in everyday usage."). A reasonable fact-finder could have considered the following facts.

Meerdink's girlfriend, Jamie Holladay, testified that she purchased a puppy for Meerdink approximately a month or a month-and-a-half before the incident. On the day of the incident, she went to Wal-Mart with her children. The store was on the other side of a grassy field adjacent to her apartment complex. While she was shopping, Meerdink called her and said the puppy had an accident by the door. Holladay completed her shopping and went home. As she was unloading the groceries, she saw Meerdink with the puppy under his arm, saw him grab his jacket, and surmised that he went outside. When he returned a few minutes later, he had a baseball bat in his hand, which she had never seen before. Meerdink told her the dog was dead.

Holladay called the police. She was hysterical. A Davenport police officer testified he found the seven-month-old puppy in a field between the apartment complex and Wal-Mart. He introduced pictures showing a "pool of blood" and other matter and "a deceased dog." The dog was lying on its side with a bloodied eye and mouth and significant bruising in the head region. Holladay asked Meerdink to move out.

A reasonable fact-finder would not have had to engage in any speculation to find that Meerdink took a baseball bat to the head of the puppy in response to the puppy's accident. A reasonable fact-finder could have found this conduct to be an extreme response to an ordinary and forseeable occurrence.

The majority cites Holladay's testimony concerning the puppy's propensity to bite and its unresponsiveness to remedial measures. I am not persuaded that these facts mandate a different finding as a matter of law. First, the statute does

not provide for a justification defense. Second, there is no evidence that the puppy bit anyone or anything on the day of his death, lending a hollow ring to this post-hoc rationalization. Finally, a reasonable fact-finder could have inferred that Holladay's sudden defense of Meerdink at trial reflected her remorse at having reported the incident to police following her reconciliation with him.

The majority also cites the fact that Meerdink "was gone for only a few minutes." In my view, the fact that the puppy may have died quickly would have been relevant if the State had relied on the "prolonged suffering" prong of the statute. *See* Iowa Code § 717B.3A(1). The length of his absence had little bearing on the "death" prong of the statute, which is the only prong invoked by the district court.

Finally, the majority cites Meerdink's demeanor when he returned to the home, stating he "did not look happy or eager," but "confused." In my view, a gleeful demeanor might have been a predicate to establishing "sadistic intent" but it was not necessary to establish "depraved intent." A reasonable fact-finder could have found depravity based on the dog's age, the fact that the act was precipitated by nothing more than the puppy's weak stomach, the inference that Meerdink spent some time searching for a blunt instrument with which to kill the dog, the uncontested fact that Meerdink inflicted "severe physical pain," and the fact that the animal was a family pet.

I would affirm Meerdink's judgment and sentence.