

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE  
January 24, 2023 Session

**FILED**  
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Appellate Courts

**STATE OF TENNESSEE v. PHILIP MAINER**

**Appeal from the Criminal Court for Sullivan County  
No. S71840 William K. Rogers, Judge**

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**No. E2021-01467-CCA-R3-CD**

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The defendant, Philip Mainer, appeals his conviction of aggravated cruelty to animals that he received following a bench trial before the Sullivan County Criminal Court. On appeal, the defendant challenges the sufficiency of the evidence supporting his conviction. Upon review, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed**

JAMES CURWOOD WITT, JR., P.J., delivered the opinion of the court, in which KYLE A. HIXSON, J. and KRISTI M. DAVIS, Sp.J., joined.

Brian D. Wilson, Assistant Public Defender-Appellate Division (on appeal); Andrew J. Gibbons, District Public Defender; and Dustin J. Franklin, Assistant District Public Defender (at trial), for the appellant, Philip Mainer.

Jonathan Skrmetti, Attorney General and Reporter; Garrett D. Ward, Assistant Attorney General; Barry P. Staubus, District Attorney General; and Kristen Rose, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

The defendant was charged with one count of aggravated cruelty to animals after he shot and killed a cat that he had trapped outside of his residence in Kingsport, Tennessee, on May 24, 2019. A bench trial was held on May 13, 2021.

According to the evidence presented at trial, at the time of the offense, the defendant lived on the first floor of a house that had been converted into a duplex. Kia Watterson Galloway, her boyfriend, and her brother, Keon Watterson, lived on the second

floor. Ms. Galloway testified that on May 24, 2019, she and Mr. Watterson were outside on a balcony that overlooked the backyard when she saw a cat in a “crate” or “cage” on the ground approximately 10 to 20 feet away. The door to the crate was closed. She stated that the cat was black and white, was “kind of crouched down,” and was not “going crazy or anything.” Although other cats had been in the area previously, she had never seen this cat in the area. She did not see the defendant outside.

Ms. Galloway stated that after she sat down in a chair out of view from the cage, she heard up to five gunshots from what appeared to be a pellet gun. She walked down the stairs and approached the defendant, who was holding a pellet gun and standing two or three feet away from the cage. She stated that the cat was bloody, was not moving, and appeared to be dead. She then returned to her residence and called the police. She testified that she never had any prior issues with the defendant in the two or three-year period during which he resided at the duplex.

During cross-examination, Ms. Galloway testified that she did not hear any sounds from the cat. She did not know whether the cat had rabies or any other diseases and agreed that she was uncertain whether the cat was healthy. She did not know whether the cat had an owner. The cat was not wearing a collar, and no one ever approached her claiming ownership. She agreed that she was uncertain whether the cat was feral or stray.

Ms. Galloway testified that she never saw the defendant attempt to open the cage before he shot the cat and that she did not know whether the defendant ever attempted to open the cage when the cat was inside of it. She did not hear the defendant scream or cry in joy after shooting the cat. She stated that she never saw the defendant attempt to harm any animals prior to this incident but that “the crate was always there with food in it trying to catch stuff.”

During redirect examination, Ms. Galloway testified that she was outside for a total of 10 to 15 minutes on the day of the incident. She said that when she first saw the cat, it was “[m]aybe a little frightened, but it wasn’t acting crazy or anything” and that “it was just sitting there. It was pretty calm.” She did not see foam coming from the cat’s mouth. She knew that the cage belonged to the defendant, and she had observed the defendant with the cage on prior occasions. During recross-examination, she acknowledged previously seeing opossums and raccoons in the neighborhood at night, and she also saw a raccoon in the cage on a prior occasion.

Keon Watterson testified that on May 24, 2019, while he and Ms. Galloway were outside on their balcony, he heard a cat moving around in a “cage” located in bushes on the right side of the duplex. Mr. Watterson stated that the cage was not “that big” and that he assumed that it was used to catch opossums and raccoons. He could “somewhat”

see the cat from his vantage point. He stated that the cat was black and white, was likely afraid or nervous, and appeared to have been attempting to find a means of escape. Mr. Watterson did not observe any foam around the cat's mouth. He saw the defendant "stick" an airsoft rifle into the cage. Mr. Watterson said that he and Ms. Galloway both turned their heads after which he heard several shots. Mr. Watterson went inside and looked through a window. He did not see the cat moving or any blood around the cat. He stated that prior to the incident, he and the defendant had always been friendly with each other and that the defendant never caused any issues.

During cross-examination, Mr. Watterson testified that while on the balcony, he was approximately 15 feet away from the cat and was unable to determine whether the cat was wearing a collar. He did not know who owned the cat and stated that no one ever approached him claiming ownership of the cat. He said that the defendant did not express excitement after killing the cat. Mr. Watterson acknowledged previously seeing raccoons, opossums, and stray cats in the neighborhood.

Detective Abby Ford with the Kingsport Police Department testified that she contacted the defendant, who agreed to meet with her and provide a written statement. The defendant told Detective Ford that during the past two years, he had trapped animals, including opossums, raccoons, and woodchucks, and then released them at a rest area near the interstate. He stated that on May 24, 2019, at approximately 9:00 a.m., he found a "feral cat" inside a trap that he had prepared on the side of his porch. He said that he tried to pick up the trap to take it to a rest area and release the cat but that "[t]he cat charged both ends of the cage and was growling, spitting, and hissing." He was unable to calm the cat. He stated that he stabbed the cat in its head with a sharpened piece of metal, killing the cat and that he placed the cage and the deceased cat inside a dumpster near a Kroger.

During cross-examination, Detective Ford testified that she did not question neighbors to determine who owned the cat and that no one ever approached her claiming ownership. She saw a photograph of the cat and acknowledged that the cat did not appear to have been wearing a collar. She did not see any indicia of ownership on the cat and was unaware of whether the cat was someone's pet. She had no prior complaints against the defendant for animal cruelty.

The 64-year-old defendant elected to testify in his own defense. He stated that he had previously observed several cats and nuisance animals attempting to enter his garden and his home. He had previously trapped and released opossums, groundhogs, and raccoons. He stated that he woke up between 4:00 and 4:30 a.m. on the morning of the incident and found a cat inside the trap. He said he had seen the cat on four or five prior occasions, including in his garden. He maintained that he previously had questioned neighbors about the cat but that no one claimed ownership.

The defendant testified that the cat had a “[d]angerous” demeanor in that it was “charging the cage, spitting, hissing, growling.” He decided to wait for the cat to grow calm. He returned around 7:00 a.m., but the cat continued to exhibit the same behavior. When the defendant returned around 10:00 a.m., the cat continued “hissing,” “scratching,” “charging,” and “spitting.” The defendant stated that he was unable to safely unlatch the cage without the cat injuring his fingers. He said that at that point, he believed he had no other choice but to kill the cat. He retrieved his air rifle and explained that he had to shoot the cat multiple times because the cat was “moving constantly” and that he did not “want to leave an animal to—to be in misery.” The defendant explained that he told the detective that he stabbed the cat with a metal pole “[b]ecause I didn’t think it mattered.” He agreed that he did not believe he did anything wrong.

During cross-examination, the defendant testified that he placed table scraps in the cage on the night before the incident. He stated that he placed the deceased cat and the cage into the dumpster at different times on the same day.

At the conclusion of the proof, the trial court made multiple findings rejecting the credibility of the defendant’s testimony. The trial court stated that contrary to the defendant’s statement to the police in which he claimed that he stabbed the cat once in the head with a sharp piece of metal, the evidence established that the defendant shot the cat “several times,” and Ms. Galloway testified that the cat was covered in blood. The trial court found that the defendant’s testimony that he told the detective that he stabbed the cat because he did not believe “it mattered” “defies logic.” The trial court also found it “odd” that the defendant would place the deceased cat in a dumpster and then return later to dispose of his cage in the same manner. The trial court determined that the cat was a companion animal, that the defendant’s shooting the cat multiple times with an airsoft rifle was “a cruel way...to kill an animal,” and that the defendant acted “in a morally corrupt and extremely cruel manner” in killing the cat. The trial court found that the defendant’s testimony that the cat was dangerous and would have harmed him was not credible. The trial court noted that the cat had been in the defendant’s garden and that “I’m sure that he was not happy that the cat had been in the garden.” The trial court convicted the defendant of aggravated cruelty to animals.

Following a sentencing hearing on July 22, 2021, the trial court sentenced the defendant to one year of probation, prohibited him from owning animals for one year, and ordered that he be placed on the animal cruelty registry for two years. The defendant filed a timely motion for new trial, asserting that the evidence was insufficient to support his conviction. Following a hearing, the trial court entered an order on November 24, 2021, denying the defendant’s motion for new trial. The trial court found that the defendant was not a credible witness based primarily upon the discrepancies between his statement to the

police and the testimony of the witnesses at trial. The trial court stated that the cat was a companion animal although no one claimed ownership of the cat and that a cat is “the type of animal normally maintained in or near the household...of its owner or owners.” The trial court found that by shooting the cat several times with an air rifle, the defendant killed the cat “in a depraved or sadistic manner.” The trial court rejected the defendant’s claim that he had a “justifiable purpose” in killing the cat because it had gotten into his garden and allegedly tried to enter his house and found that the evidence established that the defendant “lured the cat onto his property with table scraps, trapped it[,] and shot it several times with a pellet gun which killed it.” The defendant filed a timely notice of appeal.

Sufficient evidence exists to support a conviction if, after considering the evidence—both direct and circumstantial—in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011). This court will neither re-weigh the evidence nor substitute its inferences for those drawn by the trier of fact. *Dorantes*, 331 S.W.3d at 379. The verdict of the trier of fact resolves any questions concerning the credibility of the witnesses, the weight and value of the evidence, and the factual issues raised by the evidence. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). Significantly, this court must afford the State the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. *Id.*

At the time of the offense, Tennessee Code Annotated section 39-14-212(a) provided that “[a] person commits aggravated cruelty to animals when, with aggravated cruelty and no justifiable purpose, such person intentionally kills or intentionally causes serious physical injury to a companion animal.” T.C.A. § 39-14-212(a) (2018).<sup>1</sup> “Aggravated cruelty” is defined as “conduct which is done or carried out in a depraved and sadistic manner and which tortures or maims an animal including the failure to provide food and water to a companion animal resulting in a substantial risk of death or death[.]” T.C.A. § 39-14-212(b)(1) (2018). “Torture” is defined in relevant part as “every act, omission, or neglect whereby unreasonable physical pain, suffering, or death is caused or

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<sup>1</sup> Effective July 1, 2021, Tennessee Code Annotated section 39-14-212(a) was amended to provide that:

- (a) A person commits aggravated cruelty to animals when, with no justifiable purpose, the person intentionally or knowingly;
  - (1) Kills, maims, tortures, crushes, burns, drowns, suffocates, mutilates, starves, or otherwise causes serious physical injury, a substantial risk of death, or death to a companion animal; or
  - (2) Fails to provide food or water to the companion animal resulting in a substantial risk of death or death.

permitted....” T.C.A. § 39-14-201(4). The statute does not define “depraved” or “sadistic.” However, this court has utilized the ordinary meaning of these words provided in a dictionary in evaluating the sufficiency of the evidence. See *State v. Billy Stewart*, No. W2013-02562-CCA-R3-CD, 2015 WL 3509397, at \*11 (Tenn. Crim. App., Jackson, June 4, 2015); *State v. Christopher Lee Barnett*, No. M2009-00756-CCA-R3-CD, 2010 WL 3822880, at \*13 (Tenn. Crim. App., Nashville, May 20, 2010). “Depraved” means “‘marked by corruption or evil,’” and “sadistic” or “sadism” is defined in relevant part as “‘a delight in cruelty’ or ‘excessive cruelty.’” *Billy Stewart*, 2015 WL 3509397, at \*11 (quoting *Merriam-Webster’s Dictionary*, 10th ed. (1996)). Code section 39-14-212(c) lists several “endeavors,” with which subsection (a), setting forth the elements of aggravated cruelty to animals, “shall not be construed to prohibit or interfere,” including “[d]ispatching wild or abandoned animals on a farm or residential real property.” T.C.A. § 39-14-212(c)(9) (2018).

The defendant asserts that the evidence failed to establish that the cat was a “companion animal.” He also asserts that even if the cat was a “companion animal,” his shooting the cat did not constitute aggravated cruelty to animals because he dispensed a wild or abandoned animal on residential real property. Both arguments involve issues of statutory construction.

The most basic principle of statutory construction is “‘to ascertain and give effect to the legislative intent without unduly restricting or expanding a statute’s coverage beyond its intended scope.’” *Houghton v. Aramark Educ. Res., Inc.*, 90 S.W.3d 676, 678 (Tenn. 2002) (quoting *Owens v. State*, 908 S.W.2d 923, 926 (Tenn. 1995)). “Legislative intent is determined ‘from the natural and ordinary meaning of the statutory language within the context of the entire statute without any forced or subtle construction that would extend or limit the statute’s meaning.’” *Osborn v. Marr*, 127 S.W.3d 737, 740 (Tenn. 2004) (quoting *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000)). “When the statutory language is clear and unambiguous, we apply the plain language in its normal and accepted use.” *Boarman v. Jaynes*, 109 S.W.3d 286, 291 (Tenn. 2003) (citing *State v. Nelson*, 23 S.W.3d 270, 271 (Tenn. 2000)). “It is only when a statute is ambiguous that we may reference the broader statutory scheme, the history of the legislation, or other sources.” *In re Estate of Davis*, 308 S.W.3d 832, 837 (Tenn. 2010) (citing *Parks v. Tenn. Mun. League Risk Mgmt. Pool*, 974 S.W.2d 677, 679 (Tenn. 1998)). “Further, the language of a statute cannot be considered in a vacuum, but ‘should be construed, if practicable, so that its component parts are consistent and reasonable.’” *In re Estate of Tanner*, 295 S.W.3d 610, 614 (Tenn. 2009) (quoting *Marsh v. Henderson*, 424 S.W.2d 193, 196 (Tenn. 1968)). This court must also “presume that...the General Assembly ‘did not intend an absurdity.’” *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010) (quoting *Fletcher v. State*, 951 S.W.2d 378, 382 (Tenn. 1997)).

Code section 39-14-212(a) prohibits aggravated cruelty to a “companion animal.” T.C.A. § 39-14-212(a) (2018). “‘Companion animal’ means any non-livestock animal as defined in § 39-14-201(3).” T.C.A. § 39-14-212(b)(2) (2018). Code section 39-14-201(3) defines “non-livestock animal” as

a pet normally maintained in or near the household or households of its owner or owners, other domesticated animal, previously captured wildlife, an exotic animal, or any other pet, including but not limited to, pet rabbits, a pet chick, duck, or pot bellied pig that is not classified as “livestock” pursuant to this part[.]

The defendant asserts that the determination of whether an animal is a “non-livestock animal” is dependent upon the characteristics of the particular animal at issue rather than the species as a whole. The defendant maintains that due to the lack of evidence of ownership and his testimony at trial regarding the cat’s aggressiveness, the cat was not a “pet” but was a feral, stray, or otherwise abandoned animal that did not qualify as a “non-livestock animal.” The State appears to concede that the cat did not qualify as a “pet” but argues that the cat was an “other domesticated animal” due to the nature of its species and, therefore, qualified as a “non-livestock animal.” The defendant counters that based upon his testimony at trial regarding the cat’s aggressiveness and the lack of evidence that the cat had an owner, the State failed to establish that the cat was “domesticated.”

The term “domesticated” is not defined in the statute. When our Code does not define a term, we give the words of the statute “‘their ordinary and natural meaning,’ and we may refer to dictionary definitions where appropriate.” *State v. Majors*, 318 S.W.3d 850, 859 (Tenn. 2010) (quoting *State v. Williams*, 690 S.W.2d 517, 529 (Tenn. 1985)). The term “domesticated” is defined as “adapted over time (as by selective breeding) from a wild or natural state to life in close association with and to the benefit of humans.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/domesticated>; accessed 28 Apr. 2023. In other sections of the Tennessee Code, the General Assembly has defined “domestic animals” as including “cats,” see T.C.A. § 44-2-101, and has defined “companion animal” under the Tennessee Animal Abuser Registration Act as including “any...cat, defined as any live cat of the species *Felis catus*,” see T.C.A. § 40-39-102(4).

Furthermore, the defendant’s assertion that a stray animal does not fall within the definition of “non-livestock animal” is not supported by statutory authority. Code section 39-14-215(a)(7) provides that “[s]tray animal means that a non-livestock animal is roaming with no physical restraint without an identification tag, collar, or chip and that has no record of ownership.” See T.C.A. § 39-14-215(a)(5) (adopting the same definition

of “non-livestock animal” as set forth in Code section 39-14-201(3)). Thus, the fact that an animal is a stray animal does not preclude it from falling within the definition of a “non-livestock animal.” The legislature’s intent that a “non-livestock animal” still qualifies as such even though the animal is a stray or abandoned is further illustrated by the provisions of the Non-Livestock Animal Humane Death Act, which adopt the same definition of “non-livestock animal” as set forth in Code section 39-14-201(3), *see* T.C.A. § 44-17-303(h), and refer to a “public or private agency, animal shelter or other facility operated for the collection, care or euthanasia of stray, neglected, abandoned, or unwanted non-livestock animals,” *see* T.C.A. § 44-17-304(a).

Although the defendant also asserts that a feral animal is excluded from the definition of “non-livestock animal,” we need not decide the issue because we conclude that the evidence presented at trial, when viewed in light of the trial court’s credibility determinations, did not establish that the cat killed by the defendant was feral. “Feral” is defined as “1. A term applied to wild animals descended from tame stocks, or to animals having become wild from a state of domestication....2. Wild by nature; untamed; savage; ferine; existing in a state of nature.” *Key v. State*, 384 S.W.2d 22, 24 (Tenn. 1964) (quoting Webster’s Unabridged Dictionary, 1950 Edition). The defendant relies upon his testimony at trial regarding the cat’s aggressive and dangerous nature. The trial court, however, found that the defendant’s testimony was not credible. The determination of the credibility of witnesses is entrusted exclusively to the trial court as the trier of fact, and we may not reconsider the trial court’s credibility assessment. *See State v. Carruthers*, 35 S.W.3d 516, 558 (Tenn. 2000); *State v. Millsaps*, 30 S.W.3d 364, 368 (Tenn. Crim. App. 2000). Ms. Galloway testified at trial that the cat appeared “a little frightened,” was “pretty calm,” and was “just sitting there.” We conclude that the evidence presented at trial, when viewed in the light most favorable to the State, did not establish that the cat was feral. Rather, the evidence established that the cat was a stray, otherwise “domesticated animal” and, therefore, was a “non-livestock animal” or “companion animal,” for purposes of Code section 39-14-212(a).

As such, the cat in question was generally protected from aggravated cruelty by the terms of the appropriate statutes. We turn now to decide whether the defendant’s actions fell within any exception to the proscription of aggravated cruelty to animals. The defendant asserts that the evidence established that by killing the cat, he dispatched a wild or abandoned animal on residential real property and, thus, did not commit the offense of aggravated cruelty to animals. The State responds that the evidence presented at trial established that the defendant intentionally killed the cat with aggravated cruelty and with no justifiable purpose. We agree with the State.

Tennessee Code Annotated section 39-14-212(a) prohibits the intentional “kill[ing]” of a companion animal “with aggravated cruelty and with no justifiable



purpose.” T.C.A. § 39-14-212(a) (2018). Subsection (c) lists “endeavors” with which subsection (a) “shall not be construed to prohibit or interfere,” including “[d]ispatching wild or abandoned animals on a farm or residential real property.” T.C.A. § 39-14-212(c)(9) (2018). We note that subsection (a), setting forth the elements of the offense, uses the term “kills” and that subsection (c)(9) uses the term “[d]ispatching.” We “presume that the General Assembly used every word deliberately and that each word has a specific meaning and purpose.” *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010) (citing *State v. Hawk*, 170 S.W.3d 547, 551 (Tenn. 2005); *Johnson v. LeBonheur Children’s Med. Ctr.*, 74 S.W.3d 338, 343 (Tenn. 2002)). “Dispatching” is not defined in the statute. According to Merriam-Webster, “dispatch” means “to kill with quick efficiency.” *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/dispatch>, accessed 28 Apr. 2023. While “kill merely states the fact of death caused by an agency in any manner,” “dispatch stresses quickness and directness in putting to death.” *Id.*

The evidence, when viewed in the light most favorable to the State, established that the defendant had found the cat in his garden on multiple prior occasions and placed table scraps in a cage to lure and catch the cat. The defendant testified that the cat had a “[d]angerous” demeanor in that it was “charging the cage, spitting, hissing, growling.” The defendant further testified that due to the cat’s behavior, he was unable to safely release the cat, that he had no other choice but to kill the cat, and that he had to shoot the cat multiple times because the cat was “moving constantly.” However, the trial court found that the defendant’s testimony was not credible, and we may not reconsider the trial court’s credibility determination. *See Carruthers*, 35 S.W.3d at 558; *Millsaps*, 30 S.W.3d at 368. Rather, Ms. Galloway testified that the cat appeared to be frightened but was otherwise “just sitting there” and was “pretty calm.” Mr. Watterson saw the defendant “stick” an airsoft rifle into the cage, and Ms. Galloway heard up to five gunshots. She proceeded to the yard where she saw the cat, which was bloody and appeared to be dead inside the cage, and the defendant, who was standing next to the cage and holding an airsoft rifle. The defendant disposed of the dead cat and the cage by placing each in a dumpster on separate occasions. He then gave an untruthful statement to the police, claiming that he stabbed the cat in its head with a sharpened piece of metal.

We conclude that by trapping the cat, allowing the cat to remain inside the cage for several hours, and then shooting the cat, which was otherwise calm, up to five times at close range with an airsoft rifle, the defendant did not “dispatch” or kill the cat “with quick efficiency.” Rather, the evidence supports the trial court’s finding that the defendant acted “in a morally corrupt and extremely cruel manner” such that his actions were depraved and sadistic. *See Tenn. Att’y Gen. Op. 08-124* (“In a criminal prosecution under § 39-14-212, it would be the duty of the fact-finder to determine whether the defendant’s actions were carried out in a ‘depraved and sadistic’ manner.”); *see also Billy*

*Stewart*, 2015 WL 3509397, at \*13 (“It was the province of the jury to determine whether the Defendant’s conduct was depraved and sadistic[.]”). The evidence also supports the trial court’s finding of torture in that the defendant’s shooting the cat approximately five times with an airsoft rifle caused unreasonable physical pain or suffering and that the defendant did not have a justifiable purpose in killing the cat. Accordingly, we conclude that the evidence is sufficient to support the defendant’s conviction for aggravated cruelty to animals.

For the foregoing reasons, we affirm the judgment of the trial court.

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JAMES CURWOOD WITT, JR., PRESIDING JUDGE