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SJC-12277

COMMONWEALTH vs. J.A., a juvenile.

Suffolk. September 7, 2017. - November 20, 2017.

Present: Gants, C.J., Lenk, Gaziano, Budd, Cypher,
& Kafker, JJ.

Dog. Youthful Offender Act. Statute, Construction. Words,
"Serious bodily harm."

Indictments found and returned in the Suffolk County Division of the Juvenile Court Department on November 19, 2015.

A motion to dismiss was heard by Peter M. Coyne, J.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Elianna J. Nuzum, Special Assistant District Attorney, for the Commonwealth.

Benjamin L. Falkner for the juvenile.

The following submitted briefs for amici curiae:

Michael W. Morrissey, District Attorney for the Norfolk District, & Tracey A. Cusick & Stephanie Martin Glennon, Assistant District Attorneys, for District Attorney for the Norfolk District.

Jeffrey J. Pokorak, Kimberly Cariani, & Jaclyn Collier for Juvenile Law Center of Suffolk University Law School & another.
Virginia F. Coleman for Animal Legal Defense Fund.

BUDD, J. The juvenile is alleged to have brutally attacked

his friend's dog. The Commonwealth elected to proceed against the juvenile pursuant to the youthful offender statute, G. L. c. 119, § 54, on the ground that he caused serious bodily harm to the dog.¹ The juvenile argues that the youthful offender indictments are not supported by probable cause because the phrase "serious bodily harm" in the statute contemplates harm to human beings, not animals.² We agree and therefore affirm the dismissal below. We note, however, that the Commonwealth still may take action against the juvenile by seeking a complaint for delinquency against him.³

Background. The following facts are taken from the testimony presented to the grand jury. In August, 2015, when the juvenile was fourteen years old, he tortured a friend's dog by shoving a soap dispenser pump into the dog's vagina,

¹ Unlike a delinquent child, who is subject to rehabilitative penalties and remedies, a "youthful offender" is subject to penalties that may include an adult sentence in the State prison. Commonwealth v. Mogelinski, 466 Mass. 627, 641 (2013), citing Commonwealth v. Connor C., 432 Mass. 635, 645 (2000).

² We use "animal" as a shorthand reference for "nonhuman animal."

³ We acknowledge the amicus briefs submitted by the District Attorney for the Norfolk District, the Animal Legal Defense Fund, and the Juvenile Law Center and Juvenile Defender Clinic of Suffolk University Law School.

resulting in serious internal injuries to the dog.⁴

A grand jury returned two youthful offender indictments against the juvenile, charging him with cruelty to animals and bestiality. See G. L. c. 272, §§ 34, 77. A Juvenile Court judge allowed the juvenile's motion to dismiss, concluding that the phrase "serious bodily harm" in the youthful offender statute refers only to human victims. The Commonwealth appealed, and we transferred the case to this court on our own motion.

Discussion. A juvenile may be tried as a youthful offender when the following criteria are met:

"[the] person is alleged to have committed an offense . . . while between the ages of fourteen and [eighteen] which, if he were an adult, would be punishable by imprisonment in the [S]tate prison, and the person has previously been committed to the [D]epartment of [Y]outh [S]ervices, or the offense involves the infliction or threat of serious bodily harm."

G. L. c. 119, § 54. Here, because the juvenile was between fourteen and eighteen years old at the time of the offense, the offense is punishable by imprisonment in State prison, and the juvenile has not been committed previously to the Department of Youth Services, the juvenile may be tried as a youthful offender only if the offense involved serious bodily harm or, more precisely, if the Legislature intended that the phrase "serious

⁴ The dog underwent surgery and survived.

bodily harm" apply to animal as well as human victims.

Whether the scope of the phrase "serious bodily harm" encompasses harm to animals is a question of statutory interpretation requiring de novo review. Commonwealth v. Martin, 476 Mass. 72, 75 (2016). To determine the Legislature's intent, we look to the words of the statute, "construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished." Boston Police Patrolmen's Ass'n, Inc. v. Boston, 435 Mass. 718, 720 (2002), quoting O'Brien v. Director of the Div. of Employment Sec., 393 Mass. 482, 487-488 (1984).

By its terms, the statute neither expressly includes nor excludes serious bodily harm to animals. To determine whether the statute is properly interpreted to apply to both animals and humans, a canvassing of statutes specifically prohibiting harm to animals is instructive, as is a review of other statutes generally prohibiting bodily harm or injury. See, e.g., Commonwealth v. Smith, 431 Mass. 417, 420 (2000) (explaining canon of in pari materia, i.e., looking to statutes of similar subject matter).

1. Animal protection statutes. When the Legislature intends a statute to protect animals, it does so directly and unambiguously. For example, it is a crime to "kill[], maim[] or

disfigure any horse, cattle or other animal of another person." G. L. c. 266, § 112. It is also a crime to "overwork[], torture[], . . . or kill[] an animal." G. L. c. 272, § 77. The Legislature has further criminalized "exhibit[ing] . . . any wild animal" for "amusement," G. L. c. 272, § 77B, and "surgical[ly] devocaliz[ing] . . . a dog or cat," G. L. c. 272, § 80 1/2 (b). The Legislature has also created tort liability of a person who "kills, maims, entices or carries away a dog or other domesticated animal or bird," G. L. c. 272, § 85A, or who "steals or attacks [an] assistance animal," G. L. c. 272, § 85B(a). The Commonwealth has not pointed to any Massachusetts statute, and we have not found any in our review, that has ever been interpreted to cover animals where the statutory language did not include the word "animal" or a specific type of animal. Had the Legislature intended the general criminal statutes to protect animals, it need not have enacted animal cruelty laws at all. Compare G. L. c. 265, §§ 1, 13 (murder and manslaughter), with G. L. c. 266, § 112 (killing of domestic "animal[s]").⁵

⁵ The Commonwealth relies upon Commonwealth v. Duncan, 467 Mass. 746, 751-752, cert. denied, 135 S. Ct. 224 (2014), for the proposition that this court recognizes animal protection as a strong public policy interest. In Duncan, we upheld as lawful a warrantless search for the purpose of aiding an animal. Id. at 753. Although we referenced animal cruelty statutes and highlighted the public policy of promoting the humane treatment of animals, Duncan involved the extension of our common law, not statutory interpretation. See id. at 752 (discussing cases

2. "Serious bodily harm" in context. By and large the statutes that prohibit the infliction of serious bodily injury apply only to human beings.⁶ See, e.g., G. L. c. 265, § 13J (injury to child); G. L. c. 265, § 13K (injury to elderly person); G. L. c. 265, § 13L (injury to child); G. L. c. 265, § 15A (injury to person by means of dangerous weapon); G. L. c. 265, § 15D (injury to person by strangulation); G. L. c. 265, § 40 (injury to physical exercise program participant).

Notably, the only place where the term "bodily injury" is used specifically to refer to both humans and animals is in the statute that provides for restraining orders to protect a person or a member of his or her family or household, including "domesticated animal[s]." G. L. c. 209A, § 11. This lone example demonstrates again that when the Legislature intends to include animals as victims in a statute, it does so expressly.

Thus, based on a review of statutes prohibiting harm to animals and those prohibiting harm generally, we conclude that the Legislature did not intend the "serious bodily harm" language in the youthful offender statute to apply to animal victims.

developing emergency aid exception).

⁶ We use "serious bodily harm" and "serious bodily injury" interchangeably. See, e.g., Felix F. v. Commonwealth, 471 Mass. 513, 517 (2015); Commonwealth v. Pike, 428 Mass. 393, 396 (1998); Commonwealth v. Cataldo, 423 Mass. 318, 323 (1996).

3. Legislative history. The Commonwealth argues that the legislative history of the youthful offender statute militates in favor of interpreting the statute broadly to encompass serious bodily harm to animals. However, we conclude that the legislative history further supports our more narrow reading of the statute. See Quincy City Hosp. v. Rate Setting Comm'n, 406 Mass. 431, 443 (1990) ("Statutes are to be interpreted . . . in connection with their development and history, and with the history of the times and prior legislation").

The concept of trying juveniles as adults in certain circumstances goes back as far as the Nineteenth Century. See, e.g., Pub. St. 1881, c. 155, § 49. The phrase "serious bodily harm" first appeared in the 1975 amendments to what is now known as the youthful offender statute. St. 1975, c. 840, § 1, amending G. L. c. 119, § 61. The language was included, along with the other familiar criteria that still exist today, to limit the number of juveniles being tried as adults. Until that time, it was within the discretion of a trial judge to determine whether transfer to adult court was in the public interest. G. L. (Ter. Ed.) c. 119, § 61.

The current incarnation of the youthful offender statute, enacted in 1996, made comprehensive changes in the Commonwealth's juvenile law to "address growing concern about violent crimes committed by juveniles." Doe v. Attorney Gen.

(No. 1), 425 Mass. 210, 213 n.8 (1997). Although, among other things, the 1996 amendments, codified as G. L. c. 119, § 54, eliminated juvenile transfer hearings and automatically required juveniles over the age of fourteen who were charged with committing murder in the first or second degree to be tried as adults, the amendments did not alter the "serious bodily harm" language. See St. 1996, c. 200, §§ 2, 15. Compare St. 1996, c. 200, § 2, with St. 1975, c. 840, § 1.

The impetus for the 1996 amendment had nothing to do with harm to animals; instead it was sparked by the murder of a woman by a then thirteen year old juvenile. See Roundup, State House News Service, Mar. 14, 1996. The legislative history of the youthful offender statute does not support the Commonwealth's view that "serious bodily harm" includes harm to animals.⁷

Conclusion. We do not discount the seriousness of the extremely disturbing allegations against the juvenile; they raise grave concerns about the juvenile's mental health. Nor do

⁷ The Commonwealth points to the Legislature's rejection of a proposed amendment limiting the statute to crimes involving violations of G. L. c. 265, titled "Crimes Against the Person," as proof that it intended the statute to protect animals from serious bodily harm. The failure to adopt an amendment intended to limit the types of crimes qualifying under the youthful offender statute does not demonstrate that the Legislature intended for the phrase "serious bodily harm" to extend to animal victims. See Franklin v. Albert, 381 Mass. 611, 615-616 (1980) (stressing fallacy in attributing particular motivation to rejection of legislative measure).

we wish to downplay the suffering the dog went through during and after the attack. Nevertheless, "[o]ur primary duty in interpreting a statute is 'to effectuate the intent of the Legislature in enacting it.'" Sheehan v. Weaver, 467 Mass. 734, 737 (2014), quoting Water Dep't of Fairhaven v. Department of Env'tl. Protection, 455 Mass. 740, 744 (2010). Here, for the reasons discussed supra, we conclude that the "serious bodily harm" referenced in the statute does not apply to animals. Therefore, the juvenile's conduct does not meet the requirements of the statute.

Although the juvenile will not be treated as an adult and face criminal penalties, the Commonwealth certainly may proceed by way of a complaint for delinquency in the Juvenile Court, where the flexibility to order mental health treatment exists. See Commonwealth v. Hanson H., 464 Mass. 807, 808 (2013) (noting Juvenile Court's broad "discretion . . . to render individualized dispositions").

For the foregoing reasons, we affirm the order granting the juvenile's motion to dismiss.

So ordered.

CYPHER, J. (concurring). A dog was horrifically tortured, and because her torturer was a teenager, the Commonwealth had limited recourse. I agree with the court that bodily harm to animals does not fall within the purview of the youthful offender statute as drafted. I write separately to highlight the Legislature's ability to amend the youthful offender statute or promulgate other legislation to better protect animals and the public.

Preventing animal cruelty is a tenet of our collective humanity and a crucial public policy goal in Massachusetts. See Commonwealth v. Duncan, 467 Mass. 746, 751, cert. denied, 135 S. Ct. 224 (2014) ("Our statutes evince a focus on the prevention of both intentional and neglectful animal cruelty").¹ The Commonwealth also has a strong interest in identifying young people with violent tendencies and in preventing additional violence.

Not only is preventing animal cruelty and abuse an important public policy goal for the sake of the animals, but

¹ The Legislature is considering many animal care and protection bills, indicating that this continues to be a concern to the citizens of the Commonwealth. See, e.g., House Bill No. 852 (establishing animal abuse registry); Senate Bill No. 2165 (permitting damages when assistance animal is harmed or killed); House Bill No. 2290 (providing for imprisonment and fines for those who leave pet outside during extreme weather); Senate Bill No. 1155 (forbidding pet shops from selling dogs or cats purchased from breeder that is not in compliance with breeder licensure requirements).

the link between juvenile animal cruelty and abuse and later adulthood violence is well established as well.² See Department of Correction, Childhood Animal Abuse and Violent Criminal Behavior: A Brief Review of the Literature (Oct. 2011), <http://www.mass.gov/eopss/docs/doc/research-reports/briefs-stats-bulletins/summaryofanimalabuseliteraturefinal.pdf> [<https://perma.cc/YGY2-7K7L>]; Hensley, Browne, and Trentham, Exploring the Social and Emotional Context of Childhood Animal Cruelty and Its Potential Link to Adult Human Violence, Psychology, Crime & Law (2017) ("Existing research has repeatedly shown animal cruelty to be a predictor of adult interpersonal violence"); Animal Legal Defense Fund, Animal Cruelty's Link to Other Forms of Community Violence (2011), <http://aldf.org/downloads/ALDFLinkStats2011.pdf> [<https://perma.cc/4YF6-LV7H>] ("If a child exhibits aggressive or sexualized behavior toward animals it may be associated with later abuse of

² In a time when social science is rapidly evolving, the Legislature is in a better position than a court to act on advances in social science research. See, e.g., Deputy Chief Counsel for the Pub. Defender Div. of the Comm. for Pub. Counsel Servs. v. Acting First Justice of the Lowell Div. of the Dist. Court Dep't, 477 Mass. 178, 187 (2017) (noting that while social science may support change to statute at issue, it is nonetheless court's responsibility to enforce statutes as written by Legislature). Courts are tasked with resolving particular disputes among parties and must limit rulings to those narrow issues, whereas the Legislature can more readily address most ills. See Guzman v. MRM/Elgin, 409 Mass. 563, 570 (1991) ("These are issues of broad public policy involving balancing the interests of future plaintiffs and defendants, which the Legislature is better equipped to resolve").

humans, unless the behavior is recognized and stopped").

A juvenile who intentionally harms an animal displays a concerning propensity for viciousness. If the Commonwealth can respond to juvenile animal abuse effectively, it may help spare future victims, animal and human alike.

The youthful offender statute, if amended, can provide the Commonwealth more flexibility when dealing with such disquieting cases of animal cruelty. Prosecutors then may be able to enlist the comprehensive assistance of the criminal justice system in addressing allegations of animal cruelty that may be harbingers of violence to come.

Although there may be other avenues available to the Commonwealth, the youthful offender statute could have been the most appropriate response. If the Legislature wishes to empower prosecutors to respond to similar acts of animal brutality, it may expand the reach of the youthful offender statute and other statutes proscribing violence to better address animal abuse and cruelty in the Commonwealth.