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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2029**

State of Minnesota,
Respondent,

vs.

Ajalon Thomas Corcoran,
Appellant.

**Filed September 14, 2010
Affirmed
Collins, Judge***

Winona County District Court
File No. 85-CR-07-3951

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Charles E. MacLean, Winona County Attorney, Kevin P. O’Laughlin, Assistant County
Attorney, Winona, Minnesota (for respondent)

J. P. Plachecki, Price, McCluer & Plachecki, Winona, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Hudson, Judge; and
Collins, Judge.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

COLLINS, Judge

Appellant challenges his conviction of felony mistreating an animal, arguing that the district court erred by finding probable cause to support the charge and abused its discretion by ruling out appellant's proposed jury instruction on the element of intent. We affirm.

FACTS

A St. Charles police officer responded to a complaint of cruelty to an animal. A family, including an 11-year-old child, had reported that the child was outside in the yard when she saw the family's pet cat cross the street from a neighbor's yard with the shaft of an arrow protruding from its abdomen. The officer went to the neighbor's house and talked to appellant Ajalon Corcoran, age 22, and his father. Corcoran stated that he shot the cat because he believed it was a stray and it had been coming into the yard since the previous spring. The cat could not be saved due to the extent of its injuries.

Corcoran was charged with misdemeanor mistreating an animal, a violation of Minn. Stat. § 343.21, subd. 1 (2006), and felony mistreating an animal, a violation of Minn. Stat. § 343.21, subds. 1, 9(d) (2006) (intentional violation of subdivision 1 resulting in death of pet).

Corcoran moved to dismiss the felony charge for lack of probable cause. The district court denied the motion, concluding that, contrary to Corcoran's argument, the statute does not require proof of intent to kill a pet. Instead, the district court concluded that in order to support the charges, it must find sufficient cause to believe that Corcoran

intentionally shot a cat and that death of a pet resulted from his action. Because Corcoran admitted that he intentionally shot the cat, resulting in its death, and there is no dispute that the cat was a family pet, the district court found probable cause to support both charges.

Corcoran moved the district court to declare Minn. Stat. § 343.21 unenforceable as overbroad and vague, and he proposed a jury instruction that conviction under subdivision 9(b) requires a finding that

[t]he actor must have knowledge of those facts which are necessary to make the actor's conduct criminal and which are set forth after the word "intentionally." [Minn. Stat. § 609.02.] The State has the burden of proving that . . . Corcoran knew that he was shooting someone's pet.

The district court denied the motion and ruled out the proposed instruction, based on the reasoning set forth in its probable-cause order.

Corcoran subsequently waived his right to a jury trial, pleaded guilty to misdemeanor mistreating an animal, and stipulated to the facts of the state's case regarding the felony charge. Reserving his right to appeal the district court's orders denying his motion to dismiss the complaint and ruling out his proposed jury instruction, Corcoran admitted he intentionally and unjustifiably shot the cat, resulting in its death, but denied knowing that he was shooting someone's pet. The district court found Corcoran guilty of felony mistreating an animal. This appeal followed.

DECISION

Corcoran challenges the district court's order denying his motion to dismiss the felony charge for lack of probable cause, arguing that the court erroneously construed

Minn. Stat. § 343.21, subds. 1, 9(d). As with other legal determinations, the question of statutory construction is reviewed de novo. *See State v. Linville*, 598 N.W.2d 1, 2 (Minn. App. 1999) (reviewing statutory interpretation de novo).

Corcoran also challenges the district court's order ruling out his proposed instruction modifying the element of intent. The refusal to give a requested jury instruction lies within the discretion of the district court and will not be reversed absent an abuse of discretion. *State v. Cole*, 542 N.W.2d 43, 50 (Minn. 1996).

The central issue underlying both challenges is whether a felony conviction of mistreating an animal requires proof beyond a reasonable doubt that the accused acted with knowledge that the animal being killed is a pet. Whether a statute has been properly construed is a question of law subject to de novo review. *State v. Murphy*, 545 N.W.2d 909, 914 (Minn. 1996).

“No person shall . . . unjustifiably injure, maim, mutilate, or kill any animal . . . whether it belongs to that person or to another person.” Minn. Stat. § 343.21, subd. 1. “A person who intentionally violates subdivision 1. . . where the violation results in death or great bodily harm to a pet or companion animal may be sentenced to imprisonment for not more than two years.” *Id.*, subd. 9(d). A pet or companion animal “includes any animal owned, possessed by, cared for, or controlled by a person for the present or future enjoyment of that person or another as a pet or companion, or any stray pet or stray companion animal.” Minn. Stat. § 343.20, subd. 6 (2006).

Section 343.21, subd 1 prohibits a person from unjustifiably killing “any animal.” And the statute expressly provides that the mens rea requirement for violation of

subdivision 9(d) is intent to violate subdivision 1. The plain language of the statute limits the mens rea requirement by using the word “intentionally” to modify only the violation of subdivision 1. Subdivision 9(d) then goes on to make the offense a felony when, as a result of the intentional violation of subdivision 1, a pet is killed or suffers great bodily harm. The legislature has thus clearly indicated that it does not intend that the accused must have knowledge that the animal is a pet. Indeed, if the legislature intended that the accused know that the animal he or she is mistreating is someone’s pet or companion animal, it easily could have included an express knowledge requirement in subdivision 9(d). Construction of the statute to require such a mental state would exceed the legislature’s intent as expressed by the plain language of the statute. *See* Minn. Stat. § 645.16 (2010) (“When the words of a law in their application to an existing situation are clear and free from ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit”); *State v. Al-Naseer*, 734 N.W.2d 679, 683 (Minn. 2007) (stating that if the language of the statute is not ambiguous, this court must apply its plain meaning). Moreover, if the accused were required to know that the animal he or she is killing is someone’s pet, the requirement that the conduct “results in death . . . to a pet” becomes superfluous, as the intentional killing of an animal one knows to be someone’s pet will necessarily result in the death of a pet. *See* Minn. Stat. § 645.16 (“Every law shall be construed, if possible, to give effect to all of its provisions”).

The definition of “pet or companion animal” also supports the view that the legislature intended to prohibit mistreatment of all pets, regardless of the accused’s knowledge as to whether the animal is a pet. The definition includes “any stray pet or

stray companion animal.” Minn. Stat. § 343.20, subd. 6 (2006). A stray pet is one that is “wandering or lost.” *The American Heritage Dictionary* 1776 (3d ed. 1992). The legislature’s inclusion of “any stray pet” indicates that it does not require that the pet have tags, a collar, or other observable indicia of its status as a pet. This language supports the conclusion that the legislature intended to prohibit the killing of a pet animal, regardless of whether it is readily distinguishable as such.

Corcoran further argues that the definition of “intentionally” requires that an accused must have knowledge that the animal was a pet in order for his or her conduct to be a felony. “Intentionally” means that the actor either has a purpose to do the thing or cause the result specified . . . [and] must have knowledge of those facts which are necessary to make the actor’s conduct criminal.” Minn. Stat. § 609.02, subd. 9 (2006). Section 343.21, subd. 1 prohibits the unjustifiable killing of any animal. In pleading guilty to misdemeanor mistreating an animal, Corcoran admitted he intentionally and unjustifiably shot the cat, causing its death. One who intentionally and unjustifiably kills an animal is on notice by the plain language of subdivision 9(d), without more, that when the animal is a pet the offense is enhanced to a felony. Subdivision 9(d) does not contain the element of knowledge that the animal is a pet. Again, the legislature could have included “knowledge” as an element of enhancement of the offense to a felony. It did not. The district court properly declined to read such an element into the statute, as do we. *See* Minn. Stat. § 645.16 (requiring courts to construe statutes according to their plain language.) *Cf. State v. Angulo*, 471 N.W.2d 570, 572-73 (1991) (analyzing first-degree murder statute for causing the death of a peace officer and holding that offender’s

knowledge that victim is a peace officer not required for conviction), *review denied* (Minn. Aug. 2, 1991).

Finally, Corcoran contends that failure to require that the accused know the animal is a pet would result in a person in rural Minnesota being charged with a felony if he or she kills a raccoon or rabbit that happens to be a pet. But Minn. Stat. § 343.21, subd. 1, provides the safeguard that the killing must be unjustifiable. This qualification alleviates any concerns that, for example, a lawful hunter who kills a raccoon or rabbit would be charged with a felony, as the conduct would presumably be justifiable.

Because the plain language of section 343.21, subs. 1, 9(d), does not require that the accused know that the animal being killed is a pet, the district court did not erroneously construe the statute. Accordingly, the district court did not err by denying Corcoran's motion to dismiss the complaint or abuse its discretion by ruling out his proposed jury instruction requiring proof of knowledge that the animal was someone's pet.

Affirmed.