

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

JOSEPH DAVID SADOSKY

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1394 WDA 2013

Appeal from the Judgment of Sentence April 25, 2013
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0000526-2013

BEFORE: BOWES, J., JENKINS, J., and FITZGERALD, J.**

MEMORANDUM BY JENKINS, J.

FILED: July 1, 2014

Joseph D. Sadosky ("Sadosky") appeals from the judgment of sentence imposed following his convictions in a bench trial for one misdemeanor count of cruelty to animals¹ and three summary counts of cruelty to animals.² Sadosky argues that there is insufficient evidence to sustain his misdemeanor cruelty to animals conviction. We affirm.

The pertinent facts are as follows:

Alexandra Duffy and [Sadosky] resided together and they adopted a kitten named 'Chloe' in 2012. At the time the kitten was

** Former Justice specially assigned to the Superior Court.

¹ 18 Pa.C.S. § 5511 (a)(2.1)(i)(A).

² 18 Pa.C.S. § 5511 (c)(1). Sadosky was originally charged with four summary counts. **See** Docket Number CP-02-CR-0000526-2013.

adopted, the kitten weighed 2.7 pounds. Shortly after the kitten was adopted, the kitten began exhibiting signs of physical injuries. In October of 2012, the kitten originally exhibited respiratory difficulties and received veterinary treatment. Shortly thereafter, Ms. Duffy came home from work and observed the kitten lying on the couch, wrapped in a blanket and unresponsive. Ms. Duffy rushed the kitten to the veterinarian on that date. The kitten spent a few nights at the veterinarian for treatment. Shortly after this incident, the kitten was taken to the veterinarian because the kitten was limping. [Sadosky] told Ms. Duffy that the kitten had caught its leg in a cabinet and suffered some injuries. The kitten remained at the veterinarian for a few days on that occasion. Shortly after that incident, the kitten was again taken to the veterinarian after Ms. Duffy came home and found [Sadosky] using a blow dryer on the kitten.³ Ms. Duffy found the kitten to be in a very weakened state and unable to stand. After the final incident, Ms. Duffy was privately advised by the veterinarian that x-rays had been performed and the kitten had sustained various injuries. All of these incidents and treatments occurred between October 3, 2012 and October 25, 2012, during a time when Ms. Duffy was at work and [Sadosky] was home alone with the kitten.

According to the expert testimony in this case, during the course of the kitten's treatment with the veterinarian, it was discovered that the kitten had suffered numerous injuries. The kitten first presented to the veterinarian's

³ Sadosky claims, because the kitten's temperature reached dangerously low levels the previous time he bathed her, he attempted to dry the kitten using a blow-dryer. **See** Brief for Appellant at 8. The trial court does not address this matter directly but appears to find his statements of the course of events incredible. **See** Trial Court Opinion, 12/12/2013, at 2.

office suffering from a respiratory ailment that was unrelated to this case. The kitten was later diagnosed with a degloving injury on her tail.⁴ This injury progressed to the point where the tip of the kitten's tail became . . . dead. On another occasion, the kitten suffered right hind limb lameness. The kitten later suffered from lameness and swelling in her left front paw. The kitten also experienced pain in her hip and along the tail. At another visit, the kitten was unable to walk. On this occasion, on October 25, 2012, x-rays were performed. The x-rays disclosed acute (recent) fractures of the kitten's left femur, acute and chronic (over a longer period) fractures of the kitten's ribs, an acute fracture of the kitten's pelvis and some irregularity in the kitten's spine. Fractures of the kitten's phalanges (fingers) and fractures of the growth plates of two vertebrae were also noted. The kitten also suffered from a pneumothorax (collapsed lung). In the expert opinion of the veterinarian, these injuries could only have been inflicted by a substantial amount of trauma. Although [Sadosky] originally denied causing these injuries, he eventually did admit to causing them and he provided a statement to the police that he "spanked" the kitten on a number of occasions for disciplinary reasons.⁵ After he spoke to the police, [Sadosky] moved from the residence. The kitten's health drastically improved after [Sadosky] moved from the residence.

Trial Court Opinion, 12/12/2013, at 1-3.

⁴ According to the expert, this type of injury indicates the kitten's skin was peeling off her tail.

⁵ Sadosky does not dispute that he caused the kitten's injuries. **See** Brief for Appellant at 12, 17.

After a bench trial, the trial court found Sadosky guilty of the misdemeanor count, i.e., that he acted willfully and maliciously in maiming, mutilating, and/or disfiguring the kitten, and guilty of three of the four summary offenses. Trial Court Opinion, 12/12/2013, at 5. The misdemeanor count was based on the kitten's injuries corroborated by the medical records. N.T. 4/25/2013, pp. 100-01. The summary counts were based on the officers' testimony (and Sadosky's own admission) that Sadosky struck the cat "four or five times." ***Id.***

On April 25, 2013, the trial court sentenced Sadosky for the misdemeanor count to two years' probation, restitution to Ms. Duffy in the amount of \$2,590.00, and fines and court fees totaling \$2,199.92. The trial court also ordered that Sadosky not own any pets for the first year of probation and that he continue receiving animal cruelty treatment. A determination of guilty with no further penalty was assessed on the remaining summary counts.

On May 24, 2013, Sadosky filed an untimely Post-Sentence Motion for Judgment of Acquittal, which the trial court summarily denied. On May 31, 2013, Sadosky filed a Post-Conviction Relief Act ("PCRA") Petition, seeking to reinstate his post-sentence motion and direct appellate rights. On June 28, 2013, the trial court granted his PCRA petition. On July 2, 2013, Sadosky re-filed his Post-Sentence Motion for Acquittal. After a hearing on August 2, 2013, the trial court denied his post-sentence motion. On August

26, 2013, Sadosky filed a timely notice of appeal. Both Sadosky and the trial court have complied with Pa.R.A.P. 1925.

Sadosky raises a single issue on appeal:

Did the trial court err[] in finding that the Commonwealth presented sufficient evidence to prove beyond a reasonable doubt every element of the crime of [c]ruelty to [a]nimals, 18 Pa.C.S. § 5511(a)(2.1)(i)(A), where the injuries attributable to appellant were temporary, and not of the nature or severity necessary to meet the threshold for conviction under the statute?

Brief for Appellant at 4. His claim is meritless.

We apply the following standard when reviewing a sufficiency of the evidence challenge: “[W]hether the evidence at trial, and all reasonable inferences derived therefrom, when viewed in the light most favorable to the Commonwealth as verdict winner, are sufficient to establish all elements of the offense beyond a reasonable doubt.” **Commonwealth v. Stevenson**, 894 A.2d 759, 773 (Pa.Super.2006) (quoting **Commonwealth v. May**, 584 Pa. 640, 647, 887 A.2d 750, 753 (2005)). “We may not weigh the evidence or substitute our judgment for that of the fact-finder.” **Id.** (citing **Commonwealth v. Smith**, 863 A.2d 1172, 1176 (Pa.Super.2004)). “[T]he evidence at trial need not preclude every possibility of innocence, and the fact-finder is free to resolve any doubts regarding a defendant’s guilt unless the evidence is so weak and inconclusive that as a matter of law no facts supporting a finding of guilt may be drawn.” **Stevenson**, 894 A.2d at 773. “The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial

evidence.” **Commonwealth v. DiStefano**, 782 A.2d 574, 582 (Pa.Super.2001). “The fact-finder, when evaluating the credibility and weight of the evidence, is free to believe all, part, or none of the evidence.” **Stevenson**, 894 A.2d at 773. In applying the above test, “we must review the entire record and consider all of the evidence introduced.” **Id.**

The Crimes Code defines cruelty to animals, in relevant part, as follows: “[A] person commits a misdemeanor of the first degree if he willfully and maliciously . . . [k]ills, maims, mutilates, tortures⁶ or disfigures any dog or cat, whether belonging to himself or otherwise. . . .” 18 Pa.C.S. § 5511(2.1)(i)(A).

Sadosky contends that the evidence was insufficient to support his misdemeanor conviction of cruelty to animals because the kitten’s injuries were temporary and not permanently debilitating. Brief for Appellant, at 16. We disagree.

Section 5511(2.1) does not specify the precise nature or scope of acts prohibited. Consistent with the Pennsylvania rules of statutory construction,⁷ this Court in **Commonwealth v. Crawford**, 24 A.3d 396 (Pa.Super.2011), applied the common and approved usage of the terms “maim,” “mutilate,”

⁶ Torture is not at issue for purposes of our review, since the trial court did not find that Sadosky tortured the kitten.

⁷ 1 Pa.C.S. § 1903.

“torture,” and “disfigure” to define the prohibited acts. These common and approved usages are as follows:

Maim

- 1: to commit the felony of mayhem upon⁸
- 2: to mutilate, disfigure, or wound seriously

Mutilate

- 1: to cut up or alter radically so as to make imperfect
- 2: to cut off or permanently destroy a limb or essential part of: cripple

Torture

- 1: a: anguish of body or mind: agony
b: something that causes agony or pain
- 2: the infliction of intense pain (as from burning, crushing, or wounding) to punish, coerce, or afford sadistic pleasure
- 3: distortion or overrefinement of a meaning or an argument: straining

Disfigure

- 1: to impair (as in beauty) by deep and persistent injuries
- 2: obsolete: disguise

Crawford, 24 A.3d at 401 (quoting **Merriam-Webster’s Online Dictionary**). Proof of permanent injury is not necessary to sustain a section 5511 (a)(2.1)(i)(A) conviction for “maiming” or “disfiguring”.⁹

⁸ The felony of “mayhem” does not exist in Pennsylvania.

⁹ “Mutilate”, on the other hand, appears to require some permanent injury. **See Crawford**, 24 A.3d at 401 (“mutilate” is defined, in part, as “to . . . alter radically so as to make imperfect”). To make something imperfect necessarily implies that the imperfection cannot be undone, i.e., that the
(Footnote Continued Next Page)

Upon consideration of the record in the light most favorable to the Commonwealth, we find the evidence sufficient to sustain Sadosky's misdemeanor conviction. The evidence establishes that Sadosky maimed the sickly kitten, who was 2.8 pounds or less, by striking her with such force over the course of about one week that she suffered multiple bone fractures. Sadosky also disfigured the kitten by impairing her ribs and some growth plates in her vertebrae with deep and persistent injuries. The kitten was unable to use her right hind limb during one veterinary visit and was unable to walk during another. An x-ray showed the kitten fractured her fingers, ribs, pelvis, and growth plates of two vertebrae, and suffered a collapsed lung. The Commonwealth's expert opined that these injuries could only have been inflicted through a substantial amount of trauma.

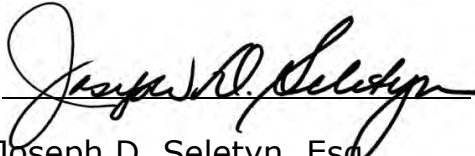
In short, the Commonwealth presented sufficient evidence to support Sadosky's misdemeanor conviction under section 5511 (a)(2.1)(i)(A) for willfully and maliciously maiming and disfiguring the kitten.

Judgment of sentence affirmed.

(Footnote Continued) _____

sustained injuries were of such a serious nature to permanently deprive an individual or animal use of a limb, or an essential part of their physical being. ***Id.*** Nevertheless, we need not analyze whether the record demonstrates that the kitten suffered permanent injury, or whether Sadosky mutilated the kitten, since the record provides sufficient evidence of maiming and disfiguring.

Judgment Entered.

A handwritten signature in black ink, reading "Joseph D. Seletyn". The signature is written in a cursive style and is positioned above a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/1/2014