IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0712-16

ROBERT MONTE PRICHARD, Appellant

v.

THE STATE OF TEXAS

ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW FROM THE FIFTH COURT OF APPEALS DALLAS COUNTY

ALCALA, J., delivered the opinion of the Court in which KEASLER, RICHARDSON, NEWELL, and WALKER, JJ., joined. KELLER, P.J., filed a concurring opinion. YEARY, J., filed a dissenting opinion in which HERVEY, J., joined. KEEL, J., dissented.

O P I N I O N

This case addresses whether a deadly weapon finding is permissible for the use or exhibition of a deadly weapon against a nonhuman. In his petition for discretionary review, Robert Monte Prichard, appellant, argues that a deadly weapon finding is improper when the only thing injured or killed as a result of a defendant's criminal conduct is an animal rather than a human being. Rejecting that argument, the court of appeals upheld a deadly weapon finding in this case in which appellant was convicted of animal cruelty and the deadly force

was directed only against a dog. *See Prichard v. State*, No. 05-14-01214-CR, 2016 WL 1615641, at *1 (Tex. App.—Dallas April 20, 2016) (mem. op., not designated for publication). We conclude that the language of the deadly weapon statute is ambiguous with respect to whether a deadly weapon finding may be made for weapons used or exhibited against nonhumans, and thus, we must consider extra-textual factors to discern the Legislature's intent as to this matter. We determine that an analysis of those factors supports our determination that a deadly weapon finding may be made for human victims only. We, therefore, we reverse the judgment of the court of appeals.

I. Background

While purportedly disciplining his pet dog, appellant killed her by repeatedly hitting her head with a shovel and then drowning her in a swimming pool. He was indicted for the state-jail felony of cruelty to a non-livestock animal. *See* TEX. PENAL CODE § 42.092(b)(1), (c). In a separate paragraph, the indictment also alleged that the shovel and pool water, singly or in combination, constituted the use of a deadly weapon in the commission of the offense.[1] A jury convicted appellant of the offense as charged in the indictment and, in a special issue in the verdict form, made a finding that appellant had used a deadly weapon. This finding made the state-jail felony offense punishable within the punishment range for

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[1] The indictment alleged that appellant did "intentionally or knowingly cause unjustifiable pain or suffering or in a cruel manner kill an animal, to wit: a dog, by striking it on the head with a shovel or by drowning it in a pool of water, singly or in combination, And it is further presented that the defendant used a deadly weapon, to-wit: a shovel or water, singly or in combination."

a third-degree felony. *See id*. § 12.35(c). The jury sentenced appellant to six and one-half years' imprisonment. The trial court's judgment reflected that appellant had been convicted of a third-degree felony and the judgment showed an affirmative finding of a deadly weapon.

On appeal, appellant argued that the evidence was insufficient to support the jury's deadly weapon finding because that finding should be limited only to human victims and no evidence showed that a human had been harmed or placed at risk of harm as a result of appellant's conduct. Appellant challenged the deadly weapon finding primarily based on three theories.

First, appellant asserted that, although the statutory definition of a "deadly weapon" does not specifically address "'the death or serious bodily injury' *of a person,*" a common-sense reading of the statute implies that it applies only to people. He argued that interpreting "death or serious bodily injury" as including nonhumans would lead to absurd consequences not intended by the Legislature, such as deadly weapon findings for a reckless driver who runs over someone's pet snake or pet rat or hits a tree knocking off branches or leaves. The court of appeals did not perform any statutory analysis to decide if the plain language permitted a deadly weapon finding in this case, nor did it respond to appellant's absurd-results argument. The court of appeals generally rejected this argument by explaining that, because appellant did not dispute that his use of the shovel and pool water caused the dog's death as he intended, the deadly weapon special issue had been properly submitted and the evidence was sufficient to support the deadly weapon finding. *Prichard*, 2016 WL 1615641,

at *2-3. The court concluded that the "pertinent inquiry with respect to whether a deadly weapon was *used*, the issue here, is whether the weapon achieved or facilitated the intended result." *Id*. at *2 (emphasis original).

Second, appellant argued that permitting a deadly weapon finding for death to a nonhuman would result in transforming what the Legislature had designated as a state-jail-felony offense of cruelty to animals into a third-degree felony. The court of appeals rejected this argument by explaining that the punishment range for the offense would remain a state-jail felony if the death or serious bodily injury of an animal was committed by omission. *Id.*

Third, appellant suggested that this Court's precedent already limits a deadly weapon finding to situations involving injury or death to humans only. The court of appeals reviewed this Court's precedent and determined that it was silent as to the inclusion or exclusion of nonhumans for deadly weapon findings. *Id*.

After rejecting appellant's arguments, the court of appeals reformed the trial court's judgment to reflect that appellant had actually been convicted of a state-jail felony, as opposed to a third-degree felony, and that he had pleaded not true to the deadly weapon allegation. *Id*. at *3. After modifying appellant's judgment, the court of appeals affirmed his conviction. *Id*.

In his petition for discretionary review, appellant reasserts his three arguments that he made to the court of appeals that contend that a deadly weapon finding may be made only when the use or exhibition of the deadly weapon is against a human victim. First, he argues

that it "defies a common-sense reading of the statute to assume that 'deadly weapon' findings can apply to all living things." He suggests that to permit a deadly weapon finding in this case would result in absurd consequences, such as permitting a deadly weapon finding in a felony DWI case when a defendant runs over someone's pet snake or pet rat, or in a felony criminal mischief case for causing the death of a tree. Furthermore, conceding that many people consider dogs as family members, appellant notes that dogs are nonetheless considered property in Texas and should not be equated with human victims.

Second, appellant also repeats his prior arguments that permitting a deadly weapon enhancement functionally makes animal cruelty a third-degree felony rather than, as the Legislature intended, a state-jail felony. He also contends that permitting a deadly weapon finding renders superfluous a section of the animal cruelty statute that enhances punishment for repeat offenses. *See* TEX. PENAL CODE § 42.092(c).

Third, although he acknowledges that this Court has never expressly addressed whether a deadly weapon finding must be limited to offenses involving humans, appellant suggests that this Court's precedent implies that limitation. In response, the State argues that the plain text of the definition of "deadly weapon" is broad enough that it permits a deadly weapon finding for serious bodily injury or death to animals. The State also maintains that the court of appeals properly rejected appellant's arguments on their merits.

II. Analysis

Appellant's sufficiency challenge turns on the legal meaning of the deadly weapon

statute. Factually, appellant does not contest that, if the law permits a deadly weapon finding under these circumstances, the evidence is sufficient to show that he used a deadly weapon against an animal. To resolve whether a deadly weapon finding may be made for a weapon used or exhibited against a nonhuman, we begin by construing the statutory language according to the rules of statutory construction. Applying those rules, we determine that the statutory language is ambiguous with respect to whether it applies to nonhuman victims. It is, therefore, necessary to examine extra-textual considerations to ascertain the Legislature's intent. That examination leads us to our conclusion that the Legislature did not intend to permit a deadly weapon finding for injury or death to a non-human.

A. Applicable Law for Sufficiency of Evidence to Support Deadly Weapon Finding

To conduct a sufficiency review, we examine the statutory requirements necessary to uphold the conviction or finding. *Liverman v. State*, 470 S.W.3d 831, 836 (Tex. Crim. App. 2015). We determine the meaning of statutes *de novo*. *Id*. When we interpret enactments of the Legislature, "we seek to effectuate the collective intent or purpose of the legislators who enacted the legislation." *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991) (internal citations omitted). We focus our analysis on the literal text of the statute and "attempt to discern the fair, objective meaning of that text at the time of its enactment." *Id*. "[I]f the meaning of the statutory text, when read using the established canons of construction relating to such text, should have been plain to the legislators who voted on it, we ordinarily give effect to that plain meaning." *Id*. Thus, we apply the plain meaning of

a term if the statute is clear and unambiguous. *Id*. In determining the plain meaning of a statute, courts read words and phrases in context and construe them according to the rules of grammar and common usage. *Yazdchi v. State*, 428 S.W.3d 831, 837 (Tex. Crim. App. 2014). Courts may consult standard dictionaries in determining the fair, objective meaning of undefined statutory terms. *Clinton v. State*, 354 S.W.3d 795, 800 (Tex. Crim. App. 2011).

In contrast to our limitation to the text of a statute with plain language, we consider extra-textual factors to determine the meaning of language that is not plain. When a statute is ambiguous or its plain language would lead to absurd results not possibly intended by the Legislature, we may consult extra-textual factors, including legislative history. *See Boykin*, 818 S.W.2d at 785-86; *see also* TEX. GOV'T CODE § 311.023. Under those circumstances, we consider extra-textual factors to discern the Legislature's intent in enacting the statute. *Bays v. State*, 396 S.W.3d 580, 585 (Tex. Crim. App. 2013). Ambiguity exists when a statute may be understood by reasonably well-informed persons to have two or more different meanings. *Id*.; *see also Baird v. State*, 398 S.W.3d 220, 229 (Tex. Crim. App. 2013) (statute is ambiguous when the language it employs is "reasonably susceptible to more than one understanding").

Here, appellant's challenge is limited to the sufficiency of the evidence to establish the deadly weapon finding, and thus we limit our review to that issue. Furthermore, because a legal-sufficiency challenge need not be preserved by objection in a trial court, appellant was permitted to present that complaint in the first instance to the court of appeals. *Moore*

v. State, 371 S.W.3d 221, 225, 227 (Tex. Crim. App. 2012). We, therefore, turn to an analysis of the meaning of the deadly weapon statute.

B. The Deadly Weapon Statute is Ambiguous

After examining the statutory language, we determine that the statute is ambiguous because a reasonable person could read its terms as applying either to only humans or to all organisms that are capable of cessation of life.

1. The Statute's Language

The deadly weapon statute at issue here is set forth in Article 42.12, § 3g(a)(2), which provides for a stricter penalty for an offender who has "used or exhibited [a deadly weapon] during the commission of a felony offense or during immediate flight therefrom." TEX. CODE CRIM. PROC. art. 42.12, § 3g(a)(2) (West 2013). A "deadly weapon" includes "anything that in the manner of its use or intended use is capable of causing death or serious bodily injury." TEX. PENAL CODE § 1.07(a)(17)(B). The term "serious bodily injury" is defined as "bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." *Id*. § 1.07(a)(46). "Bodily injury" means "physical pain, illness, or impairment of physical condition." *Id*. § 1.07(a)(8). The statutory language is exceedingly broad in that a "deadly weapon" may be "anything," and there is no limitation as to what type of thing may be considered a deadly weapon. *See id* § 1.07(a)(17)(B); *Plummer v. State*, 410 S.W.3d 855, 858 (Tex. Crim. App. 2013) (noting that "[deadly weapon] includes any

instrument that threatens or causes serious bodily injury, even when the instrument is not inherently or intentionally deadly"). A deadly weapon finding can be made even in the absence of actual harm or threat. *Plummer*, 410 S.W.3d at 859 (citing *Patterson v. State*, 769 S.W.2d 938, 941 (Tex. Crim. App. 1989) (allowing a deadly weapon finding where the exhibition of the weapon reasonably could have "protected and facilitated appellant's care, custody, and management of the contraband")).[2]

Although our review in this case examines the deadly weapon statute, the question before us is exceedingly narrow. The issue is whether the intended target of the exhibition or use of a deadly weapon may be a nonhuman. Nothing in this opinion modifies this Court's existing precedent about what type of item may constitute a deadly weapon or the circumstances in which an object may be considered to be a deadly weapon. Regardless of the type of weapon and the circumstances of the use or exhibition, the question is whether a deadly weapon finding is permissible when the weapon was used or exhibited against a nonhuman. Although we may consider these other matters in evaluating the intended meaning of the statutory language, our holding in this case is limited to the exceedingly narrow determination that a deadly weapon finding is disallowed when the recipient or victim is nonhuman.

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[2] In this opinion, we sometimes use the term "victim" as shorthand for the person or animal against whom the deadly weapon was used or exhibited. However, nothing in this opinion is intended to suggest that there must be actual injury or death to a being for a deadly weapon finding to be made.

2. The Deadly Weapon Statute's Language is Ambiguous

A review of the statute's language, as it generally applies to offenses in the penal code and as it specifically applies in the context of the animal-cruelty statute, reveals that it is ambiguous with respect to whether it was intended to apply to only humans or to all living organisms. Reasonable people could reach opposite conclusions about the meaning of the statutory language as it pertains to this question. Furthermore, this Court's precedent supports our conclusion that the deadly weapon statute is ambiguous.

a. The Deadly Weapon Statute For General Offenses in the Penal Code

There are two reasonable alternative meanings of the statutory language as that deadly weapon statute may apply to all offenses in the penal code. On the one hand, the State is correct that a reasonable person could examine the deadly weapon statute and determine that it broadly refers to "serious bodily injury" or "death," without mentioning the identity or type of victim against whom the use or exhibition of the deadly weapon must have been directed. *See* TEX. PENAL CODE § 1.07(a)(46). The Texas Penal Code does not define the word "death," although it appears to consider human death by specifying that death "includes, for an individual who is an unborn child, the failure to be born alive." *Id*. § 1.07(a)(49). "Individual" is, in turn, defined as "a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth." *Id*. § 1.07(a)(26). Similar to the penal code's apparent references to death in the context of humans, the Health and Safety Code more specifically uses the term for human death. The Legislature may have considered

the definition of "death" as that term is used in the Health and Safety Code, which states, "A person is dead when, according to ordinary standards of medical practice, there is irreversible cessation of the person's spontaneous respiratory and circulatory functions." TEX. HEALTH & SAFETY CODE § 671.001(a). Black's Law Dictionary, however, more generally defines "death" as the "ending of life; the cessation of all vital functions and signs." *Death*, BLACK'S LAW DICTIONARY 484 (10th ed. 2014).

Because the penal code fails to define "death" and a common understanding of that word may expansively include organisms with vital functions that cease to function, a reasonable person could determine that the deadly weapon statute's inclusion of the word "death" is broad enough to include nonhuman forms of life, such as animals and plants. Using a commonplace understanding of the meaning of the word "death," reasonable people could consider this statute as broadly applying to the permanent cessation of all vital functions of humans, animals, and even plants. A reasonable person could assert that, due to the absence of any express limitation to the terms in the statute, the statute should be broadly construed to permit a finding when any living organism is the victim.

On the other hand, a reasonable person could examine the deadly weapon statute and determine that the definitions of the terms it uses limits its applicability to human victims only. Taken as a whole, the terms "serious bodily injury" or "death" could reasonably refer to humans only because the statute's definitions for those terms use phrases more commonly associated with humans than with nonhumans. As noted above, the word "death" in the

Penal Code and Health and Safety Code appears to refer to humans. Furthermore, the term "serious bodily injury" appears to refer to humans. For example, it would be unusual to refer to a nonhuman as having "serious bodily injury" that is defined as "serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ." *See* TEX. PENAL CODE § 1.07(a)(46). Similarly, it would be unusual to apply the definition for "bodily injury" that means "physical pain, illness, or impairment of physical condition" to a nonhuman. *Id.* § 1.07(a)(8).

In examining whether statutory language is plain, we must consider the terms in the context in which they appear. The deadly weapon statute appears in Chapter 42 of the Code of Criminal Procedure, entitled "Judgment and Sentence," in a specific section entitled "Community Supervision." TEX. CODE CRIM. PROC. art. 42.12. Section three in that Article permits a judge to suspend imposition of sentence and place the defendant on community supervision. *Id*. art. 42.12, § 3. Section 3g, however, excludes from section three the offenses for which a judge may not order community supervision, including (1) murder; (2) capital murder; (3) indecency with a child; (4) aggravated kidnapping; (5) aggravated sexual assault; (6) aggravated robbery; (7) use of a child in the commission of certain offenses; (8) certain violations of drug-free zones; (9) sexual assault; (10) first-degree felony injury to a child; (11) sexual performance by a child; (12) first-degree felony solicitation; (13) compelling prostitution; (14) trafficking of persons; and (15) certain burglaries. *Id*. art. 42.12, § 3g(a)(1). The deadly weapon provision in Subsection 3g(a)(2) that is the subject of

this appeal immediately follows this list. The placement of the deadly weapon provision after the listed offenses for which the Legislature sought more stringent punishment due to their violence or danger to human victims would seem to suggest that the Legislature was focused on the protection of human victims. However, that placement of this subsection, following the list of human-victim offenses, is not definitive because one might reasonably argue that the Legislature placed this broader language for deadly weapons into the statutory prohibition on community supervision in order to ensure that all types of offenses, including those involving human and nonhuman victims, could result in a deadly weapon finding.

We conclude that reasonable people may examine the terms of the deadly weapon statute as it applies generally to offenses and reach opposite conclusions as to whether it would apply to situations involving nonhuman victims. But the State also argues that the statute is not ambiguous in the specific context of the animal-cruelty statute, and thus we turn next to that suggestion.

b. The Deadly Weapon Statute in the Context of Animal-Cruelty Statute

Despite the ambiguity in the deadly weapon statute as it generally applies to offenses in the penal code, the State argues that the particular statutory language in the animal-cruelty statute under which appellant was convicted in this case plainly permits a deadly weapon finding. Section 42.092 of the Penal Code, entitled "Cruelty to Nonlivestock Animals," states, "A person commits an offense if the person intentionally, knowingly or recklessly: (1) tortures an animal or in a cruel manner kills or causes serious bodily injury to an animal."

TEX. PENAL CODE § 42.092(b)(1).

The State contends that the animal-cruelty statute's use of the phrase "kills or causes serious bodily injury to an animal" necessarily includes the use of a deadly weapon because (1) the phrase "serious bodily injury" appears in both the deadly weapon statute and animal-cruelty statute and (2) it is impossible to inflict serious bodily injury or death without the use of a deadly weapon. A close comparison of the deadly weapon statute and animal-cruelty statute reveals that, although they each incorporate the same phrase "serious bodily injury," they use different terms for the loss of life, they criminalize the loss of life under different circumstances, and the term has varied meanings in the two statutes. Thus, we are unpersuaded that the plain language of the animal-cruelty statute reveals the Legislature's intent to permit a deadly weapon finding.

It is true that the animal-cruelty statute and the deadly weapon statute each use the same phrase "serious bodily injury," but it is also true that the two statutes use entirely different terms for the cessation of life. The animal-cruelty statute uses the term "kill" and the deadly weapon statute uses the word "death." *See* TEX. PENAL CODE §§ 1.07(a)(46), 42.092(b); TEX. CODE CRIM. PROC. art. 42.12, § 3g(a)(2). This choice of vocabulary suggests that the interests at stake are quite different in that the penal code, within which the animal cruelty statute appears, expressly permits the lawful killing of nonlivestock animals under certain circumstances. The animal-cruelty statute states, "It is an exception to the application of this section that the conduct engaged in by the actor is a generally accepted and otherwise

lawful: (1) form of conduct occurring solely for the purpose of or in support of: (A) fishing, hunting, or trapping; or (B) wildlife management, wildlife or depredation control, or shooting preserve practices . . . ; or (2) animal husbandry or agriculture practice involving livestock animals." TEX. PENAL CODE § 42.092(f). Recognizing that cessation of the life of certain animals is lawful under certain circumstances, the animal cruelty statute used the word "kill." *See id.*[3] In contrast, the deadly weapon statute incorporates the definition of deadly weapon that uses the broader word "death." *See* TEX. PENAL CODE § 1.07(a)(17)(B). A killing involves a death, but a death does not necessarily involve a killing. Unlike the authorized killing of an animal, the penal code provides no exceptions to offenses that cause death or serious bodily injury to a person. *See id.* § 9.02 ("It is a defense to prosecution that the conduct in question is justified under this chapter."); *see also id.* § 2.02.

Although both relevant statutes use the identical phrase "serious bodily injury," the statutes are materially different in their descriptions about the cessation of life, with the animal-cruelty statute permitting certain killings, and the deadly weapon statute more broadly using the word "death." Given these differences in the two statutes, we do not consider the fact that the Legislature used part of the phrase in the deadly weapon statute, "serious bodily

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[3] *See also id.* § 42.092(d), (e) (providing defenses to prosecution for animal cruelty for killing an animal to prevent bodily injury to a person, protecting livestock animals, or crops, bona fide experimentation for scientific research, or when the killing occurred within the scope of a person's employment as a public servant or in furtherance of activities associated with the generation, distribution, or transmission of electricity or natural gas); *see also Chase v. State*, 448 S.W.3d 6, 28 (Tex. Crim. App. 2014) (discussing TEX. HEALTH & SAFETY CODE § 822.013 as a defense to animal cruelty).

injury," but not the entire phrase "serious bodily injury or death," to render the statutory language plain so as to reveal the Legislature's intent to permit a deadly weapon finding for violations of the animal-cruelty statute.

We additionally note that the two statutes use the same phrase "serious bodily injury," but that phrase has different proof requirements and meanings in each context. Unlike the evidence necessary for a deadly weapon finding (i.e., the use or exhibition of an object capable of causing death or serious bodily injury), offenses under subsections (b)(1) or (b)(2) of the animal-cruelty statute require proof of more than death or serious bodily injury to an animal. Subsection (b)(1) requires that the killing or infliction of serious bodily injury be "in a cruel manner," where cruel manner is defined to include "a manner that causes or permits unjustified or unwarranted pain or suffering." *Id*. § 42.092(a)(3), (b)(1). Subsection (b)(2) requires that the killing or serious bodily injury be "without the owner's effective consent." *Id*. § 42.092(b)(2).[4] Thus, while it might be adequate to show death or serious bodily for a deadly weapon finding for humans, additional facts must be shown before an individual may be found guilty of animal cruelty in that the serious bodily injury or death must have occurred under circumstances showing a cruel manner or absence of an owner's effective consent. The inclusion of these additional requirements further reduces the similarity between the animal-cruelty statute's use and the deadly weapon definition's use of "serious bodily

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[4] Section 42.092(b)(2) makes it a state-jail felony offense to intentionally, knowingly, or recklessly, without the owner's effective consent, kill, administer poison to, or cause serious bodily injury to an animal. TEX. PENAL CODE § 42.092(b)(2).

injury." Accordingly, the additional statutory elements of "in a cruel manner" or "without the owner's effective consent" weigh against the inference that the use of the phrase "serious bodily injury to an animal" signals a clear legislative intent to permit deadly weapon findings for animal-cruelty offenses.

The State also suggests that the language in the animal-cruelty statute that includes the phrase "to an animal" in the context of "kills or causes serious bodily injury to an animal" necessarily means that the Legislature intended to permit a deadly weapon finding. *See id.* § 42.092(b)(1), (2). The State argues that it is impossible to kill or cause serious bodily injury without the use of a deadly weapon. Although the State's reading of the statute may be a reasonable interpretation of the language, we conclude that it is equally reasonable that the Legislature did not intend for this language to permit a deadly weapon finding, and thus that the meaning of the statute is ambiguous. The phrase "to an animal" could connote the meaning that the State suggests, but it could equally have been inserted there by the Legislature to limit the applicability of the statute to animals that are specifically identified in the definition. The statute defines "animal" as "a domesticated living creature, including any stray or feral cat or dog, and a wild living creature previously captured. The term does not include an uncaptured wild living creature or a livestock animal." *Id.* § 42.092(a)(2). The word "animal" in that statute is distinguished from "livestock animal" that is covered in a different section. Section 42.09, entitled "Cruelty to Livestock Animals," defines "livestock animal" as "(A) cattle, sheep, swine, goats, ratites, or poultry commonly raised for

human consumption; (B) a horse, pony, mule, donkey, or hinny; (C) native or nonnative hoofstock raised under agriculture practices; or (D) native or nonnative fowl commonly raised under agricultural practices." *Id*. § 42.09(b)(5). Thus, the reference to killing or causing serious bodily injury "to an animal" could reasonably suggest that the Legislature intended to permit a deadly weapon finding for the death of an animal, but, alternatively, it could also mean that the statute was merely defining the types of creatures to which the statute was intended to apply. For this reason, the language in the animal-cruelty statute is ambiguous rather than plain with respect to whether it would specifically permit a deadly weapon finding.

We also note that there is nothing in the deadly weapon statute that suggests that the Legislature intended to permit the finding on an assessment of a statute-by-statute analysis as compared to permitting it for all offenses anytime the facts established that a deadly weapon was used or exhibited against a person with the intent to facilitate an offense. *See Patterson*, 769 S.W.2d at 940 (noting that "all felonies are theoretically susceptible to an affirmative finding of use or exhibition of a deadly weapon"). We, therefore, are unpersuaded that the particular language in the animal-cruelty statute would determine whether a deadly weapon finding could be made. Furthermore, because the animal-cruelty statute defines an "animal" as including a wild living creature previously captured, the State could not limit the statute to victims that are dogs, but instead, if we permitted a deadly weapon finding as to the animal-cruelty statute, the possible victims include a turtle, rat,

rabbit, deer, or even a fly or mosquito. *See* TEX. PENAL CODE § 42.092(a)(2).

The State also contends that the animal-cruelty statute's use of the phrase "kills or causes serious bodily injury to an animal" necessarily includes the use of a deadly weapon because it is impossible to inflict serious bodily injury or death without the use of a deadly weapon. The State relies on *Crumpton v. State*, in which this Court held that a deadly weapon finding was properly made when a jury found a defendant guilty of criminally negligent homicide "as included in the indictment" and the indictment had alleged a deadly weapon. 301 S.W.3d 663, 664 (Tex. Crim. App. 2009). Although it is true that an affirmative finding of a deadly weapon may be made based on the jury's finding of guilt under circumstances in which an indictment pleads a deadly weapon allegation and the jury finds a defendant guilty as charged in the indictment, that does not answer the instant question whether an affirmative finding of a deadly weapon may be made when the victim is a nonhuman.

Given that reasonable people could disagree about the meaning of the statutory language, the deadly weapon statute is ambiguous as to whether it applies only to humans. Nothing in the plain language of the statute limits the victim of the use or exhibition of the deadly weapon to humans only, and for all of the reasons explained above, reasonable minds may disagree about whether the Legislature intended for this statute to be limited to only humans.

c. Precedent Suggests Deadly Weapon Statute's Language is Ambiguous

This Court has previously discussed the broad nature of the language in this statute when we held that its language was ambiguous in another respect. This Court held in *Plummer v. State* that the statutory language was ambiguous as to whether the exhibition of a deadly weapon must help facilitate the commission of the felony. *See Plummer*, 410 S.W.3d at 861. This Court's rationale in *Plummer* supports our conclusion that the language in this case is also ambiguous.

In *Plummer*, this Court held that a deadly weapon finding for a felony offense requires some facilitating connection between the weapon and the felony. *Id*. at 864-65. We deleted the affirmative finding of a deadly weapon that had been imposed against Plummer, explaining that his possession of a handgun did not play any role in enabling, continuing, or enhancing the offense of possession of body armor under the circumstances in which Plummer was working as a security guard. *Id*. at 865. Similar to our determination that the language in the deadly weapon statute was ambiguous in *Plummer*, here we also conclude that the language is ambiguous as to whether the object of the use or exhibition of the deadly weapon may be a nonhuman. The types of concerns this Court had in *Plummer* with the broader statutory language are similar to those here, but this time with respect to the type of victim that may be considered. In light of the broad language in the deadly weapon statute, we again conclude, as we did in *Plummer*, that the statute is ambiguous.

Although we note that our precedent supports our view that this statute is ambiguous, we disagree with appellant's suggestion that this Court's precedent has more definitively held

that a deadly weapon finding is limited to human victims only. We agree with the court of appeals's determination that this Court's precedent does not definitively address the issue before us in the instant case. Appellant cited *Cates v. State*, but there this Court held that "to sustain a deadly weapon finding, there must be evidence that others were actually endangered, not merely a hypothetical potential for danger if others had been present." 102 S.W.3d 735, 738 (Tex. Crim. App. 2003). Appellant also cited *Brister v. State*, but there this Court held that, "in order to sustain a deadly weapon finding, the evidence must demonstrate that: (1) the object meets the definition of a deadly weapon; (2) the deadly weapon was used or exhibited during the transaction on which the felony conviction was based; and (3) other people were put in actual danger." *Brister v. State*, 449 S.W.3d 490, 494 (Tex. Crim. App. 2014). We agree with the court of appeals that, although we discussed the deadly weapon finding as it would pertain to humans in those cases, this Court was not called upon in those cases to address whether the finding would be appropriate as to nonhumans. Thus, the question in this case presents a matter of first impression in this Court.

In sum, although we believe that it is more reasonable to view the statutory definitions for "serious bodily injury" and "death" as referring to humans only, we conclude that the language is not so plain that people could not reasonably disagree about whether the terms "serious bodily injury" and "death" could also apply to animals or even plants. At this juncture, we only decide that it is necessary to consider extra-textual sources because the statutory language is not so clear that we may fairly characterize its meaning as plain.

Having determined that the language is ambiguous, we need not address whether the plain language would lead to absurd results before considering extra-textual factors. *See Boykin*, 818 S.W.2d at 785 (holding that a court may consider extra-textual factors if and only if the statutory language is ambiguous or would lead to absurd results). We next consider extra-textual sources to determine whether the Legislature intended for the deadly weapon statute to apply to nonhuman victims.

C. Extra-Textual Analysis

Having determined that the plain language is ambiguous, we may consider extra-textual factors, including (1) the legislative history, (2) the objective of the statute, and (3) the consequences of a particular construction, to determine the Legislature's intent in enacting the statute. *See Chase v. State*, 448 S.W.3d 6, 11 (Tex. Crim. App. 2014); TEX. GOV'T CODE § 311.023(1), (3), (5).

1. Legislative History

In *Plummer*, this Court described the legislative record discussing the specific terms in the deadly weapon statute as "skimpy." *Plummer*, 410 S.W.3d at 861 (citing *Polk v. State*, 693 S.W.2d 391, 393 n. 1 (Tex. Crim. App. 1985) (noting that the legislative history of SB 152, the bill that was to become Section 3 of article 42.12, "is incomplete" and that the intended meaning of specific terms within that legislation "is difficult to educe"). The general purpose of the statute, however, is well documented in that the Legislature apparently intended to provide more severe punishment against actors who risk serious bodily injury or

death for crimes against people. *See id.* One witness testifying before the 1977 Senate subcommittee on the deadly weapon provision stated that it was "intended to send a message to criminals to leave their firearms at home." *Id.* (citing *Tyra v. State*, 897 S.W.2d 796, 802-03 (Tex. Crim. App. 1995) (Maloney, J., concurring)). All of the discussion during the hearing centered on the commission of dangerous, violent felonies towards people, and the use of obvious weaponry, such as guns, grenades, and knives. The House sponsor for the bill explained,

> [I]t is a bill . . . that deals with the situation of those people who have been involved with serious criminal acts. Those acts in almost every instance are those that deal with violent crime, the crime that deals with a weapon . . . has intimidated and perhaps injured or killed or maimed some victim. It provides that there will be no probation in certain circumstances in a case dealing with a violent act.

Id. Senator Meier, the 1977 sponsor of Senate Bill 152 which contained the 3g deadly weapon provision, told the committee,

> [T]he purpose of the bill is to . . . attempt to deter the commission of those crimes by insuring that other provisions of the criminal justice system, such as the calculation of good time credit, and such as the obtaining of probation, and such as the time a person is going to be eligible for parole, are denied the persons who commit those serious offenses in those limited circumstances. That is the purpose of the bill.

Id. (citing *Ex parte Jones*, 957 S.W.2d 849, 851 (Tex. Crim. App.1997) (citing debate on H.B. 571, 65th Leg. (1977))). Although the legislative history is silent with respect to whether the Legislature specifically intended to more severely punish defendants who victimize animals or plants as well as humans, the substance of the arguments presented in

favor of the legislation suggest that the focus of the statute was to protect people from criminals who bring firearms and other weapons to commit their offenses. There is nothing in the legislative history to suggest that the statute was enacted to enhance the penalties for deadly weapons used or exhibited against nonhumans. Moreover, as explained above, because a primary purpose of the deadly weapon statute is to deter using or exhibiting deadly weapons in a criminal act because their presence increases the likelihood of violence and the severity of injuries by escalating the dangers involved, that rationale fails when the crimes are directed against nonhumans. For example, a mugger who produces a knife or a firearm to compel his victim's wallet creates a far more dangerous situation than if unarmed because the victim can perceive the weapon and understand the increased threat. With respect to an animal, it is extraordinarily unlikely that an animal would comprehend the significance of a deadly weapon in its interaction with a person. The legislative history, therefore, weighs in favor of permitting a deadly weapon finding for humans only.

2. The Objective of the Statute

Considering the objective of the statute, we determine that it is unlikely that the Legislature intended to broadly include nonhumans as the entity against whom the deadly weapon was used or exhibited. A deadly weapon finding significantly affects the gravity of the punishment, carrying with it serious legal consequences that may affect probation eligibility, parole, and the punishment range. *See Plummer*, 410 S.W.3d at 858. When that finding is made, among other possible consequences, the offender is not eligible for

judge-ordered community supervision; he is ineligible for parole until he has served either at least one-half of his prison sentence or a minimum term of confinement; or he must be sentenced in the punishment range for a third-degree felony for a state-jail felony offense. *See* TEX. CODE CRIM. PROC. art. 42.12 § 3g(a)(2) (community supervision); TEX. GOV'T CODE § 508.145(d)(1) (West 2013) ("An inmate serving a sentence for an offense . . . for which the judgment contains an affirmative finding under Section 3g(a)(2) of that article . . . is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than two calendar years."); TEX. PENAL CODE § 12.35(c) (state-jail felony punished as third-degree felony).

We conclude that it is highly unlikely that the Legislature would have considered these enhanced penalties appropriate for causing the death of all types of animals and plants in the course of and to facilitate a felony offense. Perhaps as to some animals such as dogs, it might be reasonable to determine that the Legislature could decide that an enhanced punishment is appropriate. But the broad reading of the statute suggested by the State would not limit a deadly weapon finding to victims that are dogs. Rather, a broad reading of the statute would permit a deadly weapon finding for all nonhuman animal victims, such as flies, mosquitoes, rats, mice, etc. We conclude that it is highly unlikely that the Legislature would have considered these enhanced penalties appropriate for causing the death of a fly, for

example, in the course of and to facilitate a felony offense. Consideration of the objectives of the statute weighs in favor of limiting it to human victims only.

3. Consequences of Construction

In considering the consequences of the construction of the statute, we conclude that it is more likely that the Legislature intended to limit the deadly weapon statute to humans. Although we are unpersuaded by many of appellant's arguments, we agree with his ultimate contention that it would be absurd to read the broadly written statute as permitting a deadly weapon finding for nonhuman victims.

We briefly address and reject appellant's argument that permitting a deadly weapon finding under these circumstances would contravene the Legislature's intent to punish a first offender for animal cruelty as a state jail felony. We agree with the court of appeals that the Legislature's intent to punish a first offender for this offense as a state-jail felony could remain intact under some circumstances in which the serious bodily injury or death was to an animal by omission and a deadly weapon finding was not made under the facts of that case. *Prichard*, 2016 WL 1615641, at *2. The court of appeals cited to *Chambless v. State* to support its view that permitting a deadly weapon finding that would enhance the penalty to a third-degree felony would not affect cases of serious bodily injury or death by omission. 411 S.W.3d 498, 501 (Tex. Crim. App. 2013). In *Chambless*, this Court rejected the argument that, because a homicide by definition involves a death, a guilty verdict of criminally negligent homicide naturally implicates the use of a deadly weapon and makes

every criminally negligent homicide punishable as a third-degree felony under Section 12.35(c) despite the Legislature's intent to punish that offense as a state-jail felony. *Id*. at 502-03 (citing TEX. PENAL CODE § 12.35(c)). We reject appellant's arguments for the same reason. Even assuming that a deadly weapon finding could be made for the serious bodily injury or death to a nonlivestock animal, that offense could be punishable as a state-jail felony if it was committed by omission and no deadly weapon finding was made, or it would be a third-degree felony if it was committed by the use a deadly weapon. Because there would remain the possibility of a state-jail felony punishment for a first offender who committed animal cruelty by omission under some circumstances, we are unpersuaded that permitting a deadly weapon finding and sentencing an offender in the third-degree punishment range would improperly circumvent the Legislature's intent to punish the offense as a state-jail felony. Having already rejected it in a similar context, this argument is not persuasive as a basis for reaching our decision.

In further considering the consequences of the construction suggested by the State, we are persuaded that the application of the deadly weapon statute to animal-victims in the animal-cruelty statute would lead to absurd results not intended by the Legislature through its broad phrasing in the statute. Appellant argues that allowing serious bodily injury to include nonhumans creates a slippery slope whereby causing death or serious bodily injury to any living creature could result in a deadly weapon finding. We agree. Permitting a deadly weapon finding in this case would necessarily mean that killing all animals could

result in a deadly weapon finding. If this Court interpreted the broad phrasing in the deadly weapon statute to permit a deadly weapon finding for killing an animal covered in the animal-cruelty statute, that finding would significantly enhance the punishment that could be imposed against a defendant for causing serious bodily injury to or the death of, for example, frogs, lizards, turtles, and rats. The finding would not be limited to, for example, cats, dogs, or horses, or other animals that many people may view as pets or loved ones. Under the State's theory, a defendant may not be considered for community supervision or may have to serve half of his prison sentence before he could be considered for parole because he broke the leg of a frog while committing felony criminal mischief, such as shooting at and damaging an abandoned building with a firearm, even though there were no other humans anywhere close. Under the State's theory, if the deadly weapon statute was applied to nonhuman victims in this broad manner, a felony DWI could include an affirmative finding of a deadly weapon if the defendant killed a lizard or squirrel while driving a vehicle intoxicated because the vehicle was the deadly weapon that was used to facilitate the defendant's commission of the offense. Similarly, running over a turtle or plant while fleeing from an officer in a car could result in an affirmative finding. And even causing the death of a plant in a criminal mischief case in which the damage was the destruction of a tree with a firearm, ax, or poison could result in an affirmative finding. If we held that the Legislature intended for the statutory language to broadly apply to animals, as the State proposes, then this would permit a deadly weapon finding as to all animals, and

not just to those that some of us may prefer, such as cats, dogs, and horses. There is nothing in the statutory language or legislative history that would limit the deadly weapon finding to certain animals or even to the animal-cruelty statute alone. We, therefore, agree with appellant that the Legislature's broad phrasing of the deadly weapon statute that would permit a deadly weapon finding for all animals and all criminal offenses leads to irrational results that do not appear to have been intended based on our consideration of the extra-textual factors.

Of course, we do not hold that it would be irrational or absurd for the Legislature to write a statute that expressly permits deadly weapon findings to elevate the punishment for exhibiting or using a deadly weapon that may threaten or cause serious bodily injury or death to certain animals or plants or even to all animals or plants. Rather, we hold that, given the broadness of the particular statutory language in the deadly weapon statute, and given our consideration of the extra-textual factors, here the Legislature's apparent intent as to this statute was to permit a deadly weapon finding for those weapons that are used or exhibited against humans only.

In sum, the extra-textual factors weigh in favor of a conclusion that the Legislature's intent was to limit deadly weapon findings for human victims only. Taking the legislative history, the objective of the statute, and the consequences of the interpretations of the statute into consideration, we conclude that the Legislature intended to permit a deadly weapon finding only if the recipient of the use or exhibition of the deadly weapon was a human. The

parties agree that the recipient of the use or exhibition of the deadly weapon in this case was a nonhuman. We, therefore, hold that the evidence was insufficient to sustain the deadly weapon finding in this case, and we order that the trial court's judgment delete the deadly weapon finding.

III. Remand to the Trial Court

The jury found appellant guilty of animal cruelty and it made an affirmative finding of a deadly weapon. After that, on appeal, the court of appeals ordered the reformation of the trial court's judgment to reflect that appellant was convicted of the state-jail felony of cruelty to animals, and we agree with that modification. However, we further order the modification of the trial court's judgment to delete the affirmative finding of a deadly weapon from the judgment. In the absence of that finding, appellant's state-jail felony offense would no longer be punishable as a third-degree felony. TEX. PENAL CODE §§ 42.092(c), 12.35(c)(1). We, therefore, must remand the case to the trial court for a new sentencing hearing for punishment as a state-jail felony.

IV. Conclusion

We hold that the evidence is insufficient to support a deadly weapon finding under circumstances in which the sole recipient or being against whom a deadly weapon was used or exhibited was a nonhuman. We reverse the judgment of the court of appeals and remand the case to the trial court for a new punishment hearing.

Delivered: June 28, 2017

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