

**IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,  Respondent,  v.  JOSEPH C. DOBBS,  Appellant.	No. 40721-3-II  consolidated with
STATE OF WASHINGTON,  Respondent,  v.  AMANDA L. DOBBS,  Appellant.	No. 40751-5-II  UNPUBLISHED OPINION

Penoyar, C.J. — Joseph and Amanda Dobbs appeal their convictions for first degree animal cruelty.<sup>1</sup> The Dobbs argue that the evidence was insufficient to support their convictions. Additionally, the Dobbs contend that the sentencing court lacked statutory authority to permanently prohibit them from owning or caring for horses. Joseph<sup>2</sup> also submits a statement of additional grounds (SAG).<sup>3</sup> Holding that the sentencing court lacked statutory authority to impose the permanent prohibition, we remand for resentencing. We otherwise affirm the Dobbs’s convictions.

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<sup>1</sup> In violation of RCW 16.52.205(2).

<sup>2</sup> This opinion uses first names where necessary to avoid confusion. We intend no disrespect.

<sup>3</sup> RAP 10.10.

## FACTS

In 2007, the Dobbs, who were married, purchased three horses. In November 2008, Amanda moved out of their residence.

After Amanda moved, the Dobbs noticed that the horses were losing weight. Amanda spoke to Joseph about the horses' weight loss. Joseph proposed giving the horses away; however, the horses remained at the Dobbs' home.

On February 24, 2009, Joseph came home from work and saw that one of the horses had fallen and gotten pinned under a fence. Joseph called a friend and Amanda for assistance. Joseph, his friend, Amanda, and the Dobbs' daughter attempted to lift the horse but failed. Amanda then called a veterinarian.

Dr. John Dugan responded to Amanda's call. Dr. Dugan observed that, due to the horse's "[p]oor nutritional state," it did not have any fat reserves and had lost muscle along its back and hips. Report of Proceedings (RP) at 207. The horse looked like it had not eaten "in a long time, or on a consistent basis." RP at 206. According to Dr. Dugan, the horse had a body score of about 1 1/2 or 2, while a normal horse has a body score of 5. Dr. Dugan gave the horse medication and asked the Dobbs to call him in the morning, but he "thought the horse was going to die." RP at 208.

Dr. Dugan called Pierce County Animal Control. On February 26, Pierce County Animal Control Officers Brian Boman and Joleena (Jody) Page responded to the complaint. Upon arriving at the Dobbs' residence, the officers noticed one "very thin" horse walking toward the front gate. RP at 22. The officers also observed a horse lying on the ground. The officers called to the horse and discovered it was dead.

Officer Page observed trees on the Dobbs' property with bark that appeared to have been stripped off of the branches. Officer Page also noticed a playhouse; the wood and flooring had been eaten away "down to the nails." Clerk's Papers (CP) at 20. She also noted that there was no shelter on the property for the horses. Joseph spoke with the officers and acknowledged that the horses were thin but stated that "he could not afford to care for them." RP at 161. That day, the Dobbs signed an owner release for the two remaining horses.

On February 27, Dr. Linda Hagerman performed a necropsy<sup>4</sup> on the horse. Dr. Hagerman found rocks and metal in the horse's intestinal tract. Dr. Hagerman believed that the horse died from a "metabolic problem" caused by starvation. RP at 109.

The State charged the Dobbs with one count of first degree animal cruelty and two counts of second degree animal cruelty. The Dobbs waived their right to a jury trial and proceeded with a bench trial. The trial court found the Dobbs guilty of first degree animal cruelty but not guilty on the two counts of second degree animal cruelty due to economic distress beyond the Dobbs' control. At sentencing, the trial court permanently prohibited the Dobbs "from owning or caring for same or similar animals to those involved in this case (horses)." CP at 11, 57. The Dobbs appeal.

## ANALYSIS

### I. Sufficiency of the Evidence

The Dobbs contend that the State failed to present sufficient evidence to prove beyond a reasonable doubt that they committed first degree animal cruelty.<sup>5</sup> In bringing this claim, the

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<sup>4</sup> A necropsy is a "[p]ostmortem study trying to find a cause of death." RP at 96.

<sup>5</sup> Amanda "adopts all of the assignments of error set forth in co-appellant Joseph Dobbs' 'Appellant's Brief' at page 1." Appellant's (Amanda) Br. at 1.

Dobbs challenge several findings of fact and conclusions of law. We disagree.

A. Standard of Review

Sufficient evidence supports a conviction if any rational trier of fact could find each element of the crime charged beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We draw all reasonable inferences in the State’s favor and interpret them most strongly against the defendant. *Salinas*, 119 Wn.2d at 201. Circumstantial evidence is as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

We review a trial court’s decision following a bench trial to determine whether substantial evidence supports any challenged findings of fact and whether the findings support the conclusions of law. *State v. Hovig*, 149 Wn. App. 1, 8, 202 P.3d 318 (2009). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999), *abrogated in part on other grounds by Brendlin v. California*, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007). Unchallenged findings of fact are verities on appeal. *State v. Madarash*, 116 Wn. App. 500, 509, 66 P.3d 682 (2003). We do not review credibility determinations. *State v. Kaiser*, 161 Wn. App. 705, 724, 254 P.3d 850 (2011).

B. Findings of Fact

The Dobbs argue that substantial evidence does not support findings of fact IX and VI. We disagree.

The Dobbs contend that substantial evidence does not support finding of fact IX, which states, “[The horse] clearly had not been fed.” CP at 21. Dr. Dugan testified that the horse had a body score of about 1 1/2 or 2, while a normal horse has a body score of 5. Dr. Dugan observed

that the horse did not have any fat reserves and was losing muscle along its back and hips because of its “[p]oor nutritional state.” RP at 207. He further testified that the horse looked like it had not eaten “in a long time, or on a consistent basis.” RP at 206. The trial court found Dr. Dugan’s testimony to be credible. Substantial evidence supports the trial court’s finding.

Next, the Dobbs assert that substantial evidence does not support finding of fact VI, which states, “Hagerman concluded that the horse’s death was caused by metabolic disease caused by a lack of food and/or exposure to elements.” CP at 20. Dr. Hagerman performed a necropsy on the horse. She testified that the horse had a body score of 2 and that its “ribs were very prominent and the pelvic bones were really prominent.” RP at 99. She testified that she believed that the horse died from a “metabolic problem” caused by starvation. RP at 109. She noted abrasions on the horse but did not believe that they caused the horse’s death. Dr. Hagerman did not detect any signs of congestive lung disorder or failure, cancer, fluid in the abdominal cavity, problems with the horse’s colon, heart abnormalities, signs of a stroke, or any blood abnormalities. The trial court found Dr. Hagerman’s testimony to be credible. Substantial evidence supports the trial court’s finding.

### C. First Degree Animal Cruelty

The Dobbs argue that the evidence was insufficient to support their convictions for first degree animal cruelty.<sup>6</sup> The Dobbs contend that “there is no evidence that starvation was the cause of death” and that “the only evidence is that the horse died from the stress of a fall and hypothermia.” Appellant’s (Joseph) Br. at 10. We disagree.

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<sup>6</sup> As part of their sufficiency claim, the Dobbs argue that the findings of fact do not support the trial court’s conclusions of law III.3, III.5, and III.6. After review, we conclude that the findings do support the trial court’s conclusions of law.

A person is guilty of first degree animal cruelty when “he or she, with criminal negligence, starves, dehydrates, or suffocates an animal and as a result causes: (a) Substantial and unjustifiable physical pain that extends for a period sufficient to cause considerable suffering; or (b) death.”

RCW 16.52.205(2). RCW 9A.08.010(d) defines criminal negligence as follows:

A person is criminally negligent or acts with criminal negligence when he or she fails to be aware of a substantial risk that a wrongful act may occur and his or her failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.

The Dobbs testified that after Amanda moved out of their residence, they both noticed that the horses were losing weight. The Dobbs spoke to each other about the horses’ weight loss, Joseph proposed giving the horses away, but the horses remained at the Dobbs’ home.

Dr. Hagerman performed a necropsy on the horse and testified that she believed that the horse died from a “metabolic problem” caused by starvation. RP 109. Dr. Hagerman found rocks and metal in the horse’s intestinal tract which are not normal objects for a horse to consume. Dr. Hagerman testified that if horses “are in a situation where they can’t get anything else, they are only going to eat what is given to them.” RP at 104. Officer Page noticed that bark had been stripped off of trees on the Dobbs’ property and that a wooden structure on the Dobbs’ property had been eaten. Dr. Hagerman testified that eating wood is not normal for a horse and that horses experience pain when not eating. Sufficient evidence supports the Dobbs’ convictions.

## II. Crime-Related Prohibition

The Dobbs argue that the trial court erred in permanently prohibiting the Dobbs from owning or caring for horses. The Dobbs argue that because the maximum sentence for first degree animal cruelty is five years of confinement, the trial court exceeded its statutory authority by imposing a permanent prohibition. We agree that the trial court erred in imposing the permanent prohibition.

“A trial court’s sentencing authority is limited to that expressed in the statutes.” *State v. Skillman*, 60 Wn. App. 837, 838, 809 P.2d 756 (1991). We review de novo matters of statutory interpretation. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

A “crime-related prohibition” is “an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted.” Former RCW 9.94A.030(11) (2008) (Laws of 2008, ch. 231, § 23). Crime-related prohibitions are subject to the same time limit as the statutory maximum for the defendant’s crime. *See Armendariz*, 160 Wn.2d at 119.

First degree animal cruelty is a class C felony. RCW 16.52.205(4). “Unless a different maximum sentence for a classified felony is specifically established by a statute of this state, no person convicted of a classified felony shall be punished by confinement or fine exceeding the following: For a class C felony, by confinement in a state correctional institution for five years.” RCW 9A.20.021(1)(c).

The State cites to former RCW 16.52.200(3)(b) (2009), which addresses sentences and forfeitures for crimes relating to cruelty to animals, as statutory authority for the Dobbs’s sentences:

[T]he court shall order the forfeiture of all animals held by law enforcement or animal care and control authorities under the provisions of this chapter[, addressing prevention of cruelty to animals,] if any one of the animals involved dies as a result of a violation of this chapter or if the defendant has a prior conviction under this chapter. . . . If forfeiture is ordered, the owner shall be prohibited from owning or caring for any similar animals . . . [p]ermanently for a first conviction of animal cruelty in the first degree under RCW 16.52.205.

But that version of the statute did not go into effect until July 26, 2009. Substitute S.B. 5402, 61st Leg., Reg. Sess. (Wash. 2009). The trial court must impose the sentencing laws in effect on the date the Dobbs committed the crime. See RCW 9.94A.345 (“Any sentence imposed under this chapter shall be determined in accordance with the law in effect when the current offense was committed.”). The version of the statute applicable in February 2009, when the Dobbs committed first degree animal cruelty, provides for only a two-year ban, not a lifetime ban. See former RCW 16.52.200(3) (2003) (“If forfeiture is ordered, the owner shall be prohibited from owning or caring for any similar animals for a period of two years.”).

RCW 16.52.205(5)(a) allows the court to order a person convicted of first degree animal cruelty to “[n]ot harbor or own animals or reside in any household where animals are present;” however, RCW 16.52.205(5)(a) does not provide for a lifetime ban. We remand to the sentencing court to address this error.

### III. Statement of Additional Grounds

In his statement of additional grounds, Dobbs asserts that he did not act with criminal negligence, repeating an argument that appellate counsel addresses in this appeal. We decline to address arguments that simply repeat or paraphrase arguments presented in the appellate counsel’s brief. *State v. Johnston*, 100 Wn. App. 126, 132, 996 P.2d 629 (2000). The remainder of his SAG does not raise any legal arguments and need not be addressed further.



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We affirm the Dobbs's Convictions but remand for resentencing.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Penoyar, C.J.

We concur:

Van Deren, J.

Worswick, J.