

CASE NO. 2023-1182

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**IN THE SUPREME COURT OF OHIO**

STATE OF OHIO,	:	No 112202
Plaintiff-Appellee	:	CR 22-669748-A
v.	:	On appeal from The Court of Appeals, Eighth Judicial District, Cuyahoga County
ALONZO KYLES,	:	
Defendant-Appellant	:	

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**BRIEF OF AMICUS CURIAE, OHIO ANIMAL ADVOCATES**

**IN SUPPORT OF THE POSITION OF  
PLAINTIFF-APPELLANT STATE OF OHIO**

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## SUMMARY OF ARGUMENTS

### **THIS COURT SHOULD GRANT REVIEW AND THE REMAND, REAFFIRMING THE PRINCIPLE THAT NO PERSON SHALL HARM ANY COMPANION ANIMAL, REGARDLESS OF WHERE IT IS KEPT.**

Ohio Revised Code 959.13(A) states in part:

No person shall (1) torture an animal, deprive one of necessary sustenance, unnecessarily or cruelly beat, needlessly mutilate, or kill, or impound or confine an animal without supplying it during such confinement with a sufficient quantity of good wholesome food and water.

Violation of this statute historically resulted in up to a 2<sup>nd</sup> degree misdemeanor with a possible sentence of up to 90 days in jail and up to a \$750.00 fine unless it was a repeat offense. Nitro's Law (2013), increasing animal cruelty penalties and added the term "companion" animals under its protection, specifically including dogs and cats. In 2016, Ohio passed Goddard's Law, H.B. 60, a law that strengthened animal cruelty penalties, and made knowingly causing serious physical harm to a companion animal, which is defined as a cat or dog, regardless of where they live, or any animal that lives in a residential dwelling, eligible, and based upon prosecutorial discretion, charged as a felony of the fifth degree on a first offense.<sup>1</sup>

This law required evidence that a defendant carried an unnecessary or unjustifiable substantial risk of death; involved either partial or total permanent incapacity; caused pain resulting in substantial suffering or that was prolonged, severe, or incurable and/or knowingly deprived a companion animal of food or water resulting in its death. It did not require that the prosecution present evidence as to whether that animal was "kept". R.C. §959.131 was amended by House Bill

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<sup>1</sup><https://ohiohouse.gov/news/repUBLICan/goddards-law-passes-ohio-house-adding-further-protections-for-companion-animals-66102>

108 (February 15, 2012) and classifies cruelty to animals as an offense of violence. R.C. §959.131

now reads:

No person shall knowingly cause physical harm to a companion animal. A companion animal is defined as: any animal that is kept inside a residential dwelling and any dog or cat, *regardless of where it is kept*, including a pet store as defined in section R.C. §956.01, Livestock and wild animals are excluded as companion animals. (*emphasis added*).

In *State v. Kyles*, the trial court convicted Mr. Kyles of felony animal cruelty. (*State v. Kyles*, Cuyahoga County Case No. CR-22-669748-A). Mr. Kyles appealed this conviction, claiming that he did not “keep” the cat, and the Appellate court reversed the decision based upon their statutory interpretation of “kept”. See Eighth Appellate District Opinion (hereafter “Opinion”), ¶15. We respectfully argue herein that the Appellate court erred in this interpretation based on: (1) legislative intent; (2) their definition of “kept” being as inconsistent with controlling case law; (3) the fact that, should the Appellate decision stand, there would be significant policy implications when considering the general interest of the public.

## ARGUMENT I

### THE APPELLATE COURT ERRED IN ITS STATUTORY INTERPRETATION OF “KEPT”

#### Introduction

Legislation has provided guidance as to the categorization of companion to include dogs and cats and the term “kept” to apply to any companion animal if kept inside a residential dwelling and any dog or cat *regardless of where it is kept*. The strict statutory interpretation of this legislation would infer that cruelty to any dog or cat, regardless of where and how evidence shows that it was kept, would be afforded protection under the felony animal abuse statute. Therefore, an individual who causes cruelty to a) any dog or cat and b) regardless of where it was kept would be guilty of felony animal cruelty.

## Law and Argument

Ohio law has defined companion animal as “any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept, including a pet store as defined in section 956.01 of the Revised Code.” “Companion animal” does not include livestock or any wild animal.

Ohio law added the term “kept” in an effort to be inclusive, not exclusive. From the Ohio House of Representatives: “Sponsored by Reps. Dave Hall (R-Millersburg) and Bill Patmon (D-Cleveland), House Bill 60 makes it a fifth-degree felony to knowingly cause serious physical harm to a *companion animal, such as pets or domestic creatures.*”<sup>2</sup> (*emphasis added*). It then continues to state that “HB 60 also broadens the definition of “companion animal” to include animals that are *kept* inside a pet store, whereas the previous definition was limited to a residential dwelling.” Based on this reading, the term kept is not meant to be exclusive but instead to be inclusive of animals in pet stores, who were not protected before. It is clear that the intent of this law in using the word “kept” is to protect all dogs and cats. The purpose of R.C. §959.13 of the Revised Code is animal protection against cruelty of domestic animals and not property protection.<sup>3</sup> As such, direct abuser ownership is irrelevant.

Companion animal veterinarians follow the same definition of a “companion animal” in section 959.131 of the Revised Code.<sup>3</sup> Companion animal veterinarians are subject to the same level of care for dogs and cats “regardless of where they are kept”. While there are differences in the species a veterinarian may treat, there is no species differentiation between owned and free roaming cats. Free-roaming cats are frequently trapped by welfare groups and individuals for trap-

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<sup>2</sup> Ohio House Memorandum to All House Members RE: Co-Sponsor Request - “Goddard’s Law”, House Representatives Bill Patson and Dave Hall, January 7, 2015.

<sup>3</sup> *Id.*

neuter-release (TNR). There is no requirement for ownership and TNR groups will conduct clinics in areas where there is no known ownership of the trapped cats. These outdoor cats, with no owner or caretaker, are still cared for by companion animal veterinarians under the same minimum standards of care as owned cats.

Furthermore, the Ohio Veterinary Medical Association “Guidelines and Policies” includes under companion animals all dogs and cats, including free roaming cats.<sup>4</sup> One could argue that when a cat is brought into a veterinary clinic, it is now under someone’s possession. By that same reasoning, we could argue that this cat became Mr. Kyle’s possession the moment that he decided to act upon it and was thus required by law to provide care and protection from harm.

#### Application

The example cited by the Eighth District and the appellant, *State v. Hartman*, (9<sup>th</sup> Dist., Summit No. 26250, 2012-Ohio-4694) is a case in which the definition of birds as companion animals required that proof be given that the birds were kept in a residence. In *Hartman*, this was necessary because birds are not generally covered in the statute and there must be proof that they are living within a residence to be considered companion animals. (Opinion, ¶16). The Appellate Court’s correlation of caged birds with cats and dogs is problematic on several levels. First, domesticated birds do not move around outside as cats and dogs commonly do. Further, birds and not specifically defined in R.C. §959.131 as are cats and dogs.

Because dogs and cats are mentioned in a general and inclusionary manner, and there is an added measure of protection for “regardless where they are kept”, it is clear that the law seeks to protect ALL dogs and cats from cruelty and torment while other domestic species must show

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<sup>4</sup> <https://www.ohiovma.org/veterinarians/resources/guidelines.html>

evidence of living in a dwelling. The intention here is that any indicia of ownership or care is enough to meet the legislative definition of “kept”.

A cat without a caretaker will often suffer from health conditions attributed to poor nutrition and lack of care. Most common problems seen in practice are poor body condition (too thin), external parasites (flea, ticks, ear mites), intestinal parasites, respiratory infections, and injuries due to trauma. The veterinarian who examined the cat stated that she was slightly underweight (not “malnourished” as stated in Opinion, ¶18) but there is not mention of other health problems. The cat was also noted to have long hair and, despite being dirty, the veterinarian did not mention the presence of matted hair. The veterinarian’s report also reported that the cat was tame, loved being cuddled, and tolerated being bathed. All of this is indicia that the cat that had recently received some form of care by a person or persons; in other words, “kept”. See *Buettner v. Beasley*, 8th Dist. Cuyahoga No. 83271, 2004-Ohio-1909, ¶14. Cited in Opinion, ¶17.

In its reversing opinion, Ohio’s Eighth District stated that “There is a misdemeanor offense for cruelty to animals under R.C. §959.13, regardless of the stature of the animal...*the legislature might want to revisit these statutes.* (Concurrence, Opinion, ¶24)(*emphasis added*). Given the facts of this case, the stature (a.k.a. ownership status), was clear. The cat was not feral by its actions and appearance. Therefore, the Eighth Appellate District misinterpreted the intent of the legislature, which in fact did “revisit these statutes” by redefining and adding teeth to R.C. 959.131. It admitted that intent of the legislature when it wrote...

Until the introduction of House Bill 108, a violation of R.C. §959.13 resulted in only misdemeanor convictions. See *Updating Ohio’s Animal Cruelty Statutes: How Human Interests Are Advanced*, 29 Cap. U.L. Rev. 857, 872 (2017). This change was rationalized by evidence indicating a clear link between the mistreatment of domestic pets and child abuse. *Id.* As a result, the legislature amended the cruelty to animals statute to include R.C. §959.131, which enhances the penalty for cruelty to companion animals from a misdemeanor to a felony of the fifth degree (Opinion, ¶10)(*emphasis added*).

In the case at bar, even if we were to take the word “kept” under a single, literal interpretation instead of its intended use, we cannot assume that an outdoor cat is without an owner or caretaker. Cats are not always kept strictly indoors, and cats that are part of colonies are still under the care of a person even though they are “kept” outside. A cat can escape from its home and find themselves lost even though they have an owner. A cat owner may not be able to locate or claim their cat if it is lost. This does not mean the cat is not owned or cared for. In fact, given its condition and longer-term residence in the apartment building in question, there is evidence that the male cat was indeed being fed and provided water; in others words “kept”.

Here, the appellant made no effort to locate an owner and had no reason to know that this was not an owned animal. The injury was done to the cat without knowledge of ownership. It has been determined that the cat is not feral, so “being afraid of cats” as a blanket statement does not condone purposeful injury to the animal. The appellant demonstrates a dislike of any cat, regardless of behavior, and the injury appears malicious based on the fact that the animal was a cat, and not that it was aggressive or harmful, since there is abundant evidence of just the opposite.

In summary, from these arguments it appears clear that the injured cat was kept by someone in that apartment building and therefore falls under the Ohio Legislature’s intent to be inclusive, not exclusive under R.C. §§959.131 and 132. The reversal of the Ohio Eighth Appellate District counters the intent of the legislation, calling for consideration and potential reversal by this Court.

## ARGUMENT II

### THE APPELLATE COURT ERRED IN CONSIDERING CONTROLLING CASE LAW WITH INDICATES THAT THE CAT IN QUESTION WAS “KEPT” FOR THE PURPOSES OF ENFORCEMENT OF R.C. §§959.131 AND 132

#### Introduction

The case law in this jurisdiction has provided guidance as to the definition of whether a domesticated animal (read cat or dog in this case) is “kept” in the traditional sense of care or supervision. A controlling case is *Buettner* (8th Dist. Cuyahoga No. 83271, 2004-Ohio-1909). If there are indications that the animal has been cared for, whether by the offending party or another, it has been “kept”, thereby due heightened legal protections.

#### Law and Argument

Animals in general are divided into two classes, domestic or *domitae naturae*, and wild or *ferae naturae*. Domestic animals are those which are naturally tame and gentle, or which by long association with man have become thoroughly domesticated and are now reduced to such a state of subjection to his will that they no longer possess the disposition or inclination to escape. Wild animals are such as are of a wild nature or disposition and so require to be reclaimed and made tame by art, industry, or education, or else must be *kept* in confinement to be brought within the immediate power of the owner. *Harris v. Rootstown Twp. Zoning Bd. Of Appeals*, 44 Ohio St.2d 144, 149, 338 N.E.2d 763 (1975) (*emphasis added*).

Pursuant to R.C. §§959.131(A)(1) and 132(A)(1), “a companion animal is any animal that is kept is kept inside a residential dwelling and any dog or cat regardless of where it is kept” and does not include livestock. [Therefore], *an animal is "kept" when there is evidence that it is cared for or under physical control. See Beasley, ¶14. (emphasis added)*. In the case of cats and dogs, the state must establish that the cat or dog received care, *regardless of the location or provider of*

*the care. (emphasis added).* Without evidence that it was kept, the cat or dog would not meet the definition of a companion animal under R.C. 959.131(A). Therefore, any acts of cruelty against it would fall under the purview of the general animal cruelty statute, R.C. 959.13, although a lower-level offense. *State v. Kyles*, 2023-Ohio-2691, ¶17.

### Application

The State bears the burden to prove each element of the charged crime beyond a reasonable doubt. *State v. Hilton*, Cuyahoga App. No. 89220, 2008 Ohio 3010, ¶72, citing *In re Winship* (1970), 397 U.S.358, 90 S. Ct. 1068, 25 L. Ed. 2d 368. Cited in *City of Strongsville v. Eskander*, Eighth Appellate District, Cuyahoga County, October 8, 2009, Released, No. 9244, 2009-Ohio-5370, ¶13. In the case at bar, the State met its burden of proving that the offense in question was a felony, not a misdemeanor, by showing: (1) that the cat in question had been cared for at some point and was likely currently being cared for where he was staying since he had to be fed and provided water to remain there, thus meeting the statutory definition of a “kept” companion animal in R.C. §959.131(A)<sup>5</sup>; (2) that the Defendant knew that the cat was a resident of the apartment building<sup>6</sup>; (3) that the cat had been in the apartment building for some time; (4) that the Defendant purposefully poured bleach in the vicinity of the cat;<sup>7</sup> and (5) that the Defendant’s actions were a direct and causal effect of the cat’s abuse and injuries.

There is abundant evidence that the cat in question was “kept” under the controlling *Beasley* Standard. The officer doing the investigation indicated that the cat had been at least

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<sup>5</sup> 959.131(A)(1) “Companion animal” means any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept, including a pet store as defined in section 956.01 of the Revised Code. “Companion animal” does not include livestock or any wild animal.

<sup>6</sup> 959.131(A)(3) “Residential dwelling” means a structure or shelter or the portion of a structure or shelter that is used by one or more humans for the purpose of a habitation.

<sup>7</sup> 959.131(A)(2) “Cruelty,” “torment,” and “torture” have the same meanings as in R.C. §1717.01.

partially declawed. Further, the veterinarian who examined the animal indicated that it was tame and open to be cuddled and bathed; indicia of socialization. Finally, by the Defendant's own testimony, the cat had been in the hallway of his apartment for some time. Someone had to be putting out food and water for the cat to stay, further indicia of possession. Therefore, since the cat was being kept by someone under R.C. 959.132(A)(1) and R.C. 959.131(A)(1) the cat in question was kept and cared for to some degree in that apartment building and therefore is entitled to heightened legal protection as defined in R.C. §959.131; as a felony, not a misdemeanor.

### **ARGUMENT III**

#### **THE APPELLATE COURT'S INTERPRETATION OF THE MEANING OF "KEPT" RAISES AN ISSUE OF GENERAL INTEREST**

##### Introduction

The legislative intent for House Bill 108 was to act in the general interest of the public and protect public safety by recognizing the close link between human and animal cruelty (Hodges, 2008; Finkelstein, 2007<sup>8</sup>). This link is one of the most consistent variables in committing future harm to others, including arson and mass shootings. Those who commit harm to animals are likely to commit harm to the elderly, children, their partners, and others (Arkow, 2018)<sup>9</sup>.

One way the legislature determined they could protect public safety was by classifying animal cruelty as an offense of violence. Classifying this as an offense of violence statutorily prevents those charged from Intervention in Lieu of Conviction ("ILC") addresses the violent

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<sup>8</sup> Hodges, C., 2008, The Link: Cruelty to Animals and Violence Towards People, Michigan State University College of Law, citing *Finkelstein, A., 2007, Canary in a Coal Mine: The Connection Between Animal Abuse and Human Violence at [tpp://www.vet.upenn.edu/schoolresources/communications/publications/bellwether/58/connection.html](http://www.vet.upenn.edu/schoolresources/communications/publications/bellwether/58/connection.html)* .

<sup>9</sup> Arkow, P. (2018). Elder Abuse and Animal Abuse: Implications and Strategies for Adult Protective Services. Washington, DC: National Adult Protective Services Association. Access at NAPS Research-to-Practice briefs.

tendencies of those charged with felony animal cruelty. In turn, this will provide resources such as anger management courses and/or mental and psychological evaluation, remove access to children and vulnerable individuals and require the forfeiture of other companion animals, provide aid to domestic violence victims in the home, and protect the general public from violent individuals that target the vulnerable. The court may also prohibit or place limitations on the person's ability to own or care for additional animals. Absent this categorization as an offense of violence, punishment and access to resources would not be commensurate with the amount of harm that occurred.

The legislative intent was clear in its commitment to protect companion animals from harm by addressing those who engage in offenses of violence. The case of State v. Kyle is the exact case that the legislature was intended to address. In 2017, Mr. Kyles attacked a child with a baseball bat and was charged with felonious assault, two counts of menacing, and six counts of child endangering, and thus, shows the same propensity and patterns of violence that the legislature was attempting to address. It is imperative for public safety to identify those with those propensities and violent tendencies and when they act upon those tendencies to harm family members or companion animals to find them guilty of an offense of violence.

#### Application

The decision of the Appellate court is a significant cause for concern for public safety. Data linking harm to animals with harm to humans are substantial. These data have been interpreted by all fifty states to include animal cruelty as a felony offense. In November of 2019, the Preventing Animal Cruelty and Torture Act (PACT) was signed into federal law, making intentional acts of cruelty to animals a federal crime to carry up to seven (7) years in prison [Public Law No: 116-72 (11/25/2019)].

In direct contrast to the 2003, 2013, and 2016 advancements on animal cruelty laws, the Appellate court's decision is essentially moving backwards, allowing anyone who states that they did not "keep" an animal to bypass the public safety protections that the legislation intentionally put into place. Additionally, if the State does not appropriately punish an individual convicted of an offense of violence, violent behaviors of that individual will accelerate, or in Mr. Kyle's case, continue a pattern of violence.

Requiring the prosecution to show that an animal is "kept" by the abuser him or herself puts Ohio on a proverbial slippery slope and is in direct contradiction with the progressive and appropriate advancements made by Ohio legislature. It makes prosecution of the felony charge specifically and purposefully installed by the legislature nearly impossible unless the abuse was upon a companion cat or dog proven to be the direct pet of the abuser. The Eighth District argues that "It is not Kyle's burden to prove that the cat is feral". (Opinion, ¶19). We agree. However, given the condition of the cat and his own testimony that the cat had been living for a significant period of time in the apartment building, there were clear indications it was being fed and provided water. Here, the Defendant knew or should have known that the cat was not feral.

In the case at bar, the Defendant had a prior history of violence, including beating a child with a baseball bat. There is no more important guidepost for the escalation from violence against animals leading to violence against children than this case. And there is no more important public policy issues.

With due respect, this does not appear to be the legislative intent in Ohio, nor it is workable interpretation of R.C. §959. As argued herein, once there are indicia of ownership, be it direct or indirect, the heightened standard of punishment should apply.

## CONCLUSION

Given the arguments provided herein, Ohio Animal Advocates supports the State of Ohio in their argument that the Eighth District of Appeals' decision should be reversed and that the trial court's verdict of Defendant Kyle's guilt of a felony under R.C. §959.131 should be upheld.

Respectfully submitted,

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## CERTIFICATION OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing pleading was served upon opposing counsel via ECF this 27<sup>th</sup> day of February 2024.

/s/ **Mark J. Bamberger**  
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OAA Board President