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OFFICE OF THE DISTRICT ATTORNEY
AROOSTOOK COUNTY
PROSECUTORIAL DISTRICT NUMBER 8

April 3, 2025

Susan Pinette, Clerk of the
Committee on Judiciary
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

SUBMITTED VIA EMAIL

RE: **Public Hearing on 1189**

Good day Honorable Members of the Judiciary Committee.

Thank you for this opportunity to present written testimony on the proposed legislation affecting Maine's criminal laws. I am offering this testimony both individually as the District Attorney for Aroostook County and on behalf of Maine's elected District Attorneys.

I write in support of LD 1189. For the better part of the last decade Maine's elected District Attorneys have been on the leading edge of criminal justice reform in Maine by spearheading efforts in the Legislature to decriminalize many of Maine's criminal offenses, advocating for increased discretion in limited circumstances, and offering systemic changes to the substantive law. LD 1189 is our latest effort.

Maine law currently allows prosecutors to elect between civil and criminal versions of its Cruelty to Animals statute - Title 17 § 1301 (4) :

Criminal or civil prosecution. A person may be arrested or detained for the crime of cruelty to animals in accordance with the rules of criminal procedure. A person may not be arrested or detained for the civil violation of cruelty to animals. The attorney for the State shall elect to charge a defendant with the crime of cruelty to animals under this section or the civil violation of cruelty to animals under Title 7, section 4011. In making this election, the attorney for the State shall consider the severity of the cruelty displayed, the number of animals involved, any prior convictions or adjudications of animal cruelty entered against the defendant and such other factors as may be relevant to a determination of whether criminal or civil sanctions will best accomplish the goals of the animal welfare laws in the particular case before the attorney for the State. The election and determination required by this subsection are not subject to judicial review. The factors involved in such election and determination are not elements of the criminal offense or civil violation of animal cruelty and are not subject to proof or disproof as prerequisites or conditions for conviction under this subsection or adjudication under Title 7, section 4011.
[PL 1999, c. 481, §1 (AMD).]

The Law Court has reviewed this statutory scheme with approval: See *State v. Peck*, 2014 ME 74, attached. In that case, the prosecutor could have brought 26 individual criminal counts of cruelty to animals, but, "the prosecutor reached an agreement with [the defendant] whereby only one charge would be filed. . . [in a] compassionate exercise of prosecutorial discretion. . . ."

We believe that the election between criminal or civil prosecution should be extended to most Class E offenses in Maine. This simple change could have profound consequences across the state and minimize the number of citizens convicted of lower-level crimes – especially those for which the state is not seeking to impose a jail sentence. For many of those individuals charged with Class E offenses and who are offered only a fine for their offense will still be stuck with a criminal conviction if they accept the offer and a court finds them guilty and imposes only a fine. LD 1189 provides a powerful tool to prosecutors with which we can hold persons accountable for violating the law and impose a fine to correct the behavior without requiring a conviction and a criminal record to punish the offender. LD 1189 enhances (and encourages) a prosecutor's compassionate use of discretion in a much broader and impactful manner.

There are two substantive changes that need to be made to the bill. 1) Section 1 must be removed as it will create confusion and does not accurately reflect the Constitutional limits of the 4th Amendment. Law enforcement can, and must be able to, detain persons committing and suspected of committing civil violations. Every traffic stop of a speeding violation involves a seizure and "detention" of a person. Enacting this section of the LD would be tantamount to a repeal of the Constitutional authority of the State. 2) Section 2 needs to amended to limit the authority of prosecutors to reduce Class E offenses where the Legislature has designated a mandatory minimum jail sentence. While prosecutors should have the discretion to elect a civil violation in the majority of Class E offenses, that power cannot legitimately extend to charges where a jail sentence is mandatory.

Thank you for the opportunity to address the ongoing evolution of criminal justice reform in Maine, LD 1189 can be an integral part of that process.

Be Well and Stay Safe,

Todd R. Collins
District Attorney, Aroostook County

93 A.3d 256
Supreme Judicial Court of Maine.

STATE of Maine
v.
Julia **PECK**.

Docket No. Fra–12–490
|
Argued: April 9, 2014.
|
Decided: June 10, 2014.

Synopsis

Background: Cat owner was found in a bench trial in the District Court, Franklin County, Carlson, J., to have committed the civil violation of cruelty to animals. Owner appealed.

Holdings: The Supreme Judicial Court, Saufley, C.J., held that:

[1] requirement of **state's** cruelty-to-animals statute that an owner or owner's agent provide "necessary medical attention" to an animal was not unconstitutionally vague;

[2] evidence was sufficient to support finding that owner failed to provide necessary medical care to cats; and

[3] restitution order of $18,000 was not excessive.

Affirmed.

Procedural Posture(s): On Appeal.

West Headnotes (9)

[1] Witnesses Discretion in general

The decision to quash a subpoena rests in the discretion of the court. Rules Civ.Proc., Rule 45(c)(3)(A)(i, iv).

[2] Animals Constitutional provisions, statutes and ordinances

Constitutional Law Animals and Plants, Regulation of

Requirement of **state's** cruelty-to-animals statute that an owner or owner's agent provide "necessary medical attention" to an animal was not unconstitutionally vague under the due process clause; statute expressly defined "necessary medical attention" as the attention required when the animal is or has been suffering from illness, injury, disease, or excessive parasitism, and there was nothing about statute that would require a person of ordinary intelligence to guess at its meaning. U.S.C.A. Const.Amend. 14; 7 M.R.S.A. § 4011(1)(E).

1 Case that cites this headnote

[3] Constitutional Law Certainty and definiteness; vagueness

The due process clauses of the federal and **state** constitutions require that a statute must provide reasonable and intelligible standards to guide the future conduct of individuals and to allow the courts and enforcement officials to effectuate the legislative intent in applying these laws. U.S.C.A. Const.Amend. 14; M.R.S.A. Const. Art. 1, § 6–A.

1 Case that cites this headnote

[4] Constitutional Law Certainty and definiteness; vagueness

A statute may be void for vagueness under the due process clause when people of common intelligence must guess at the statute's meaning. U.S.C.A. Const.Amend. 14.

3 Cases that cite this headnote

[5] Constitutional Law Certainty and definiteness; vagueness

In examining the sufficiency of statutory language, in order for the statute to not be unconstitutionally vague under the due process clause, objective quantification, mathematical

certainty, and absolute precision are not required. U.S.C.A. Const.Amend. 14.

1 Case that cites this headnote

[6] **Appeal and Error** De novo review

Appellate court reviews factual findings for clear error and the application of the law to those facts de novo.

1 Case that cites this headnote

[7] **Appeal and Error** Verdict, Findings, and Sufficiency of Evidence

On review of a civil violation proceeding, the appellate court reviews the sufficiency of the evidence in the light most favorable to the **State** to determine whether the trier of fact could have found, by a preponderance of the evidence, each element of the charge. Rules Civ.Proc., Rule 80H(g).

2 Cases that cite this headnote

[8] **Animals** Civil liability

Evidence was sufficient to support finding that cat owner failed to provide necessary medical care to cats, as would support finding of civil violation of animal cruelty statute; several of owner's cats died shortly after owner brought them to a veterinarian, all 26 cats seized from owner had one or more medical problems, a respiratory disease was circulating among owner's cats, owner rebuffed the **State's** efforts to help her reduce the number of cats, against a veterinarian's advice, owner took one kitten back from a veterinarian and the kitten nearly died, and the cats improved in health after receiving treatment. 7 M.R.S.A §§ 4011(1)(E), 4016(1).

[9] **Animals** Civil liability

Trial court's restitution order, requiring cat owner to pay $18,000 after finding civil violation of animal cruelty statute for failure to provide necessary medical attention to cats, was not excessive; amount was only approximately half the sum the **State** spent to house and care for owner's cats, and court allowed payment to be made in monthly installments of $100. 7 M.R.S.A. § 4016(1)(B); 17–A M.R.S.A. § 1325(1)(C); 14 M.R.S.A. § 5602.

1 Case that cites this headnote

Attorneys and Law Firms

***257** Tawny L. Alvarez, Esq., Verrill Dana, LLP (orally), Portland, for appellant Julia **Peck**.

Andrew S. Robinson, Dep. Dist. Atty. (orally), Franklin County District Attorney's Office, Farmington, argued, for appellee **State** of Maine.

Panel: SAUFLEY, C.J., and ALEXANDER, SILVER, MEAD, GORMAN, and JABAR, JJ.

Opinion

SAUFLEY, C.J.

[¶ 1] Julia **Peck** appeals from a judgment entered in the District Court (Franklin County, *Carlson, J.*) after a bench trial finding that **Peck** committed the civil violation of cruelty to animals, *see* 7 M.R.S. §§ 4011(1)(E), 4016(1) (2013); prohibiting **Peck** from owning, possessing, or having on her premises any animals except two spayed or neutered cats, *see id.* § 4016(1)(C); requiring **Peck** to pay a fine of $500 plus surcharges, *see id.* § 4016(1)(A), and $18,000 in restitution to the **State**, *see id.* § 4016(1)(B); 14 M.R.S. §§ 3141(1), (4), 5602 (2013); and requiring her to post a bond of $6,400 to support during the appeal process the cats that were seized from her home by the **State**, ***258** *see* 17 M.R.S. § 1021(6)(D) (2013). **Peck** contends that the court abused its discretion in quashing a subpoena that would have compelled one of her witnesses to testify; that the cruelty-to-animals statute is unconstitutionally vague, *see* 7 M.R.S. § 4011(1)(E); and that the record contains insufficient evidence to sustain a finding of cruelty to animals and to support the court's restitution order. We affirm the judgment.

I. BACKGROUND

[¶ 2] On March 22, 2012, the **State** charged **Peck** with one count of the civil violation of cruelty to animals. *See*

id. §§ 4011(1)(E), 4016(1). Although the facts would have permitted the **State** to charge **Peck** with numerous counts of cruelty to animals, the prosecutor reached an agreement with **Peck** whereby only one charge would be filed, but evidence regarding the twenty-six cats seized by the **State** would be admissible. The agreement represents a compassionate exercise of prosecutorial discretion because it exposed **Peck** to only one mandatory fine of $500 while enabling the court to address each incident of alleged cruelty to animals. *See id.* §§ 4011(1)(E), 4016(1)(A). Had **Peck** been charged with and found to have committed the number of counts of cruelty to animals commensurate with the number of cats the **State** seized, the mandatory minimum fine would have totaled $25,500, rather than $500. *See id.* § 4016(1)(A). [1]

[¶ 3] The court held a three-day bench trial in which **Peck** was unrepresented by counsel. The **State** presented evidence of its substantial efforts to assist **Peck** and her eventual decision to cease cooperating with the **State**. From the extensive and detailed evidence regarding the very poor health of the twenty-six cats and kittens seized from **Peck**, the court made the following findings of fact, which are fully supported by the record.

[¶ 4] In July 2011, local officials became aware that **Peck** was keeping a substantial number of cats at her home. **Peck** was unable to keep up with the outbreak of illnesses and infections among the cats, and only took her cats to a veterinarian when they were very ill or near death. Although **State** and local officials attempted to help **Peck** reduce her cat population over a period of months, the **State** ultimately seized twenty-six of the cats. Each of the seized cats suffered from one or more medical problems such as mycoplasma, toxoplasmosis, tapeworm, ringworm, an upper respiratory disease, conjunctivitis, fleas, and ear infections; some were so ill that they bore stillborn litters. The **State** spent approximately $36,800 to treat, house, and care for the cats.

[¶ 5] On September 4, 2012—one day before the final day of trial—one of **Peck's** witnesses, a doctor of veterinary medicine, sent a letter to the court asking to be excused from testifying. The court treated the witness's request as a motion to quash **Peck's** subpoena to testify. In his request, the witness **stated** that he received **Peck's** subpoena on Sunday, September 2, 2012, leaving him "one business day" to prepare and clear his schedule. He asserted that complying with **Peck's** subpoena on such short notice would cause him to cancel meetings with "twenty-five to thirty clients," inconveniencing each client, impoverishing his business, and costing him "an inestimable amount of goodwill"; and that complying with **Peck's** subpoena would cause him to miss a lunchtime ***259** retirement party for his employee of twenty years. [2] The court quashed **Peck's** subpoena on September 5, 2012, the last day of trial.

[¶ 6] The court made oral findings of fact, **stating** that **Peck** "committed cruelty to animals based upon a failure to supply these ... 26 cats that were seized by the **State** on January 11th, 2012, [with] necessary medical attention," and imposed a single fine of $500. [3] *See* 7 M.R.S. § 4016(1)(A). The court also orally ordered that **Peck** post a bond of $6,400 with the court to support the cats while her appeal to us was pending. *See* 17 M.R.S. § 1021(6)(D). On September 6, 2012, the court issued a written judgment limiting the number of animals that **Peck** may own, possess, or have on her premises to two spayed or neutered cats and ordering restitution of $18,000—approximately half of the sum the **State** spent to house and care for the cats—to be paid in monthly installments of $100. [4] *See* 7 M.R.S. 4016(1)(B)-(C); 14 M.R.S. § 3141(4) (authorizing courts to order installment payments if "requiring the defendant to make immediate payment in full would cause a severe and undue hardship for the defendant"). **Peck** timely appealed. *See* 14 M.R.S. § 1851 (2013); M.R.App. P. 2(b)(3).

II. DISCUSSION

A. Motion to Quash

[1] [¶ 7] **Peck** argues that the court erred in failing to hold a hearing on the veterinary doctor's motion to quash and failing to provide its reasons for quashing **Peck's** subpoena. [5] "On timely motion, the court for which a subpoena was issued shall quash or modify the subpoena if it[, inter alia,] fails to allow a reasonable time for compliance [or] subjects a person to undue burden." M.R. Civ. P. 45(c)(3)(A)(i), (iv). Despite the absence of Maine case law or a rule explicitly authorizing a nonparty witness to move to quash a subpoena ad testificandum, *cf.* ***State*** *v. Grover,* 387 A.2d 21, 21–22 (Me.1978) (holding that a nonparty witness has no right to appeal the denial of a motion to quash), the Advisory Committee Note to M.R. Civ. P. 45 recognizes motions to quash as "the remedy for nonparties," M.R. Civ. P. 45 Advisory Committee Note to 2007 amend. "The decision to quash a subpoena ... rests in the discretion of the court." ***State*** *v. Watson,* 1999 ME 41, ¶ 5, 726 A.2d 214.

[¶ 8] Given **Peck's** late delivery of the subpoena and the assertions set forth in the prospective witness's motion to quash, the court did not abuse its discretion in quashing **Peck's** subpoena. *See* M.R. Civ. P. 45(c)(3)(A)(i), (iv). Although it is generally the best practice to allow the parties to be heard on the motion, **Peck** presents no information on appeal demonstrating that a hearing would have changed the outcome of the motion or the trial. *See* M.R. Civ. P. 26(g)(2); M.R. Civ. P. 45(e) (providing that Rule 26(g) governs "[m]otions or objections concerning subpoenas ***260** issued in discovery or pretrial proceedings").

B. Void for Vagueness

[2] [¶ 9] The cruelty-to-animals statute provides that "a person, including an owner or the owner's agent, is guilty of cruelty to animals if that person ... [d]eprives an animal that the person owns or possesses of ... necessary medical attention." 7 M.R.S. § 4011(1)(E). The statute further provides that "[n]o person owning or responsible for confining or impounding any animal may fail to supply the animal with necessary medical attention when the animal is or has been suffering from illness, injury, disease, excessive parasitism or malformed or overgrown hoof." *Id.* § 4014 (2013). **Peck** contends that section 4011 is void for vagueness because it fails to define "necessary medical attention" in a manner that enables people of common intelligence to easily discern its meaning.

[3] **[4]** **[5]** [¶ 10] Although the void-for-vagueness doctrine is more commonly applied in the criminal law context, the doctrine is also applied in those circumstances where a person "must conform [her] conduct to a civil regulation." *Me. Real Estate Comm'n v. Kelby,* 360 A.2d 528, 531 (Me.1976) (quotation marks omitted). The due process clauses of the Maine and United **States** Constitutions require that a statute "must provide reasonable and intelligible standards to guide the future conduct of individuals and to allow the courts and enforcement officials to effectuate the legislative intent in applying these laws." *Shapiro Bros. Shoe Co., Inc. v. Lewiston–Auburn Shoeworkers Protective Ass'n,* 320 A.2d 247, 253 (Me.1974); *see* U.S. Const. amend. XIV, § 1; Me. Const. art. I, § 6–A. "A statute may be void for vagueness when people of common intelligence must guess at its meaning." ***State*** *v. Witham,* 2005 ME 79, ¶ 7, 876 A.2d 40. "In examining the sufficiency of statutory language, [o]bjective quantification, mathematical certainty, and absolute precision are not required." *Id.* (alteration in original) (quotation marks omitted).

[¶ 11] Maine's cruelty-to-animals statute is not unconstitutionally vague. Rather, the statute expressly defines "necessary medical attention" as the attention required "when the animal is or has been suffering from illness, injury, disease, [or] excessive parasitism." 7 M.R.S. § 4014. There is nothing about the statute that would require a person of ordinary intelligence to guess at its meaning. *See Witham,* 2005 ME 79, ¶ 7, 876 A.2d 40; *see also* ***State*** *v. Malpher,* 2008 ME 32, ¶¶ 17–19, 947 A.2d 484 (concluding that a statute that does not define the phrase "cruelly treated" is not void for vagueness).

C. Sufficiency of the Evidence

[¶ 12] **Peck** argues that the fact that her cats were sick does not necessarily mean that she deprived them of "necessary medical attention" and that, to the contrary, she provided her cats with holistic medication and took them to a veterinarian when they were sick. **Peck** also argues that there was insufficient evidence in the record to support the court's restitution order and that the court should have ascertained her ability to pay in determining the amount of restitution for which she was liable.

[6] **[7]** [¶ 13] "We review factual findings for clear error and the application of the law to those facts de novo." ***State*** *v. Thomas,* 2010 ME 116, ¶ 27, 8 A.3d 638. We review the sufficiency of the evidence in the light most favorable to the **State** to determine whether the trier of fact could have found, by a preponderance of the evidence, each element of the charge. *See* ***State*** *v. Black,* 2000 ME 211, ¶ 14, 763 A.2d 109; M.R. Civ. P. 80H(g).

***261** 1. Necessary Medical Care

[8] [¶ 14] Contrary to **Peck's** contention, the record supports the court's finding that **Peck's** inability to keep up with the proliferation of her pets, which caused a profusion of parasites and diseases to spread among the cats, constituted a failure to provide the animals with "necessary medical care." *See* ***State*** *v. Weinschenk,* 2005 ME 28, ¶ 8, 868 A.2d 200 ("Findings of fact are clearly erroneous only when no competent evidence supporting the finding exists in the record."); *Rinehart v. Schubel,* 2002 ME 53, ¶ 9, 794 A.2d 73 (**stating** that a "court is not required to believe the testimony of any particular witness, expert or otherwise" (quotation marks omitted)). Specifically, the court heard evidence that several of **Peck's** cats died shortly after **Peck** brought them to a veterinarian; all twenty-six seized

cats had one or more medical problems; a respiratory disease was circulating among **Peck's** cats; **Peck** rebuffed the **State's** efforts to help her reduce the number of cats; against a veterinarian's advice, **Peck** took one kitten back from a veterinarian early in the **State's** work with her and the kitten nearly died; and the cats improved in health after receiving treatment.

2. Restitution Order

[9] [¶ 15] The record taken as a whole reflects the parties' agreement that, in fashioning its restitution order, the court would consider the **State's** cost regarding all of the cats proven to have suffered cruelty while in **Peck's** care. **Peck** did not object to the court's consideration of the costs of providing for all twenty-six cats on this basis, and she recognized at the conclusion of the trial that significant restitution would be ordered. Thus, contrary to **Peck's** argument, the court did not err in determining that the parties' agreement in advance of trial anticipated that the court would have the authority to consider the costs associated with all of the cats in fashioning the restitution order.

[¶ 16] "[A] court may order a person adjudicated as having violated the laws against cruelty to animals to pay the costs of the care, housing and veterinary medical treatment for the animal." 7 M.R.S. § 4016(1)(B). A court entering a restitution order on a civil complaint must consider the offender's "present and future financial capacity." *See* 17–A M.R.S. § 1325(1)(C) (2013); 14 M.R.S. § 5602 ("Title 17–A, chapter 54 applies to the determination, ordering, payment and enforcement of an order of restitution."). "[A]n offender who asserts a present or future incapacity to pay restitution has the burden of proving the incapacity by a preponderance of the evidence," 17–A M.R.S. § 1325(4), and the court was not required by statute to make explicit findings as to **Peck's** financial resources before ordering restitution payments, *id.* § 1325(1)(C).

[¶ 17] **Peck** did not meet her burden of demonstrating that she had no capacity to pay restitution. *See id.* § 1325(4). In ordering **Peck** to pay restitution, the court properly recognized **Peck's** financial limitations and more than halved the **State's** requested amount of $36,800 to $18,000. *See id.* § 1325(1)(C). The court further reduced the hardship of an immediate, lump sum payment by allowing the payment to be made in monthly installments of $100. *See id.;* 14 M.R.S. § 3141(4). The court's restitution order, which encompassed care, housing, and treatment costs for all of the twenty-six seized cats, is both reasonable and supported by the record. *See* 7 M.R.S. § 4016(1)(B); *Weinschenk,* 2005 ME 28, ¶ 8, 868 A.2d 200.

The entry is:

Judgment affirmed.

All Citations

93 A.3d 256, 2014 ME 74

Footnotes

1 For the first civil offense, the court must impose a mandatory fine of not less than $500, and for the second and subsequent offenses a fine of not less than $1,000 is mandated. 7 M.R.S. § 4016(1)(A) (2013).

2 In what appears to be a typo, the witness **stated** that "Wednesday the 4th" was the employee's last day. September 4, 2012, the day the witness composed the request, was a Tuesday, such that the Wednesday referred to in the letter, the day the witness was subpoenaed to testify, was most likely September 5, 2012.

3 After applicable surcharges and assessments, the fine ultimately totaled $620.

4 If **Peck** makes a $100 payment every month, the entire debt of $18,000 will take fifteen years to satisfy.

5 The court appropriately treated the witness's letter as a motion to quash. *See* M.R. Civ. P. 7(b)(1) (defining "motion" as "[a]n application to the court for an order" made orally or in writing).

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