

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-1925-2017
:
vs. :
:
: Opinion and Order re
CHRISTIAN BEILER, : Defendant's Petition for Writ of Habeas Corpus
Petitioner

OPINION AND ORDER

Effective August 28, 2017, Act 2017-10, codified at 18 Pa. C.S. § 5532, entitled Neglect of Animal, provides criminal culpability for individuals who fail to provide necessary veterinary care of animals to which that individual has a duty of care. If the failure to provide necessary veterinary care causes bodily injury to the animal or places the animal at imminent risk of serious bodily injury, a violation of the Act is a misdemeanor of the third degree. The interpretation of this statutory language in the context of a petition for writ of habeas corpus is at issue in this case.

The facts developed during the preliminary hearing and the hearing on defendant's petition for writ of habeas corpus held on March 9, 2018 must be viewed in the light most favorable to the Commonwealth. *Commonwealth v. Lees*, 135 A.3d 185, 188 (Pa. Super. 2016); *Commonwealth v. Landis*, 48 A.3d 432, 448 (Pa. Super. 2012).

On September 18, 2017, Shawn McMonigle, a Humane Officer for the County of Lycoming, went to Defendant's residence in Montgomery, PA. Among other things, Officer McMonigle observed a female Cane Corso dog in a chain link kennel. The dog was unable to move. Defendant told Officer McMonigle that possibly "months prior" he believed that the dog had been hit by a car.

Officer McMonigle asked Defendant if he had taken the dog to a veterinarian.

Defendant responded that he thought about it, but he just didn't get around to it. Defendant confirmed that the dog had not been seen by a veterinarian for the injury. Officer McMonigle instructed Defendant to contact Amanda Paulhamus, a veterinarian.

Dr. Paulhamus went to Defendant's residence on September 19, 2017 to examine the dog. Upon first seeing the dog, she noticed that the dog was not moving. The dog was taken out of the pen and examined by her. She further noticed that the dog could not bear weight on the dog's right hind leg. She also observed that the dog was not willing to move forward. She palpated the dog's leg but couldn't "feel anything" wrong.

She opined that the dog's condition was such that the dog needed to be taken to a veterinary hospital where x-rays could be taken, blood work could be done and the dog could undergo a full physical exam.

While she was unable to diagnose the dog's condition during her 15 minute observation and examination of the dog, she clearly opined that the dog was in substantial pain. The dog's pain was evident by the dog's unwillingness to move forward and unwillingness to place any weight on the dog's hind leg. She measured the dog's lameness as a 5 on a scale of 1 – 5 with 5 being the most severe.

She administered pain medication to the dog and gave to Defendant additional pain medication for the dog in order that the dog could be transported to a veterinary hospital, in less pain and less stress, the next day.

While she was able to rule out a cruciate tear, she could not rule out a more serious injury such as necrosis to the hip or an injury to the pelvis which could potentially be very serious if, for example, it caused an obstruction to the dog's bowels and the dog was unable to defecate.

The next day the dog was taken to the Susquehanna Trail Animal Hospital. The dog was diagnosed as suffering from a fractured pelvis and loss of muscle. The options given to Defendant to correct the injury were either surgery or complete cage rest for six to eight weeks.

Dr. Paulhamus explained cage rest as a dog being confined in an area so small that the dog could only stand up and turn around. The kennel that the dog was in would not have satisfied the cage rest requirement. It was too large, approximately six feet by six feet, and the dog could “jump and gain speed.”

A pretrial petition for a writ of habeas corpus is similar in purpose to a preliminary hearing. *Commonwealth v. Owen*, 580 A.2d 412, 413 (Pa. Super. 1990) (citing *Commonwealth v. Morman*, 541 A.2d 356, 359) (Pa. Super. 1988)).

At a habeas corpus hearing, the issue is whether the Commonwealth has presented sufficient evidence to prove a prima facie case against the defendant. *Commonwealth v. Hilliard*, 172 A.3d 5, 9 (Pa. Super. 2017). “A prima facie case consists of evidence, read in a light most favorable to the Commonwealth, that sufficiently establishes both the commission of the crime and that the accused is probably the perpetrator of that crime.” *Commonwealth v. Cordoba*, 902 A.2d 1280, 1285 (Pa. Super. 2006)(quoting *Commonwealth v. Miller*, 810 A.2d 171, 181 (Pa. Super. 2002)(citations omitted)). “Stated another way, a prima facie case in support of an accused’s guilt consists of evidence that, if accepted as true, would warrant submission of the case to a jury.” *Id.*

The issue raised by Defendant is one of statutory construction. Specifically, Defendant argues that because he did not injure the dog in the car accident, he cannot be held legally responsible. Defendant’s argument, however, is misplaced. Defendant’s interpretation

of the statute reflects a convoluted and constrained reading of it which belies the clear language of the statute.

In all matters involving statutory interpretation the courts apply the Statutory Construction Act of 1972, 1 Pa. C.S. §§ 1501-1991. “The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all of its provisions. 1 Pa. C.S.A. § 1921(a). “When construing one section of a statute, courts must read that section not by itself, but with reference to, and in light of, the other sections because...the General Assembly intended the entire statute to be effective.” *Commonwealth v. Kitchen*, 2018 Pa. Super. 52 (March 9, 2018). 1 Pa. C.S.A. § 1922, citing *Commonwealth v. Lopez*, 663 A.2d 746, 748 (Pa. Super. 1995) (internal citations omitted).

Generally, the legislature’s intent “is best expressed through the plain language of the statute.” *Commonwealth v. Hart*, 28 A.3d 898, 908 (Pa. 2011)(citations omitted). Thus, “[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.” 1 Pa. C.S.A. § 1921(b).

In this particular case, the court finds that the language is clear and unambiguous and that it expresses the intent of the legislature. This statute imposes criminal liability through a defendant’s omission. An omission is a failure to act. In this case, the omission gives rise to liability because the law imposes a duty to act and the defendant did not act.

A person commits the offense if the person fails to provide necessary veterinary care for an animal to which the person has a duty of care. The violation is a misdemeanor of the third degree when that failure to provide necessary veterinary care

causes bodily injury to the animal or places the animal at imminent risk of serious bodily injury. 18 Pa. C.S.A. § 5532 (a), (b) (2). Bodily injury is defined as “[i]mpairment of physical condition or substantial pain” and serious bodily injury is defined as “[b]odily injury that creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” 18 Pa. C.S.A. §5531.

In this case, the evidence established for prima facie purposes that Defendant’s failure to provide veterinary care for the dog caused bodily injury to the dog. Specifically, the failure to provide necessary veterinary care caused the dog to continue to be in substantial pain. Had Defendant brought the dog to a veterinarian earlier, the veterinarian would have, at the very least, given the dog pain medication to alleviate the pain. This is precisely what occurred once the dog was seen by Dr. Paulhamus. Moreover, and for prima facie purposes, the failure of Defendant to provide necessary veterinary care placed the dog at imminent risk of serious bodily injury. The testimony clearly showed that by not taking the dog to the veterinarian sooner, the dog was exposed to the risk of serious bodily injury which could have included, but would not be limited, to hip necrosis and a broken pelvis that could have blocked his bowel. It is important to note that the animal need not suffer actual serious bodily injury as a result of a person’s failure to seek necessary veterinary care; it only needed to be placed in imminent risk of such injury.

Defendant’s interpretation misreads the statute. Defendant wishes the court to read the statute as requiring the Commonwealth to prove that Defendant caused the underlying bodily injury to the dog. Defendant misses the fact that prior to the words “causes bodily injury,” the word “violation” is inserted. It is the violation of not bringing the dog for

necessary veterinary care that causes the bodily injury which in turn creates criminal liability.

The Commonwealth presented evidence which established for prima facie purposes that Defendant was aware that the dog had been hit by car, the dog could not walk, and the dog was in pain. Despite this knowledge, he failed to take the dog to a veterinarian for examination, pain medication, or treatment. Defendant's failure to promptly seek necessary veterinary care caused the dog to unnecessarily remain in substantial pain and exposed the dog to the risk of hip necrosis or a bowel blockage.

ORDER

AND NOW, this 15th day of March 2018, following a hearing, argument, and the submission of briefs, Defendant's petition for habeas corpus is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Melissa Kalas, Esquire (ADA)
Michael A. Dinges, Esquire
Work File
Gary Weber, Esquire, Lycoming Reporter