

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	No. 112202
	:	
v.	:	
	:	
ALONZO KYLES,	:	
	:	
Defendant-Appellant.	:	

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JOURNAL ENTRY AND OPINION

**JUDGMENT: REVERSED AND VACATED**  
**RELEASED AND JOURNALIZED: August 3, 2023**

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Criminal Appeal from the Cuyahoga County Court of Common Pleas  
Case No. CR-22-669748-A

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Mason P. McCarthy, Assistant Prosecuting Attorney, *for appellee*.

The Goldberg Law Firm, L.L.C., and Adam Parker, *for appellant*.

EMANUELLA D. GROVES, J.:

{¶ 1} Defendant-appellant, Alonzo Kyles (“Kyles”), appeals his conviction for cruelty to animals, a felony of the fifth degree in violation of R.C. 959.131. For the reasons that follow, the judgment of conviction is reversed and the sentence is vacated.

## **FACTS AND PROCEDURAL HISTORY**

**{¶ 2}** On October 3, 2021, Cleveland police officers responded to an incident at an apartment building on Cliffview Road. (Tr. 12 and 14.) Upon arrival, the officers accessed the building through the bottom floor stairway leading into the basement, where they smelled a powerful odor of bleach. (Tr. 13.) The officers discovered a large amount of bleach on the basement floor. (Tr. 16.)

**{¶ 3}** While investigating the scene, officers heard distressed meowing from a cat that was found lying still, completely soaked in the bleach. (Tr. 14 and 20.) The officers promptly retrieved the cat, noticing its red and swollen paws. (Tr. 23-25.) The cat had no collar or any identifiable markings and remained unclaimed by anyone present (Tr. 34.) One officer testified that he believed that the cat had been declawed on its front paws since it had only its back claws extended. (Tr. 33 and 37.) The officers questioned Kyles, who was present at the scene. Kyles explained to the officers that he was afraid of cats and that he poured water and bleach on the floor to make the cat leave the building. (Tr. 14 and 25.)

**{¶ 4}** The cat was subsequently taken to West Park Animal Hospital for treatment under the care of Dr. Jennifer Kinney. (Tr. 25 and 42.) Dr. Kinney instantly noted the strong bleach odor from the cat and was uncertain whether the cat was a stray. The cat was identified as a domestic long-hair breed and around eight months old, was slightly underweight, and showed signs of stress indicated by its heart rate. (Tr. 48-49 and 50.) The cat was dirty and unfriendly, but not aggressive. (Tr. 44 and 45.) Dr. Kinney was surprised that the cat tolerated a bath

to rinse off the remaining bleach better than a typical cat, let alone a stray or feral one. (Tr. 46 and 54.) Dr. Kinney identified swelling and ulcerations on the cat's paws, a common symptom of bleach exposure. (Tr. 45 and 46.) Dr. Kinney stated that the cat's swollen paws and ulcerations could potentially be symptoms of an uncommon autoimmune disorder known as "pillow foot." However, this condition is rare and usually affects all four paws, while this cat only exhibited symptoms on its front paws. (Tr. 54-56.) Dr. Kinney testified that she conducted a pain assessment when the cat arrived and concluded it was not in pain. (Tr. 48 and 49.) While the cat presented no additional immediate symptoms, Dr. Kinney expressed concerns about potential delayed injuries or even death due to bleach exposure because these symptoms can develop hours or days post-exposure. (Tr. 52-53 and 61.)

**{¶ 5}** On April 22, 2022, Kyles was indicted on a single count of animal cruelty, a fifth-degree felony under R.C. 959.131, on April 22, 2022. Kyles pled not guilty at his arraignment on May 31, 2022, and the trial court held a bench trial on November 2, 2022. Kyles filed motions for acquittal under Crim.R. 29 at the end of both the state's and his own case. However, both motions were denied, and Kyles was found guilty of animal cruelty. He was sentenced to a nine-month term of incarceration on November 29, 2022.

**{¶ 6}** Kyles raises two assignments of error on appeal.

### **Assignment of Error No. 1**

Defendant's conviction is not supported by sufficient evidence.

### **Assignment of Error No. 2**

Appellant's convictions are against the manifest weight of the evidence.

### **Standard of Review**

{¶ 7} In a criminal case, the state bears the burden of producing sufficient evidence for each element of an offense in order to sustain a conviction of the offense. *Strongsville v. Eskander*, 8th Dist. Cuyahoga No. 92448, 2009-Ohio-5370, ¶ 10. The standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime are proven beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 274, 574 N.E.2d 492 (1991). If the state fails to produce sufficient evidence to support each element of the offense charged, the defendant must be acquitted. Crim.R. 29.

{¶ 8} While the test for sufficiency requires a determination of whether the prosecution has met its burden of production at trial, a manifest weight challenge questions whether the prosecution has presented evidence that has the effect of persuasion. *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598 *State v. O'Malley*, 8th Dist. Cuyahoga No. 109454, 2021-Ohio-2038, ¶ 20.

## Law and Analysis

{¶ 9} Ohio’s animal cruelty statute has been in existence for over 125 years and concerns cruelty to all animals. R.C. 959.13(A) states in part:

No person shall (1) [t]orture 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 \* \* \*.

*Id.*

{¶ 10} Until the introduction of House Bill 108, a violation of R.C. 959.13 resulted in only misdemeanor convictions. Animal rights activists successfully garnered enough support to force the legislature to increase the penalty for household pets because they are companion animals. *See Updating Ohio’s Animal Cruelty Statute: 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.

{¶ 11} As opposed to being charged with a misdemeanor cruelty to animals violation, which does not require the cat to be a companion animal, Kyles was charged and convicted of violation of R.C. 959.131(C) that reads, “[N]o person shall knowingly cause physical harm to a companion animal,” a felony of the fifth degree. R.C. 959.99. 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.

R.C. 959.131(A)(1)

{¶ 12} Kyles argues that the state offered no evidence that the cat was a companion animal within the meaning of R.C. 959.131(A)(1). Kyles also claims that the trial court erred in denying his motion for acquittal pursuant to Crim.R. 29 because the state presented insufficient evidence that the cat was seriously injured. Since the companion-animal issue is dispositive, the court will only address this issue.

### **Companion Animal**

{¶ 13} The crucial question here is whether the state met the requirement that the cat was kept as mandated in the statutory definition of a companion animal. A conviction under this subsection requires the state to prove beyond a reasonable doubt that Kyles knowingly caused serious physical harm to a companion animal.

{¶ 14} A reviewing court is not permitted to interpret a statute when language is plain and unambiguous and conveys a clear and definite meaning because an unambiguous statute is to be applied, not interpreted. *Jacobson v. Kaforey*, 149 Ohio St.3d 398, 2016-Ohio-8434, 75 N.E.3d 203, ¶ 8. However, when a statutory provision is capable of having more than one meaning the court must apply the rules of statutory interpretation in R.C. 149 to resolve questions of ambiguity. *Id.* Appellee claims that this court should rely on the fundamental canons of statutory construction to conclude that a cat is a companion animal under

R.C. 959.131. We disagree. “The court does not have the authority to dig deeper than the plain meaning of an unambiguous statute under the guise of either statutory interpretation or liberal construction.” *Jacobson v. Kaforey* at ¶ 8.

{¶ 15} Kyles argues that the state must present evidence that a cat or dog is kept somewhere in order for it to be a companion animal. The Ohio General Assembly chose explicit wording in defining a companion-animal: “animal as any dog or cat regardless of where it is kept, including a pet store as defined in section R.C. 956.01 \* \* \*.” R.C. 959.131(A). The word “kept” is not defined, but the language of the statute is clear and unambiguous. Therefore, we will apply the plain and ordinary meaning to the words of the statute as written and conduct no further investigation. *State v. Hurd*, 89 Ohio St.3d 616, 618, 734 N.E.2d 365 (2000). In discerning the meaning of “kept,” we look to the common meaning of the word “keep,” and the court’s analysis of the word “kept” is the past tense and past participle of the verb “keep.” Merriam-Webster dictionary defines “keep” as having control; to take care of.<sup>1</sup>

{¶ 16} *State v. Hartman*, 9th Dist. Summit No. 26250, 2012-Ohio-4694, is instructive in this case. In *Hartman*, appellant was found guilty of cruelty to a companion animal. The animals at issue included 25 birds of varying species. Hartman argued that the state offered insufficient evidence that the birds were

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<sup>1</sup> <https://www.merriam-webster.com/dictionary/keep>. (Accessed July 12, 2023).

companion animals. The court affirmed her conviction when it found that the state had offered sufficient evidence that at least one of the birds at issue was kept in a cage in the appellant's residence. "The trier of fact was able to view photographs of the birds and cages and the surroundings. The court concluded that there was evidence that a trier of fact could conclude beyond a reasonable doubt that at least one of the birds discussed by Officer Harlan was a companion animal as defined by R.C. 959.131(A)(1)." *Hartman* at ¶ 24.

{¶ 17} While ownership is not a required element for an animal to be considered a companion animal under R.C. 959.131, applying the plain meaning of the words requires that the animal be kept. An animal is "kept" when there is evidence that it is cared for or under physical control. *See Buettner v. Beasley*, 8th Dist. Cuyahoga No. 83271, 2004-Ohio-1909, ¶ 14. 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. 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.

{¶ 18} In the present case, the state failed to offer sufficient evidence that the cat was kept. We find the state's argument that the cat was "kept" in the building lacks merit. The state failed to produce evidence that resulted from the care or maintenance of the cat. Its mere presence in the building is insufficient to prove that the cat was kept. Likewise, testimony that the cat may have been partially



declawed is insufficient to prove that the cat was kept. The emergency room veterinarian testified that she was unsure if the cat was declawed. She also testified that the cat was dirty and malnourished. Additionally, the cat was not neutered.

**{¶ 19}** The state’s argument that there is no affirmative evidence that the cat is feral wrongfully shifts the burden of proof to Kyles. It is not Kyles’ burden to prove that the cat is feral. The burden to prove that the cat is a companion animal beyond a reasonable doubt is the state’s duty alone. “The state bears the burden to prove each element of the charged crime beyond a reasonable doubt.” *Eskander*, 2009-Ohio-5370 at ¶ 13. Upon a complete review of the record, this court concludes that the state failed to present sufficient evidence that the cat was provided care. Therefore, the cat was not kept, and the state did not prove the necessary element that the cat was a “companion animal.” In choosing to charge Kyles with a higher-level cruelty to animals offense, the state assumed the burden to prove the additional element that the cat was a companion animal. After viewing the evidence in the light most favorable to the prosecution, this court cannot find that any rational trier of fact could have found the essential element of the cat being a companion animal beyond a reasonable doubt. Consequently, the trial court erred when it denied Kyles’ motion for acquittal under Crim.R. 29. Kyles’ first assignment of error is sustained. The first assignment of error is dispositive; therefore, the remaining assignment of error is moot.

**{¶ 20}** Accordingly, the judgment of the trial court is reversed and the conviction and sentencing judgment of the trial court is vacated.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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EMANUELLA D. GROVES, JUDGE

FRANK DANIEL CELEBREZZE, III, P.J., CONCURS WITH MAJORITY OPINION AND SEPARATE CONCURRING OPINION;  
SEAN C. GALLAGHER, J., CONCURS (WITH SEPARATE CONCURRING OPINION)

SEAN C. GALLAGHER, J., CONCURRING:

**{¶ 21}** Under an Orwellian backdrop with thoughts that “four legs good, two legs bad,” I must concur with the majority. George Orwell, *Animal Farm*, Ch. 3 (1945).

**{¶ 22}** I am compelled to concur because as the majority points out, R.C. 959.131(C) applies only to companion animals and not to all animals regardless of stature.

**{¶ 23}** I am not convinced this was a feral cat by the behavior exhibited upon treatment, yet the legislature made the decision to require a cat to be a companion animal for the felony-level conviction to apply. As the majority notes, the officer’s

initial observation of the cat's paws is simply not enough to establish that the cat in this instance was a companion animal. The cat was underweight, was found under an apartment stairwell, lacked a tag or a collar, and was not neutered. Although the officer believed the cat was declawed, the veterinarian did not note this finding in her report. Kyles's cruelty to this cat caused it to suffer great distress, but the state did not present sufficient evidence to prove that the cat was "kept," which was required to qualify as a companion animal under R.C. 959.131(C).

{¶ 24} There is a misdemeanor offense for cruelty to animals under R.C. 959.13, regardless of the stature of the animal, but that offense was not the one charged and hardly affords sufficient redress for the cruelty exhibited in this matter. The legislature may want to revisit these statutes. As of now, the Orwellian standard that "all animals are equal, but some animals are more equal than others" unfortunately holds true. George Orwell, *Animal Farm*, Ch. 10 (1945).