

## CASE LAW SUMMARIES

### KATHRYN LEONARD

Case	Citation	Summary of the Facts	Summary of the Holding
People v. Leach	2006 WL 2683727 (Mich. App.)	<p>Defendant was convicted for the malicious killing of a rabbit while police were executing a civil court order.</p> <p>Defendant alleged that the cruelty statute was unconstitutionally vague.</p>	<p>The Court of Appeals held that the statute in question was not unconstitutionally vague.</p> <p>Further, the Court of Appeals held it was not unreasonable for a jury to find that Defendant's manner in killing a rabbit was "malicious", "willful", and "without just cause" despite the statutes exception for the "lawful" killing of livestock.</p>
People v. Garcia	2006 WL 771373 (N.Y.A.D. 1 Dept.)	<p>Defendant's conviction arises from a claim of aggravated cruelty to animals in violation of Agriculture and Markets Law.</p> <p>Defendant argued that goldfish should not be considered a "companion animal" under the statute and should therefore not constitute a felony charge.</p> <p>Defendant also argued that that because the fish was killed instantly it did not experience the "extreme pain" and was therefore not a heightened level of cruelty.</p>	<p>The Court of Appeals affirmed the trial court's ruling that goldfish are considered companion animals, stating that the definition of companion animals includes domesticated animals, such as goldfish.</p> <p>The Court of Appeals also held that the level of cruelty in the killing of the animal depends on the state of mind of the perpetrator rather than that of the victim.</p>
Lewis v. Chovan	2006 WL 1681400	An employee of a pet	The Court of Appeals held,

	(Ohio App. 10 Dist.)	grooming establishment was injured while providing services to a dog. The employee is appealing the ruling that she is considered a “keeper” under state law, preventing her from asserting a strict liability claim against the actual owners.	based on precedent, that a person who is responsible for exercising physical control over a dog is a “keeper” even if that control is only temporary.  Therefore, because the employee is considered to be a “keeper” she has no claim for injuries under state law.
Bartlett v. State	2006 WL 1409122 (Fla.App. 4 Dist.)	Defendant was convicted for felony cruelty to animals when he repeatedly shot an opossum with a BB gun, causing the animal to suffer and ultimately requiring it to be euthanized.	The Court of Appeals held that an act which causes a “cruel death” under state law applies to even the unintended consequence of a lawful act like hunting.
State v. Segó	2006 WL 3734664 (Del.Com.Pl. 2006) (unpublished)	The Society for the Prevention of Cruelty to Animals (SPCA) seized fifteen horses in poor condition. When the owners failed to pay bills sent to them for the medical care of the horses, the SPCA claimed ownership of the horses. Defendant’s claim that the daughter of the prior owners has a lien on the horses and is entitled to their return.	The court held that under the statute, if probable cause exists to believe that the animal cruelty laws have been violated by the owner the SPCA may seize the animals.  Further, when the original owner failed to pay the costs incurred by SPCA for the care of the animals within 30 days, ownership of the animals properly reverted to the State.
Ware v. State	2006 WL 825184 (Ala.Crim.App.)	Defendant was indicted on six counts of owning, possessing, keeping, and/or training a dog for fighting purposes,	The Court of Appeals held that the plain language of the statute doesn’t require the state to show evidence that the Defendant hosted a dog fight, nor do they have

		<p>and one count of possessing a controlled substance. When police arrived at Defendant's house there were many emaciated and injured dogs and various evidence of a dog-fighting operation. Defendant argues that the evidence didn't prove that he actually held dog fights or participated in them.</p>	<p>to state when and where the dogs fought.</p> <p>The condition of the dogs and their demeanors was enough to demonstrate Defendant's intent that each dog shall be engaged in an exhibition of fighting another dog.</p>
State ex rel. Griffin v. Thirteen Horses	2006 WL 1828459 (Conn.Super.)	<p>Defendant's horses were seized after the execution a search and seizure warrant signed by the court revealed evidence of neglect and cruelty toward the animals.</p> <p>Defendant argued the statute did not allow seizure of the animals without prior judicial determination.</p>	<p>The Court held that, where officers found the mistreatment of animals while executing a search warrant, it would be implausible for officers to leave the animals at the property. They have a duty to ensure the animals receive proper treatment pending a hearing at which the owner could be heard.</p>
Cabinet Resource Group v. U.S. Fish and Wildlife Service	2006 WL 3615512 (D. Mont. 2006).	<p>Plaintiff challenged a Land Use Plan developed by The Forest Service regarding roads being built in National Forests, arguing that the plan violated the Environmental Species Act. The Forest Service has a duty to determine what density of road coverage is safe for grizzly bear survival when making its road plans.</p>	<p>The District Court held that The Forest Service's Land Use Plan did not violate the Endangered Species Act. An agency action is not required to assist in the survival of a species, only to not reduce the likelihood of survival and recovery of the species.</p>

Defenders of Wildlife v. Kempthorne	2006 WL 2844232	<p>A group of non-profit organizations sued the Fish and Wildlife Service (FWS) claiming that the FWS failed to obey a court order requiring them to explain their findings that certain areas were not to be considered a “significant area” of lynx habitat under the Endangered Species Act (ESA).</p> <p>The groups also claim that FWS further violated the ESA when they passed regulations making it easier for federal agencies to clear trees in the lynx habitat.</p>	<p>The District Court ordered the FWS to further explain how the areas in question were not significant to the lynx habitat.</p> <p>However, the court also held that the regulations making it easier to thin trees within the lynx habitat was permissible under Section 7 of the ESA.</p>
Qaddura v. State	2007 Tex. App. LEXIS 1493	Defendant was convicted of cruelty to animals after multiple warnings from officers regarding the poor condition his animals and property were in. Defendant argued that he did not maintain the requisite intent to abuse, mistreat, and starve the animals in his care.	The Court of Appeals held that a showing of actual intent to abuse, mistreat, and starve the animals in his care was not needed to convict the Defendant. Rather, the pictures of his property and the animals as well as testimony from the officer who made frequent visits to the Defendant’s property was sufficient for the jury to reasonably find the Defendant knowingly mistreating, abusing, and starving his animals.
United States v. Winddancer	435 F.Supp2d 687 (M.D.Tenn)	Defendant was indicted on six counts of possessing and bartering eagle feathers and feathers	The District Court held that the indictments were proper where the defendant was not a member of a recognized Native

		plucked from other migratory birds in violation of the Bald and Golden Eagle Protection Act (BGEPA) and the Migratory Bird Treaty Act (MBTA). Defendant argued that these indictments violated his rights under the Religious Freedom Restoration Act (RFRA).	American tribe for the purposes of possessing the feathers.  The court further held that the defendant did not have standing to challenge the MBTA indictments when he failed to apply for a permit and such application would not have been futile.
United States v. Bengis	2006 WL 3735654 (S.D.N.Y)	Defendants pleaded guilty and were convicted of conspiracy and violations of the Lacey Act after they were involved in illegal fishing activities in waters off the coast of South Africa. The Government is now contending that defendants are responsible for paying restitution under the Mandatory Victims Restitution Act (MVRA).	The District Court held that because South African law declared that they did not have property interest in the wildlife within its waters, there was no underlying act of the defendants taking property. Therefore, the Government is not entitled to restitution under the MVRA.
Northwest Ecosystem Alliance v. United States	475 F.3d 1136 (C.A.9(Or.) 2007)	The Northwest Ecosystem Alliance wanted review of the Fish and Wildlife Service's decision to deny a petition to classify western gray squirrels in Washington state as an endangered "distinct population segment" under the Endangered Species	The Court of Appeals affirmed the decision by Fish and Wildlife Services (FWS) when they determined that FWS's findings were not arbitrary and capricious when looking at the ecological setting, the possible gap in the range and the genetic differences regarding the western gray squirrel.

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State v. Siliski	2006 Tenn. Crim App. LEXIS 537	After Defendant was convicted of nine counts of animal cruelty, third parties brought suit to seek the return of animals they owned that were seized as a result of Defendant's conviction.	The Court of Criminal Appeals held that the trial court did not have jurisdiction in the criminal case to determine third party ownership over the animals seized in connection with Defendant's conviction.
Diercks v. State of Wisconsin Department of Administration	2006 WL 3761333 (E.D.Wis.)	Defendant pled no contest to one count of misdemeanor cruelty to animals after she was suspected of giving her dogs illegal performance enhancing drugs. Defendant now appeals the installation of a hidden surveillance camera in her dog kennel unit.	The District Court held that the Defendant's fourth amendment rights were violated when the surveillance camera was installed in her kennel. She had a certain level of privacy expectation despite the building owners having access to the kennels for random searches. This level of privacy expectation does not warrant the placement of a hidden surveillance camera in Defendant's kennel without her consent or a warrant issued by the court.