

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

Court of Appeals File No. 285677  
285678

v

JAMES EDWARD HENDERSON, JR., and  
MATTHEW MERCIER,

Lower Court File Nos. 07-3772-FH  
07-3773-FH

Defendants-Appellees.

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**BRIEF OF AMICUS CURIAE AMERICAN HUMANE ASSOCIATION**

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## **INTEREST OF AMICUS CURIAE**

As amicus curiae, the American Humane Association is uniquely situated to provide this court with specialized expertise on horse welfare law and knowledge of the public's direct benefit from proper enforcement and prosecution of these cases. American Humane is a 130-year-old nonpartisan, nonprofit animal and child welfare organization headquartered in Denver, Colorado. American Humane has satellite offices in Washington, D.C., and Los Angeles, California.

American Humane has a public interest in supporting the State's position that the Jackson County Circuit Court's decision should be reversed. Due to the inherent challenge of cases involving neglect and cruelty toward animals, this brief of amicus curiae will discuss horse protection laws nationally, and how Michigan's animal protection laws are among the best in the country. As such, this case will have national ramifications for horse protection.

The American Humane Association was founded in 1877 and is the only national organization dedicated to protecting children and animals from cruelty, abuse, neglect, and exploitation and to assuring that their interests and well-being are fully, effectively, and humanely guaranteed by an aware and caring society. American Humane is a national leader on The Link® between animal cruelty and human violence and, through the below-signed author, has special expertise on how cruelty toward animals can subsequently result in human violence which negatively impacts communities. American Humane has a vast history in child protection, including current initiatives to promote the inclusion of families in decision-making concerning maltreated children and promoting restorative justice in the criminal justice system. In animal protection, American Humane's history involves direct work with animal shelters to promote humane treatment of animals and we are nationally recognized for our Red Star Emergency

Response team that responds to natural disasters across the country. American Humane also has a National Horse Abuse Investigation School and for over 20 years has educated and raised awareness regarding the complexities of cruelty and neglect toward horses.

### **JURISDICTIONAL STATEMENT**

American Humane adopts and incorporates by reference the Jurisdictional Statement as set forth in Appellant State of Michigan's Brief.

### **STATEMENT OF QUESTIONS PRESENTED**

American Humane adopts and incorporates by reference the Statement of Questions Presented as set forth in Appellant State of Michigan's Brief.

### **STATEMENT OF FACTS**

American Humane adopts and incorporates by reference the Statement of Facts as set forth in Appellant State of Michigan's Brief.

### **LEGAL ISSUES**

#### **I. MICHIGAN'S ANIMAL CRUELTY STATUTE, MCL 750.50B, IS A GENERAL INTENT CRIME AND WAS IMPROPERLY ANALYZED BY THE TRIAL COURT**

Amicus Curiae American Humane supports the arguments and theories as set forth in the People's Brief and will not reiterate the facts or law already covered in the People's brief.

Michigan has a nationally-recognized strong animal cruelty law and it is one of the better-written and enforceable laws in the country. In fact, Michigan has consistently been recognized

in the top five states with the strongest animal cruelty laws. Moreover, many states have modeled similar statutory language after Michigan's animal cruelty laws; for instance, Connecticut, Georgia, Hawaii, Kansas, Massachusetts, Minnesota, Mississippi, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Vermont, and Virginia (see below for citations).

The statute in question, MCL 750.50b, is a general intent crime because it only requires an intent to perform the act and does not require the *specific intent* to commit the actual harm caused. All 50 states and the District of Columbia have anti-cruelty laws to protect horses from neglect or abuse. The statutory language of these states, like Michigan's statute, are also based on general intent. See, AL ST § 13A-11-14; AK ST §11.61.140; AZ ST § 13-2910 and § 13-2910.08; AR ST § 5-62-101; CA PENAL§ 597.1; CO ST § 18-9-202; CT ST § 53-247; DC ST § 22-1001; 11 Del. C. §1325; FL ST 828.12; GA ST §16-12-4; HI ST § 711-1108.5 and 711-1109; ID ST §25-3504.; 510 ILCS 70/2.01a, 510 ILCS 70/3.01 and 510 ILCS 70/3.02; I.C. 35-46-3-7; IA ST § 717.1A and IA ST § 717.2; KS ST §21-4310; KY ST 525.125 and KY ST 525.130; LSA-R.S. 14:102.1; ME ST Tit 7 § 4011; MD CRIM LAW §10-601-622; MA ST § 77; MN ST 343.21; MS ST § 97-41-1 – 23 and §97-29-59; MO ST §578.009 and 578.012; MT ST 45-8-211; NE ST § 28-1009; NV ST 574.100; NH ST 644:8; NJ ST 4:22-17; NM ST § 30-18-1 and § 30-18-12; NY AGRI & MKTS § 353, 353a ; NC ST §14-360; ND St 36-21.1-02; OH ST 959.13; OK ST T 21§ 1685; OR ST 167.315, 167.320 and 167.322; PA ST 18 PA SCA § 5511; RI ST §4-1-1 - 38; SC ST § 47-1-40; SD ST §40-1-27; TN ST § 39-14-202 and § 39-14-212; TX PENAL § 42.09; UT ST § 76-9-301; VT ST T 13 § 352 and 352a; VA ST § 3.1-796.122; WA ST 16.52.205 and 16.52.207; WV ST § 61-8-19; WI ST § 951.02; and WY ST § 6-3-203.

It is important to note that horse cruelty prosecutions are not as frequent as prosecutions for cruelty against companion animals such as dogs and cats. A search of case law only turns up a few cases in Michigan that specifically address neglect and cruelty to horses. However, as already briefed by the People, the case of People v Fennell, 260 Mich App 261; 677 NW2d 66 (2004) provides a helpful analysis that MCL 750.50b is a general intent, not specific intent, statute. The Fennell court held, “[g]iven the construction of the animal cruelty statutes preceding MCL 750.50b(2), and the fact that ‘willful’ may be interpreted to describe a purposeful action in the context of a crime, we find that the Legislature enacted the current animal torture statute as a general intent crime.” Thus, Fennell is directly on-point with the facts of this case and, therefore, the trial court and defendants’ arguments are inaccurate and flawed.

An analysis of case law nationwide lends strong support for the assertion that general intent is the norm for animal cruelty statutes. As in MCL 750.50b, the District of Columbia statute, DC ST § 22-1001, requires an act “willfully” committed. The court in Regalado v United States, 572 A2d 416 (DC App 1990), in rejecting defendant’s claim that specific intent to harm the puppy was required, found the D.C. statute to be general intent. The court found “the general intent with malice requirement reflects the growing concern in the law for the protection of animals.” Regalado at 420.

The Court of Appeals of California in People v Alvarado, 125 Cal App 4th 1179; 23 Cal Rptr 3d 391 (2005), came to a similar conclusion.

The expressions “willfully,” “knowingly,” “intentionally,” and “maliciously” are expressions of general, not specific, intent when used in a penal statute. (*People v. Williams* (1980) 102 Cal. App. 3d 1018, 1029 [162 Cal. Rptr. 748]; *People v. Ramsey* (2000) 79 Cal.App.4th 621, 632 [94 Cal. Rptr. 2d 301].) More specifically, the term “intentionally” in a penal statute refers to general intent: “[T]he occurrence of the terms ‘intentionally’ and ‘knowingly’ in a penal statute do not imply that the offense so defined is a specific intent crime. As a rule, the term ‘intentionally’ requires only that the agent acted intentionally in engaging in

the proscribed conduct, and not that the agent knew that the conduct was proscribed.” (*People v. Ramsey, supra*, at p. 632.)

Alvarado at 1188.

The California statute, on its face, appears to require even more intent than Michigan’s requirement of “maliciously and intentionally.” The statute, Cal Pen Code 597 (a) requires: “maliciously and intentionally maims, mutilates, tortures, or wounds a living animal, or maliciously and intentionally kills an animal” and is a general intent statute.

Also, the Supreme Court of Florida also found their animal cruelty statute to require general intent even though the statute uses the words “intentionally commits an act.” Reynolds v State, 842 So 2d 46, 48 (Fla 2002). The defendant in Reynolds argued that the term “intentionally” required a determination of specific intent. The statute, FL ST 828.12(2) states “person who intentionally commits an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or by a fine of not more than \$ 10,000, or both.” The court disagreed with the defendant and found the statute, unless specifically designated by the Legislature, to be a general intent crime.

The New York statute lists torture as an act, omission, or neglect that results in unjustifiable pain. NY CLS Agr & M § 353 states “[a] person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or to another, or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten, or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food or drink, or who wilfully sets on foot, instigates, engages in, or in any way furthers any act of

cruelty to any animal...” The court in People v Walsh, 19 Misc 3d 1105A; 859 NYS2d 906 (2008), upheld an animal torture charge where the defendant did not take his cat to the vet in 15 years. The cat developed a painful tumor on a paw and the court found that this unjustifiable physical pain met the threshold of torture.

A person should be guilty of torture where his omission leads to the animal feeling unjustifiable pain. As long as there is a conscious disregard of the known risks, such a person violates the statute. The above cases from other state appellate courts should provide the guidance necessary for this Court to properly deem MCL 750.50b a crime of general intent and, therefore, reinstate the felony criminal charges.

## **II. ANIMAL CRUELTY STATUTES PROTECTING HORSES FROM NEGLECT AND ABUSE ARE ESSENTIAL PUBLIC POLICY CONSIDERATIONS FOR KEEPING COMMUNITIES SAFE AND HOLDING OFFENDERS ACCOUNTABLE**

This case has the magnitude to impact numerous investigations and prosecutions. A decision by this court to deem MCL 750.50b a specific intent crime and to uphold the trial court’s decision in dismissing the criminal felony charges will result in a domino-effect throughout Michigan, and potentially the nation. Such a decision will dismantle the current prosecutions pending against numerous defendants in at least three Michigan counties.

Americans witness everyday how incidents of animal cruelty play out in local, state and national media outlets. Crimes such as the Michael Vick federal dog fighting case (United States v Vick, ED VA, No. 3:07CR274), the case of a 9-year-old Alabama boy’s bunnies set on fire by an unknown culprit (WAFF TV News, July 31, 2008), and the recent case of 360 maltreated animals and 6 maltreated children in St. Louis, Missouri (CNN News, August 13, 2008), bring communities together to speak out and to understand why these senseless acts of inhumanity

against animals occur. These incidents also show how communities rally around the proper administration of justice when animal cruelty cases are properly investigated, prosecuted and handled in the court system. When animal cruelty cases are not taken seriously at any time in the criminal justice process, communities react negatively and the public trust in its public officials declines and erodes community morale.

Michigan, like other states, has provided horses the protection of the law, in particular MCL 750.50b which prohibits anyone from “willfully, maliciously and without just cause or excuse kills, tortures, mutilates, maims, or disfigures an animal”. As such, the People should be given the opportunity to present this case before a jury.

### **CONCLUSION**

Amicus Curiae American Humane respectfully requests this Honorable Court to reverse the Jackson County Circuit Court decision of Judge Chad Schmucker and reinstate the felony criminal charges against both defendants.

Dated: August 15, 2008

Respectfully submitted,

American Humane Association

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**PROOF OF SERVICE**

This is to certify that a copy of **MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF and BRIEF OF AMICUS CURIAE AMERICAN HUMANE ASSOCIATION** was mailed to all attorneys of record by first class postage, prepaid, on this 15<sup>th</sup> day of August, 2008.

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