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Criminal Law - Must Love Dogs: Zach and Kenji's Escape from Confinement and the Broader Context of Animal Cruelty - Commonwealth v. Trefry, 51 N.E.3D 502 (Mass. App. Ct. 2016)

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**CRIMINAL LAW—*MUST LOVE DOGS*: ZACH AND
KENJI’S ESCAPE FROM CONFINEMENT AND
THE BROADER CONTEXT OF ANIMAL
CRUELTY—*COMMONWEALTH V. TREFRY*, 51
N.E.3D 502 (MASS. APP. CT. 2016)**

The policy interest in protecting animals from cruelty is historically evidenced by consistent expansion of criminal statutes created with the goal of preventing animal abuse.¹ Massachusetts has followed this legislative trend by amending the scope of current laws to encapsulate different types of conduct with animals as cruelty.² In *Commonwealth v.*

¹ See MASS. ANN. LAWS ch. 272, § 77 (LexisNexis 2014) (defining conduct equating to animal cruelty). Applicable portions of the acts outline the following:

[W]hoever overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or kills an animal, or causes or procures an animal to be overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated or killed; and whoever uses in a cruel or inhuman manner in a race, game, or contest, or in training therefor, as lure or bait a live animal, except an animal if used as lure or bait in fishing; and whoever, having the charge or custody of an animal, either as owner or otherwise, inflicts unnecessary cruelty upon it, or unnecessarily fails to provide it with proper food, drink, shelter, sanitary environment, or protection from the weather, and whoever, as owner, possessor, or person having the charge or custody of an animal, cruelly drives or works it when unfit for labor, or willfully abandons it, or carries it or causes it to be carried in or upon a vehicle, or otherwise, in an unnecessarily cruel or inhuman manner or in a way and manner which might endanger the animal carried thereon, or knowingly and willfully authorizes or permits it to be subjected to unnecessary torture, suffering or cruelty of any kind shall be punished

Id. See also MASS. ANN. LAWS ch. 140, § 174E (LexisNexis 2016) (describing restricted methods of restraining dogs outside); MASS. ANN. LAWS ch. 140, § 152 (LexisNexis 2012) (outlining animal control officers’ duties toward individuals in violation of animal cruelty); MASS. ANN. LAWS ch. 272, § 89 (LexisNexis 2006) (authorizing animal control officers to enter without warrant onto property where animal fighting occurs). Situations falling under this law include “any place or building in which there is an exhibition of any fighting birds, dogs or other animals, preparations are being made for such an exhibition, or . . . animals are owned, possessed, kept, trained, bred, loaned, sold, exported or otherwise transferred in violation of section 94.” *Id.*; see also MASS. ANN. LAWS ch. 119, § 85 (LexisNexis 2004) (outlining procedure regarding duty to report animal cruelty, abuse, or neglect); *Commonwealth v. Tilton*, 49 Mass. 232, 234 (1844) (expanding scope of statute to include animal fighting).

² See *Commonwealth v. Curry*, 23 N.E. 212, 213 (Mass. 1890) (holding harnessing horse outside without food and shelter as cruelty); Wayne Pacelle, *Humane State Ranking 2015: Total Scores*, THE HUMANE SOC’Y OF THE U.S. (Jan. 8, 2016), <http://blog.humanesociety.org/wp->

Trefry,³ the Appeals Court of Massachusetts addressed the issue of whether outside confinement, or any type of confinement, is a necessary element to convict an individual of animal cruelty under Massachusetts law.⁴ After carefully interpreting the legislative intent and performing a textual analysis of the plain meaning of the statute, the court held that confinement was not a required element of section 174E; thus, the defendant's act of leaving her dogs in a condemned house was satisfactory to support a finding of animal cruelty.⁵

In August 2012, Leanne Trefry ("Trefry") moved into a nursing home because her house was condemned.⁶ Her two Shetland sheepdogs, Zach and Kenji, were purposefully left on the condemned property.⁷ The dogs were left with possible access to the interior of the condemned house and the connected fenced-in-yard.⁸ Numerous items were also left behind on the property that endangered the dogs' health and safety.⁹ Although Trefry visited the property periodically after the house was condemned, and received occasional assistance from her friends who did the same, the dogs were effectually isolated from human interaction.¹⁰

Animal control officers and Trefry's neighbors observed the deplorable conditions Zach and Kenji were continuously subjected to.¹¹ On July 25, 2013, Linda Brogden-Burns, an animal control officer who was

content/uploads/2016/01/CORRECTED-Total-Ranking-Scores-2015-FINAL.pdf (recognizing Massachusetts as top animal rights state).

³ 51 N.E.3d 502, 502 (Mass. App. Ct. 2016).

⁴ See *id.* at 507 (determining whether confinement is necessary element to constitute cruel conditions).

⁵ See *id.* at 507-08 (finding defendant's home cluttered with trash, feces, and open container of knives was dangerous).

⁶ See *id.* at 503-04 (explaining how home owner was removed from home and how house was condemned).

⁷ See *id.* at 503 (explaining intentional abandonment of both dogs).

⁸ See *Commonwealth v. Trefry*, 51 N.E.3d 502, 503 (Mass. App. Ct. 2016) (denoting layout of condemned house).

⁹ See *id.* (explaining dogs were around dog feces, trash, open containers, and knives).

¹⁰ See *id.* (describing human conduct on premises).

¹¹ See *id.* (detailing house filled with trash, odors of trash inside house, and dog feces outside house). Furthermore, animal control officer Linda Brogden-Burns noticed that:

[The] house was overgrown on the outside and so cluttered with boxes, books, and clothing on the inside that it was difficult to walk. A box in the house had both an open container of old dog food and knives . . . the yard was overgrown and that there were metal parts, old lawn equipment, stools, and stacks of chairs by the back door. There was stagnant water in bowls. [The officer] was specifically concerned about items in the yard that posed a danger to the animals, including wires, shovels, and other items that could fall on or otherwise hurt them.

Id. at 507.

working with Trefry, observed Kenji limping badly while appearing to be in pain.¹² The officer intervened and Kenji was subsequently taken to a veterinarian; three days later both dogs were effectively removed from the abandoned property.¹³ Trefry was convicted in the District Court of two counts of animal cruelty, violating Massachusetts state law.¹⁴ Arguing the statute was inapplicable because there was no evidence her dogs were confined to the outdoors, Trefry claimed outside confinement is an element required for conviction under the statute.¹⁵ The District Court, however, found Trefry's contention without adequate support.¹⁶ Appealing the

¹² See *id.* at 507 (observing that Kenji suffered from Lyme disease with leg and shoulder injuries).

¹³ See *Trefry*, 51 N.E.3d at 507 (finding that dogs' fur was incredibly infested with ticks and hair matted).

¹⁴ See MASS. ANN. LAW ch. 140, § 174E(f) (2016) (protecting dogs from cruel conditions, inhumane chaining, or tethering); *Trefry*, 51 N.E.3d at 507 (holding defendant guilty of animal cruelty under Act).

¹⁵ See *Trefry*, 51 N.E.3d at 507 (arguing confinement outside was necessary element). But see MASS. ANN. LAWS ch. 140, § 174E(f) (2016) (providing definitions of "chain" and "tether"). The statute states:

[N]o person owning or keeping a dog shall subject the dog to cruel conditions or inhumane chaining or the tethering at any time. For the purposes of this subsection, "cruel conditions and inhumane chaining or tethering" shall include, but not be limited to, the following conditions:

- (1) filthy and dirty confinement conditions including, but not limited to, exposure to excessive animal waste, garbage, dirty water, noxious odors, dangerous objects that could injure or kill a dog upon contact or other circumstances that could cause harm to a dog's physical or emotional health;
- (2) taunting, prodding, hitting, harassing, threatening or otherwise harming a tethered or confined dog; and
- (3) subjecting a dog to dangerous conditions, including attacks by other animals.

Id.

¹⁶ See *Trefry*, 51 N.E.3d at 504 (finding plain meaning of statute does not support defendant's narrow interpretation); *Commonwealth v. Gopaul*, 20 N.E.3d 621, 624 (Mass. App. Ct. 2014) (citations omitted) (indicating in "all matters of statutory interpretation, [courts] look first to the plain meaning of the statutory language"). See also *Arthur D. Little, Inc. v. Comm'r of Health & Hosps.*, 481 N.E.2d 441, 446 (Mass. 1985) (stating specific language exclusively appearing in one section should not be implied elsewhere); *Commonwealth v. Millican*, 867 N.E.2d 725, 728 (Mass. 2007) (declaring no interpretation of statute should determine words superfluous); *Commonwealth v. Erickson*, 905 N.E.2d 127, 131-32 (Mass. App. Ct. 2009) (noting "heightened mental state of 'knowing' and 'willful' conduct was included by Legislature . . ."); *Commonwealth v. Belanger*, 565 N.E.2d 811, 812 (Mass. App. Ct. 1991) (explaining statutes that punish on basis of social concern). The *Belanger* court explained:

[W]hen statutes impose punishment out of considerations of public policy, lack of knowledge of the law or of the fact that the law has been violated does not exonerate the person who may have unwittingly violated the statute. . . . Transgressions of that sort of statute have been described as "public welfare" or "strict liability" offenses.

District Court's finding, Trefry sought review by the Massachusetts Appeals Court.¹⁷

An Act Further Regulating Municipal Animal Control has been in effect since October 31, 2012 in Massachusetts.¹⁸ Statutes focusing on the prevention of "intentional and neglectful animal cruelty" have been created.¹⁹ Under the statute, acts including torture, overworking, and mutilation constitute animal cruelty.²⁰ Certain animal cruelty statutes are more expansive, making it a crime for the owner of an animal to "unnecessarily fail to provide it with proper food, drink, shelter, sanitary environment, or protection from weather."²¹ The 2012 Act was an expansive measure to protect all animals, but, specifically, it protects dogs.²² In addition, the Act defined the duration and conditions to appropriately restrain a dog outside and provided provisions which updated crucial animal protection laws.²³

565 N.E.2d at 812 (citations omitted).

¹⁷ See *Trefry*, 51 N.E.3d at 504 (discussing alleged error in District Court's analysis).

¹⁸ See *An Act Further Regulating Municipal Animal Control*, 2012 MASS. ACTS ch. 193, § 48 (S.B. 2192) (codified at MASS. GEN. LAWS ch. 140, § 174E (2012)); *Trefry*, 51 N.E.3d at 506 (stating Act was recently enacted).

¹⁹ See *Commonwealth v. Duncan*, 7 N.E.3d 469, 473-74 (Mass. 2014) (focusing on preventing cruelty to animals); MASS. ANN. LAWS ch. 272, § 77 (LexisNexis 2014) (outlining conduct constituting animal cruelty); see also MASS. ANN. LAWS ch. 140, § 152 (LexisNexis 2012) (outlining duties of animal control officers regarding individuals violating animal cruelty laws); MASS. ANN. LAWS ch. 272, § 89 (LexisNexis 2006) (governing animal control officers' authorization to enter without warrant); MASS. ANN. LAWS ch. 119, § 85 (LexisNexis 2004) (outlining animal cruelty reporting procedure).

²⁰ See MASS. ANN. LAWS ch. 272, § 77 (LexisNexis 2014) (outlining acts to evince animal cruelty); *Duncan*, 7 N.E.3d at 474-75 (reiterating different acts classifiable as animal cruelty).

²¹ MASS. ANN. LAWS ch. 272, § 77 (LexisNexis through 2017 Legis. Sess.) (outlining multiple acts able to prove cruelty to animals); MASS. ANN. LAWS ch. 272, § 82 (LexisNexis through 2017 Legis. Sess.) (discussing procedures for arresting individuals for animal cruelty); MASS. ANN. LAWS ch. 129, § 9 (LexisNexis 1987) (defining duties and powers of Massachusetts animal organization agents). The statute states agents may:

[V]isit all places at which neat cattle, horses, mules, sheep, swine or other animals are delivered for transportation or are slaughtered, any pet shop where animals, birds, fish or reptiles are sold, or exhibited, or for sale, any guard dog business, any hearing dog business and any stable where horses are kept for hire or boarded for a fee, or any licensed kennel where animals are boarded for a fee or any animal dealer licensed with the United States Department of Agriculture, for the purpose of preventing violations of any law and of detecting and punishing the same and such agents shall have the power to prosecute any such violation coming to their notice.

ch. 129, § 9; MASS. ANN. LAWS ch. 119, § 85 2004) (outlining (reporting procedure for animal cruelty, abuse, and neglect).

²² See Laura Hagen, *Legislative Review: 2012 State Legislative Review*, 19 ANIMAL L. 497, 532 (2013) (stating Act created critical changes in outdated animal laws including statewide spray and neuter program).

²³ See MASS. ANN. LAWS ch. 140, § 174E(a) (2012) (requiring dogs confined outside to be provided with clean water and appropriate shelter). Subsection (a) of the statute asserts:

Further, the 2012 Act expanded animal control laws by making critical changes in outdated regulations to prohibit animal cruelty.²⁴ The legislation's goal was furthered by its inclusion of animal control officer training.²⁵ The animal-control training provisions, in particular, provide a foundation for the 2012 Act.²⁶ The Act includes the requirement that animal control officers receive formal training since they are the first respondents to situations involving animal cruelty.²⁷ The animal protection law is more effectively enforced if better animal control officer training is provided.²⁸

(a) No person owning or keeping a dog shall chain or tether a dog for longer than 5 hours in a 24 hour period or outside from 10:00 p.m. to 6:00 a.m., unless the tethering is for not more than 15 minutes and the dog is not left unattended by the owner, guardian or keeper. A tethering employed shall not allow the dog to leave the owner's, guardian's or keeper's property. The tether shall be designed for dogs and no logging chains or other lines or devices not designed for tethering dogs shall be used. No chain or tether shall weigh more than ¼ of the dog's body weight. Nothing in this section shall be construed to prohibit a person from walking a dog on a hand-held leash. No dog under the age of 6 months shall be tethered outside for any length of time.

Id. Further, the act provides examples of appropriate confinement and conditions necessary for where a dog may live. *Id.* at § 174E(b).

²⁴ See Hagen, *supra* note 22, at 531-32 (adding measures to modernize animal control laws to help further prevent animal cruelty). Hagen declares the following:

[A]fter many years of hard work, An Act Relative to Animal Control finally passed in 2012 with critical changes essential to strengthening outdated animal control laws The legislation aims to protect animals and prevent acts of animal cruelty through improved animal control officer training, stricter euthanasia regulations, breed-neutrality in regards to 'dangerous dogs' and standardized holding time for stray animals, which will save municipalities money and allow for these animals to find new and loving homes more quickly[.]

Id. at 532 (quoting Senator Patricia Jehlen).

²⁵ See *id.* (explaining that updating animal control training was necessary element increasing success of statute).

²⁶ See *id.* at 532-33 (denoting a focused emphasis on updated animal control).

²⁷ See 2012 MASS. ACTS ch. 193, §§ 21, 51 (codified as MASS. ANN. LAWS ch. 140, § 151C (2012) (characterizing training of animal control officers as top legislative priority).

²⁸ See Hagen, *supra* note 22, at 533 (stating lack of training becomes real problem). Hagen stresses:

[A]COs [animal control officers] are first-responders to situations involving domestic animals, wildlife and, sometimes, exotic animals. ACOs address dangerous dogs, animal cruelty, and other threats to public health and safety. As such, it is critical that they understand and enforce state laws protecting people and animals. The problem . . . is that animal-protection laws – despite their strength – can be ineffectual without on-the-ground enforcement.

Id.

Additionally, the Act helps to regulate human interaction with animals by prohibiting certain means of putting animals to death and animal use in scientific experiments.²⁹ Moreover, as part of the Act, the legislature allows judges to consider the welfare of household pets when issuing protective orders.³⁰ Thus, judges are granted the authority to “make a finding based on the totality of the circumstances” in their determination of whether a threat existed against a pet.³¹ The continuous broadening of laws, such as the law implemented in 2012, reflect the constant push for inclusion of human treatment of animals in public policy and serves as the legal foundation for addressing animal cruelty cases.³²

In *Trefry*, the Massachusetts Appeals Court affirmed the lower court’s finding that Trefry violated Mass. Gen. Laws. ch. 140 §174E(f).³³ The court concluded that subjecting a dog to cruel conditions is enough to convict under the statute.³⁴ Moreover, the court rejected the defendant’s argument that “outside confinement or confinement in general is an element” needed to convict under the statute.³⁵ The court held that reading the statute to indicate confinement as a necessary element to convict, would ignore subsection (f).³⁶

²⁹ See MASS. ANN. LAWS ch. 140, § 174E (LexisNexis 2016) (permitting euthanasia only by barbiturates in manner deemed acceptable).

³⁰ See *Commonwealth v. Duncan*, 7 N.E.3d 471, 474-75 (Mass. 2014) (allowing judicial discretion when developing individual threshold for establishing animal cruelty cases).

³¹ *Id.* at 474. See MASS. ANN. LAWS. ch. 209A, § 11 (LexisNexis 2012) (delineating criteria for finding imminent threat or bodily injury to domesticated animal).

³² See *Commonwealth v. Yee*, 281 N.E.2d 248, 252 (Mass. 1972) (stating public policy is basic source of law when no previous authority is applicable).

³³ See *Commonwealth v. Trefry*, 51 N.E.3d 502, 507-08 (Mass. App. Ct. 2016) (affirming district court’s decision).

³⁴ See *id.* at 507 (explaining appropriate inferences drawn from applicable evidence). “The evidence was more than sufficient to establish that the dogs were subjected to ‘dangerous conditions’ in violation of § 174E(f)(3).” *Id.*

³⁵ See *id.* at 503 (rejecting defendant’s argument). The court goes on to explain:

[T]he plain meaning of the statute does not support the defendant’s narrow reading that outside confinement or, indeed, confinement in general, is an element of the subjecting of dogs to cruel conditions that is prohibited by this subsection. “[F]ilthy and dirty confinement” under § 174E(f)(1) is but one example of the kind of cruel conditions that are prohibited.

Id. at 504 (citations omitted).

³⁶ See *id.* at 504-05 (emphasizing intent behind statute’s enactment is to protect dogs). The court explains the statute’s intent by detailing:

[T]he switch from the disjunctive to a combination of the conjunctive and the disjunctive in the preamble to the nonexhaustive list does not alter [the] analysis, as it merely reflects § 174E’s consistent equation of “chaining” and “tethering.” In effect, then, the Legislature is simply providing examples of situations that are violative of the statute as either cruel conditions or inhumane tethering or chaining, a list that includes

Consequently, the court examined Mass. Gen. Law. ch. 140, §174E, as a whole, to identify any ambiguity within the confinement prohibitions.³⁷ The court suggested that the animal cruelty statute's scope is not limited.³⁸ Therefore, the statute not only regulates the conditions to which an animal can be confined, but its overlapping statutory coverage subjects dog owners to a variety of possible violations.³⁹ Furthermore, dogs do not have to be confined for the statute's protection to be implicated.⁴⁰ Thus, the evidence provided at trial was enough to establish that Trefry's two dogs were subjected to dangerous conditions in violation of section 174E(f) because the statute generally does not require confinement.⁴¹

examples where dogs are confined (§ 174E[f][1] and [2]), and examples where they are not (§ 174E[f][3]).

Id. at 504 (citations omitted); *see generally* MASS. ANN. LAWS ch. 140, § 174E(a) (LexisNexis 2016) (referring to "chain or tether"); MASS. ANN. LAWS ch. 140, § 174E(f) (referring to "tethered or confined").

³⁷ *See Trefry*, 51 N.E.3d at 504-05 ("[R]eading § 174E as a whole suggests that subsection (f) is indeed different from the preceding subsections and that subsection (e), which sets out an exception 'to the above restrictions on outdoor confinement,' is the dividing line between subsections devoted to outdoor confinement and one addressed more generally to the conditions in which dogs are kept.").

³⁸ *See id.* at 505 (discussing statutory limitation of dog confinement that is unsupported by broad statute).

³⁹ *See id.* ("We are also unpersuaded by the defendant's argument that taking the words of the statute at their plain meaning brings G.L. c.140, § 174E(f), into conflict with the overlapping coverage of the animal cruelty statute . . . inflicting unnecessary cruelty on the animal, unnecessarily failing to provide the animal with a proper sanitary environment, willfully [sic] abandoning the animal, or knowingly and willfully [sic] authorizing or permitting the animal to be subjected to unnecessary suffering or cruelty of any kind."). Furthermore, the court discusses the necessary intent required for a violation of the statute: "no mental state is explicitly required under subsection (f)." *Id.* at 506; *see also* Commonwealth v. Erickson, 905 N.E.2d 127, 131-32 (Mass. App. Ct. 2009) (noting "heightened mental state of 'knowing' and 'willful' conduct was included by the Legislature"); Commonwealth v. Belanger, 565 N.E.2d 811, 812 (Mass. App. Ct. 1991) ("When statutes impose punishment out of considerations of public policy, lack of knowledge of the law or of the fact that the law has been violated does not exonerate the person who may have unwittingly violated the statute. . . . Transgressions of that sort of statute have been described as 'public welfare' or 'strict liability' offenses.") (citations omitted).

⁴⁰ *See Trefry*, 51 N.E.3d at 505 (arguing requirement illogical where dogs' safety is imperiled, even if space is not confining).

⁴¹ *See id.* at 505-07 (explaining if confinement was element of statute, Trefry is still violating statute) The court states:

[W]hile the dogs could move in and out of the condemned house by means of a broken latch on the back door, the dogs were in fact confined to the defendant's house and fenced-in yard. There was overwhelming evidence that the area to which the dogs were confined . . . constitute[d] "filthy and dirty" conditions. Retired Brewster police Sergeant Steven Freiner testified that, as of April, 2013, there was a large amount of debris and trash inside and outside the house as well as a foul smell of trash coming from inside the house. Allen Borgal, a lieutenant with the Animal Rescue League of Boston and director of the Center for Animal Protection, reported that the yard was

When analyzing the facts in *Trefry*, the court adhered to the necessary steps when discussing the statutory interpretation of the word “confinement” under section 174E of the statute.⁴² The court used the rule in *Commonwealth v. Gopaul*⁴³ to discuss the significance of the words used under section 174E.⁴⁴ The court first addressed the use of the words “filthy and dirty confinement” under section 174E(f)(1), stating that it is “one example of the kind of cruel conditions that is prohibited under the statute.”⁴⁵ Furthermore, subsection (f)(3)’s prohibition against subjecting dogs to dangerous conditions is made, in contrast to subsection (f)(1) and (f)(2), without any reference to confinement or tethering.⁴⁶ The legislature’s continued switch from using the term “chaining” or “tethering” in one section, and not in another, is an example of the legislature demonstrating how an individual can violate the statute.⁴⁷ Thus, reading the statute as a whole supports the court’s conclusion that the defendant violated the statute.⁴⁸

overgrown, that no dog feces had been picked up, and that the yard consequently smelled like dog feces when he visited the property in July, 2013.

Id. at 507-08.

⁴² See MASS. ANN. LAWS. ch. 140, § 174E (LexisNexis 2016) (discussing chaining and tethering when confining animals under statute); *Trefry*, 51 N.E.3d at 504-07 (stating court’s analysis in finding that defendant was in violation of law).

⁴³ 20 N.E.3d 621, 623 (Mass. App. Ct. 2014) (indicating that in matters of statutory interpretation, courts look at plain meaning of statutory language). “[W]here the language of the statute is plain and unambiguous, it is conclusive as to legislative intent.” *Id.* (quoting *Thurdin v. SEI Boston, LLC*, 895 N.E.2d 446, 452 (Mass. 2008)).

⁴⁴ See MASS. ANN. LAWS. ch. 140, § 174E(f) (LexisNexis 2016) (stating mode of restraint).

⁴⁵ *Trefry*, 51 N.E.3d at 507-08 (interpreting the words “filthy” and “dirty” in context of confinement).

⁴⁶ See *id.* (arguing that subjecting dog to cruel conditions is sufficient to establish liability). The court states that if cruel conditions are not enough to establish liability in the absence of some act of chaining or tethering, “then such an interpretation would render impermissibly superfluous the inclusion of ‘confinement’ in § 174E(f)(1) and ‘tethered or confined’ in § 174E(f)(2).” *Id.* at 504. See also *Arthur D. Little, Inc. v. Comm’r of Health & Hosp.*, 481 N.E.2d 441, 446 (Mass. 1985) (“[W]here the Legislature has employed specific language in one [portion of a statute], but not in another, the language should not be implied where it is not present.”) (quoting *Sch. Comm. of Brockton v. Teachers’ Ret. Bd.*, 471 N.E.2d 61, 65-66 (Mass. 1984)); *Commonwealth v. Millican*, 867 N.E.2d 725, 728 (Mass. 2007) (declaring no words in statute should be viewed as superfluous).

⁴⁷ See *Trefry*, 51 N.E.3d at 504 (arguing legislature provides examples of violative acts as cruel conditions or inhumane chaining or tethering). For example, under subsection (f)(1) and (f)(2) the legislature provides examples of where dogs are confined, while subsection (f)(3) does not. *Id.*; see also MASS. ANN. LAWS. ch. 140, § 174E(f) (LexisNexis 2016) (same).

⁴⁸ See *Trefry*, 51 N.E.3d at 504-05 (assessing elements of statute). The court explains how section 174E should be interpreted:

[I]n fact, reading § 174E as a whole suggests that subsection (f) is indeed different from the preceding subsections and that subsection (e), which sets out an exception “to the above restrictions on outdoor confinement,” is the dividing line between

Furthermore, under the analysis set forth in *Commonwealth v. Duncan*,⁴⁹ the defendant's contention – that a violation only occurs when dogs are kept exclusively outside – fails.⁵⁰ First, Mass. Gen. Laws ch. 140, § 174E is a new statute, and *Duncan* is one of the only cases that discusses the policy behind its enactment, protecting dogs specifically.⁵¹ The court in *Duncan* discusses not only the role of protecting dogs that are kept outside, but also emphasizes the broader policy of preventing cruelty to animals.⁵² Additionally, the court addressed the exposure dogs have to conditions that can “injure or kill [them]”⁵³ when a yard is ill-equipped – similar to Zack and Kenji's exposure to the defendant's yard.⁵⁴ The court is correct in its analysis that dogs do not have to be confined exclusively to the yard to trigger protection under the statute.⁵⁵

Moreover, the court in *Trefry* discussed the conflict between the plain meaning of the statute and the overlapping coverage of the animal

subsections devoted to outdoor confinement and one addressed more generally to the conditions in which dogs are kept.

Id.

⁴⁹ 7 N.E.3d 469 (Mass. 2014).

⁵⁰ See *id.* at 473-74 (promoting public policy to help animals).

⁵¹ See *id.* (highlighting need to protect dogs). The court observed that in enacting MASS. GEN. LAWS ch. 140, § 174E, “the Legislature took steps to protect dogs in particular, by prescribing the duration and conditions under which they may be restrained outside” and noted that the statute requires, among other necessities, “that dogs confined outside be provided with clean water and appropriate shelter.” *Id.*

⁵² See *id.* at 474 (listing numerous instances where policies regulating human interaction with animals will be upheld). The *Duncan* court explains, “[a] web of other statutes also regulates human interaction with animals, for example, by prohibiting certain means of putting animals to death; imposing restrictions on railroad corporations that transport animals; and restricting the use of animals in scientific experimentation.” *Id.* (citing MASS. GEN. LAWS ch. 272, §§ 80E, 80G, 81). The *Duncan* court also focuses on the 2012 Act by stipulating that the “Legislature authorize[s] judges to consider the welfare of household pets when issuing protective orders; judges ‘may make a finding, based upon the totality of the circumstances, as to whether there exists an imminent threat of bodily injury to’ a pet . . .” *Duncan*, 7 N.E.3d at 474 (quoting MASS. GEN. LAWS ch. 209A, § 11 (2012)).

⁵³ *Duncan*, 7 N.E.3d at 474 (citing MASS. GEN. LAWS ch. 140, § 174E(f)(1) (2012)).

⁵⁴ See *Commonwealth v. Trefry*, 51 N.E.3d 502, 507 (Mass. App. Ct. 2016) (holding defendant's home cluttered with trash, feces, and open container of knives posed risk).

⁵⁵ See *id.* at 505-06 (arguing confinement exclusively to a yard would ignore the policy and purpose behind the statute). The court argues that the *Duncan* court:

[D]id not state that the dogs had to be confined to those yards in order to trigger the statute's protection, nor would it be sensible to impose such a requirement where the safety of dogs is imperiled even by an ill-equipped yard to which they have access but in which they are not confined. The defendant's conviction here is fully consistent with the court's citation to subsection (f) and the dangers faced by dogs in “ill-equipped yards.”

Id. at 505. See also *Duncan*, 7 N.E.3d at 474 (discussing the broader context of § 174E).

cruelty statute.⁵⁶ The court argued that the plain language of Mass. Gen. Laws ch. 140, § 174E is not limited to specific conditions; therefore, there is no disharmony or inconsistency that automatically arises from the overlapping coverage of Mass. Gen. Laws ch. 272, § 77.⁵⁷ The statutes work together to protect dogs from the intentional and neglectful conduct of their owners or custodians.⁵⁸ Thus, the court continuously invokes the policy and purpose of the statute's enactment and correctly concludes that the defendant was in violation of the law.⁵⁹

In *Trefry*, the court analyzed discussed the issue of whether confinement is a necessary element in violation of section 174E(f) of the Act. The court concluded correctly that it is not a necessary element of the Act, but rather, an example of how one can be in violation of animal

⁵⁶ See *Trefry*, 51 N.E.3d at 506 (finding no disharmony or inconsistency regarding plain meaning of statute coverage provided under statute). The court clarifies this contention by holding that there is “no disharmony or inconsistency [that] automatically arises from overlapping statutory coverage, especially where one statute establishes a felony and another establishes a misdemeanor.” *Id.*

⁵⁷ See MASS. ANN. LAWS ch. 140, § 174E (LexisNexis 2016) (stating no express requirement for dogs to be chained or tethered outside). Rather, the statute provides a list of examples of how animals can be chained or tethered outside. See MASS. ANN. LAWS ch. 140, § 174E (b). See also MASS. ANN. LAWS ch. 272, § 77 (LexisNexis 2014) (prohibiting those who have charge or custody of animal from inflicting unnecessary cruelty on animal). Section 77 of chapter 272 provides examples of cruelty towards animals: unnecessarily failing to provide animals with a proper sanitary environment, willfully abandoning animals, or knowingly and willfully authorizing or permitting animals to be subjected to unnecessary suffering or cruelty of any kind. *Id.*; see also *Trefry*, 51 N.E.3d at 505-06 (“[E]ven defendant’s reading of statute were accepted it would not eliminate her claimed overlap with the animal cruelty statute, as overlap would remain with respect to those cases where a confined or tethered dog is subjected to conditions that would violate both G.L. c. 140, § 174E(f), and G.L. c. 272, § 77”).

⁵⁸ See *Duncan*, 51 N.E.3d at 473 (“Our statutes evince a focus on the prevention of both intentional and neglectful animal cruelty.”); *Commonwealth v. Erickson*, 905 N.E.2d 127, 131 (Mass. 2004) (discussing mental state included in portions of statute). See also Hagen, *supra* note 22, at 532 (discussing purpose of amending animal control statutes). As Senator Patricia Jehlen, stated:

[A]fter many years of hard work, An Act Relative to Animal Control finally passed in 2012 with critical changes essential to strengthening outdated animal control laws The legislation aims to protect animals and prevent acts of animal cruelty through improved animal control officer training, stricter euthanasia regulations, breed-neutrality in regards to ‘dangerous dogs’ and standardized holding time for stray animals, which will save municipalities money and allow for these animals to find new and loving homes more quickly[.]

Hagen, *supra* note 22, at 532 (citing e-mail from Sara Doherty, Commc’n Dir., Off. of Sen. Patricia Jehlen, to Laura Hagen, Author, ANIMAL L. (Feb. 5, 2013) (on file with ANIMAL L.)).

⁵⁹ See MASS. ANN. LAWS ch. 140, § 174E (LexisNexis 2016) (stating examples, but providing no requirement, of how dogs can be chained or tethered outside); MASS. ANN. LAWS ch. 272, § 77 (LexisNexis 2014) (prohibiting those who have charge or custody of animal from inflicting unnecessary cruelty on animal); see also sources cited *supra* note 57 and accompanying text (explaining prohibition of inflicting unnecessary cruelty or suffering on animals).

cruelty. Defendant Trefry was in violation of the law because she purposefully left her dogs on a condemned property. The animal control officer was only fulfilling her duty as an agent in protecting animals from inhumane conditions. The dogs were left in an environment in which they were susceptible to many dangers, which resulted in one contracting Lyme disease. Although this was an issue of first impression, the court followed the necessary steps in analyzing the statutory language, and taking into consideration the purpose of the statute. Consequently, the court was correct in its conclusion to affirm the lower court's decision to convict the defendant for her cruel treatment of her dogs.

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