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Commonwealth v. Toms

Commonwealth of Pennsylvania v. Joanna Toms, Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Summary Appeal No. SA-81-2013

HEADNOTES

Statutory Interpretation: Meaning of Words or Phrases

1. In interpreting a statute, a court must give effect to the General Assembly's intent. 1 Pa. C.S. § 1921.
2. A court must apply the rules of grammar and the common approved meaning when interpreting words and phrases in a statute. 1 Pa. C.S. § 1903.
3. A court should apply the common and approved usage of words as they existed at the time that the General Assembly passed the statute at issue.

Criminal Law: Cruelty to Animals: Mens Rea

1. A person who wantonly or cruelly overloads, beats, otherwise abuses any animal, or neglects any animal to which a duty of care is owed, regardless of ownership; abandons any animal; or deprives any animal of necessary sustenance, drink, shelter or veterinary care, or access to clean and sanitary shelter which will protect the animal against inclement weather and preserve the animal's body heat and keep it dry is guilty of cruelty to animals. 18 Pa. C.S. § 5511(c)(1).
2. "Wantonly or cruelly" modifies all of the cruelty-to-animals statute's act requirements.
3. To convict a defendant of cruelty to animals the Commonwealth must prove that the defendant's acts were done wantonly or cruelly.

Criminal Law: Cruelty to Animals: Mens Rea

1. "Wanton" as used in the cruelty-to-animals statute means recklessness. 18 Pa. C.S. § 5511(c)(1).
2. "Cruel" as used in the cruelty-to-animals statutes means intentional or malicious. 18 Pa. C.S. § 5511(c)(1).

Criminal Law: Cruelty to Animals: Sufficiency of Evidence

1. Sufficient evidence showed that defendant wantonly or cruelly neglected, or deprived access to clean and sanitary shelter, 19 adult Rottweiler dogs under her care where evidence showed that the dogs lived in a small house and fenced-in yard; house and yard reeked of feces and urine; dogs lived in deplorable and dirty conditions; dogs were scared, dirty, and covered with feces; and defendant ignored various offers to help with caring for dogs.
2. Evidence was insufficient to show that defendant wantonly or cruelly neglected to care for 8 dead Rottweiler puppies where Commonwealth was unable to connect the puppies' deaths to any of the defendant's actions or inactions.

Appearances

Steven T. Smith, Attorney for the Commonwealth

Gregory H. Knight, Attorney for the Defendant

OPINION AND ORDER

Before Walker, S.J.

MEMORANDUM OPINION

A magisterial district judge convicted the Defendant, Joanna Toms, of 27 counts of cruelty to animals,¹ and she appealed to this Court. The issue before the Court is the state of mind that applies to the citations that Toms neglected or deprived of clean and sanitary shelter the 19 live Rottweiler dogs under her care along with 8 dead Rottweiler puppies. The Court rules that the Commonwealth must prove that Toms “wantonly or cruelly” neglected her dogs or deprived them of clean and sanitary shelter. In other words, Toms is guilty only if she consciously disregarded a substantial risk that neglect or deprivation resulted would result from her conduct. The Commonwealth has met that standard beyond a reasonable doubt for the live dogs, but not for the dead puppies. Consequently, I find the Defendant guilty of 19 and not guilty of 8 counts of cruelty to animals.

BACKGROUND

On March 11, 2013, humane society police officers removed 18 adult Rottweiler dogs from Toms’ residence in Waynesboro. A 19th dog running at large in the Borough had already been captured. The humane society police officers also discovered the carcasses of eight Rottweiler puppies inside an outdoor freezer. The March 11 seizure was the culmination of an investigation into Toms’ alleged animal neglect.

On January 15, 2013 Georgia Martin, a state dog warden investigating Toms for an illegal kennel,² noticed multiple “Rottweiler-type” kennels in Toms’ fenced-in yard. She also observed “deplorable” conditions: piles of feces, trash, and debris strewn throughout the yard.

About a month later, Jeff Bliss, a humane police officer³ with Better Days Animal League, visited Toms after receiving a complaint of animal neglect. Upon arriving at the home, Bliss noticed an adult Rottweiler tethered to the front porch inside an enclosure. The air reeked of urine and feces. The backyard contained multiple kennel structures and multiple, partially-assembled kennels. The ground was littered with debris. Bliss estimated that about 50 piles of dog feces were in the backyard. The dogs were barking loudly. Toms came outside of the home, and said to the dogs, “do you want Mama to get the hot?” Bliss observed that the dogs then ceased barking.

Bliss spoke with Toms, whom he described as “disheveled,” with dog feces throughout her hair and on her clothes and hands. Toms requested the identification of complainant, which Bliss explained was confidential. She then said something vulgar regarding Officer Martin, and mentioned that she had powerful friends. Toms apologized for the smell, claiming that she’d run out of OdoBan, and said she was cleaning and trying to fix up the property. Bliss took photographs of the outside of the house. The photos are low-quality, which Bliss attributed to the fact that Better Days is a nonprofit and lacked funds for a better camera. Bliss did not go inside the home, as he lacked a warrant or permission. In Bliss’ opinion, the conditions at Toms’ house indicated long-term neglect.

On March 8, 2013, another humane police officer, Dennis Bumbaugh, visited Toms to follow up on Bliss’ visit and to respond to multiple complaints about Toms’ dogs. He talked in detail with Toms for an hour and a half, who said that she had marital problems and a hand injury. Toms was in the process of cleaning up the yard and had partially spread a dump-truck load of gravel in the yard. Nevertheless, conditions at the home were still horrible. Bumbaugh offered Toms assistance, but she declined. Toms said that she had other placement agencies working with her, and that Better Days and the Antietam Humane Society were not acceptable to her for placing the dogs. Bumbaugh believed—like Bliss before him—that the conditions at Toms’ house evinced long-term neglect.

The next day, Toms attempted suicide by ingesting a large amount of pills while on the phone with her estranged husband, Gary. She was taken to the emergency room. At the direction of medical personnel, Gary, went to the property to get her medications. He reported deplorable conditions inside the home—feces “everywhere,” the pungent stench of urine, and dogs tethered to various fixtures throughout the interior. Gary tried to feed the dogs, but claimed that one tied to the kitchen sink bit him. He called the Antietam Humane Society for help, but they could not immediately respond because it was the weekend.

On Sunday March 10, the Waynesboro police department delivered one of the adult dogs to the Humane Society, as the dog had been running loose in the Borough.

The next business day, Monday March 11, members of the Humane Society; Waynesboro police officers; Gary; and his mother, Patty Fraley, gained access to the home. Gary (the sole owner) consented to their entry and signed over the dogs. Dennis Bumbaugh was one of the officers who removed the dogs. He testified that one dog was inside an enclosed area near the front door. The officers had trouble restraining the dog. Inside the home, another

¹ 18 Pa. C.S. § 5511(c)(1).

² Along with the cruelty-to-animals charges, Toms was originally cited for running an illegal kennel in violation of the Dog Law, 3 P.S. § 459-207(a.1)(1), at docket number MJ-39302-NT-277-2013. The citation was withdrawn for an obvious reason: under the Dog Law, a “kennel” is defined as a place that boards 26 or more dogs during a calendar year, or a place open to the public that boards dogs for compensation. 3 P.S. § 459-102.

³ Bliss is now a state dog warden.

dog was tethered to the stair railing in the living room, and another to the couch. One dog was in a crate in the living room. All of the dogs were dirty and had feces matted in their fur. One dog was so emaciated that it needed veterinary care.

The home smelled strongly of ammonia, and feces was spread throughout the home. Fraley described the home as an unlivable hoarder's den. It was impossible to cook, clean, or watch television. A fine brown dust covered everything and the air inside was stale and stagnant. The windows were shut, and the air vents were matted shut with dog hair.

In an outdoor freezer, Bumbaugh discovered the eight dead Rottweiler pups. Although not a veterinarian, he said that the puppies appeared healthy and not malnourished. One puppy had milk in its mouth and running down its belly. The carcasses were wrapped in bags, towels, or pillowcases.

Andrea Haugh, the director of Antietam Humane Society, entered the home after the dogs were safely removed. She observed the 18 dogs being removed from the home. All of the dogs needed to be cleaned, but the dogs extricated from inside the home were dirtier than the ones taken from the yard. In the yard, Haugh noticed trash and debris everywhere near the kennels. The backyard had 30 to 40 piles of dog feces in it. According to Haugh, the inside of the home was a mess. It smelled overwhelmingly of urine and feces. Trash was everywhere, and clothing was in disarray. The steps to the basement were covered in so much feces that they were difficult to use. And inside the basement, Haugh found several dog crates which were too small for adult Rottweiler dogs. In all, Haugh said she has performed 50 to 100 investigations of animal cruelty. She believed that the conditions inside Toms' home indicated neglect.

Tom's neighbor, Brian Dickinson and his son, Teddy, testified on her behalf. Brian said that the Commonwealth's witnesses reported a "fantasy" world, that he had no problem with Toms' dogs, and that the inside of the home was not feces-strewn as had been reported. On cross-examination, however, Brian appeared confused regarding the last time before March 11 when he had been inside Toms' home.

Teddy Dickinson claimed that he had been helping to clean up interior and exterior of Toms' home. He said that he was in the home two times per week from January 2013 to mid-March 2013, and that he worked half-days to help to clean the inside. Teddy did not explain how the home could have been as disgustingly dirty as shown by the Commonwealth's photographs if he actually worked as much as he said he did. He also said that Toms' home did not smell of urine or feces. Teddy admitted that he has trouble remembering dates.

In her own words, Toms is a "dog whacko." She said that she rehabilitates and rescues Rottweiler dogs, and that she has "much respect" for the breed. She claimed to be good at caring for dogs, and that she willingly gave dogs up for adoption to any reputable person or agency. She denied neglecting the dogs under her care.

When questioned about the dead puppies, Toms broke down on the stand. She claimed that they were from a litter of 14 birthed by a dog named "Sheeba" or "Shiva" in May of 2010. Toms claimed that the first six puppies were born normally. The next one was a breech birth. Toms claimed that she unsuccessfully tried to revive that puppy. She then administered oxytocin to induce labor, but the last seven puppies were born dead. Toms stored the carcasses in the freezer because she could not bury them and had no money to cremate them. Andrea Haugh contradicted Toms' testimony in one key respect. Haugh said that an adult female dog rescued on March 11, 2013 was lactating and looked to have recently given birth.

Toms did not explain her home's condition. Instead, she testified that all of the Commonwealth's witnesses were lying. She said that they have an agenda against her—even Andrea Haugh who had never met Toms before January of this year. When asked why the humane society police officers, a dog warden, and a humane society director would lie, Toms responded that it was a civil matter that she could not discuss. Toms provided no other support for her utterly delusional conspiracy theory.

Humane society officers cited Toms for 27 counts of cruelty to animals, graded as summary offenses. The district judge found her guilty on all counts, and she appealed to this Court. Because of the complexity of the case, the Court held trial on a special day. And because of confusion about the applicable state of mind, the Court requested letter briefs.⁴

⁴ The Parties waived the requirement that the Court immediately pronounce verdict and sentencing following trial. See Pa. R. Crim. P. 462(F).

DISCUSSION

The Parties agree on the relevant legal standard, though they differ as to whether the Commonwealth proved that Toms violated the statute. Both the Commonwealth and Toms argue in their letter briefs that to be guilty, Toms must have “wantonly or cruelly” neglected the dogs under her care. The Commonwealth, citing *Commonwealth v. Tomey*, 884 A.2d 291, 295 (Pa. Super. 2005), contends that the abhorrent conditions were so obvious that no reasonable person could have overlooked the consequences of those conditions. It argues that Toms’ conscious indifference to those repugnant conditions shows that her conduct was wanton and cruel.

Toms agrees that the standard is “wanton or cruel” but contends that she adequately cared for her dogs in the face of a recalcitrant husband until she was hospitalized in early March 2013. Toms argues that she is well-known for her care of Rottweilers, that she has never before been cited for animal cruelty or Dog Law violations, and that she loves dogs and would never hurt one. She contends that the evidence shows, through the testimony of her neighbors, that conditions in her home, though unsavory, were not as deplorable as described by the Commonwealth’s witnesses. She further argues that she adequately cared for her dogs until she was hospitalized on March 9, 2013. Toms implicitly argues that the deplorable conditions in her home when the dogs were extricated on March 11 resulted from her hospitalization three days prior.

A. The Commonwealth must prove that Toms “wantonly or cruelly” neglected the dogs or deprived them of clean and sanitary shelter

The Crimes Code criminalizes cruelty to animals as follows:

A person commits an offense if he *wantonly or cruelly* illtreats, overloads, beats, otherwise abuses any animal, or neglects any animal as to which he has a duty of care, whether belonging to himself or otherwise, or abandons any animal, or deprives any animal of necessary sustenance, drink, shelter or veterinary care, or access to clean and sanitary shelter which will protect the animal against inclement weather and preserve the animal’s body heat and keep it dry.

18 Pa. C.S. § 5511(c)(1) (emphasis added). In this case, Toms was cited for “neglect[ing] and/or depriv[ing]” the dogs of clean and sanitary shelter. The Parties agree, and the Court accepts that “wantonly or cruelly” modifies “neglect.”⁵ *Commonwealth v. Simpson*, 832 A.2d 496, 500 (Pa. Super. 2003). The Court rules that “wantonly or cruelly” also modifies “deprives any animal of . . . access to clean and sanitary shelter.” The *Tomey* court assumed, without discussion, that “wantonly or cruelly” also modifies the clause prohibiting deprivation. *Tomey*, 884 A.2d at 295. Therefore, the Commonwealth must prove wanton or cruel neglect or deprivation.

“Wantonly” and “cruelly” are not defined by statute, much to the chagrin of courts having to interpret and apply the law. *See Simpson*, 832 A.2d at 501 n.5. “Wantonly” and “cruelly” denote the *mentes reae* (states of mind) necessary to commit cruelty to animals. What is now § 5511(c)(1) was added to the Crimes Code in 1973, Act of Dec. 12, 1973 § 1, P.L. 387, but it merely recodifies Pennsylvania’s first law penalizing cruelty to animals, Act of Mar. 29, 1869 § 1, P.L. 22. The 1869 act read as follows:

That any person who shall, within this commonwealth, wantonly or cruelly ill-treat, overload, beat, or otherwise abuse any animal, whether belonging to himself or otherwise, . . . shall be deemed guilty of a misdemeanor.

Simpson, 832 A.2d at 499 (quoting Act of Mar. 29, 1869 § 1, P.L. 22); *see also Commonwealth v. Barr*, 25 Pa. D. 879, 879 (Quar. Sess. Lanc. 1916) (quoting the same).

Because § 5511(c)(1) uses 19th-century language to describe the acts that it prohibits, courts have struggled to define “wantonly” and “cruelly.” The *Simpson* court defined “cruelly” as “the intentional and malicious infliction of mental or physical suffering on a living creature, esp. a human.” *Simpson*, 832 A.2d at 499 n.4 (dicta) (quoting Black’s Law Dictionary 384 (7th ed. 1999)). The court defined “wantonly” as “unreasonably or maliciously risking harm while being utterly indifferent to the consequences.” *Id.* (dicta) (quoting Black’s Law Dictionary 1576 (7th ed. 1999)). The court also relied on a case interpreting the 1869 act stating that “the word ‘wantonly,’ . . . does not necessarily imply any active ill will or personal malice towards the animal abused, or its owner. As employed in the statute it is sufficient if the acts complained of were cruel and were done recklessly and without regard to consequences.” *Commonwealth v. Devenney*, 156 A. 83, 85 (Pa. Super. 1931). Other definitions of “wanton” and “wantonness,”

⁵ The Court is thankful for the Parties’ briefing. At the hearing, I had thought that “wantonly or cruelly” did not modify neglect, and that the Commonwealth needed to prove only criminal negligence.

both modern⁶ and contemporary to the 1869 law's enactment⁷ abound. In the 19th century, it appears that “wanton” and “wantonness” meant “recklessness,” though the words now mean “recklessness plus.” *Compare supra*, note 7, with *supra*, note 6. The General Assembly should amend § 5511(c)(1) to eliminate the ambiguity inherent in archaic words. In the absence of any more unequivocal direction, this Court must follow *Tomey* and chooses to rely on the dicta in *Simpson*. Thus, “wanton” means reckless conduct with utter disregard of the resulting consequences. *Tomey*, 884 A.2d at 295 (quoting *Lewis v. Miller*, 543 A.2d 590, 592 (Pa. Super. 1988)). Legal malice toward the animals allegedly neglected is not required. *Simpson*, 832 A.2d at 500 n.4. Nor is intent to injure. *Id.*

B. The Commonwealth has proved that Toms wantonly or cruelly neglected the 19 live Rottweiler dogs or deprived them of clean and sanitary shelter

After considering the evidence, the Court finds beyond a reasonable doubt that Toms' actions and inactions constituted wanton or cruel neglect or deprivation. The evidence of neglect is overwhelming. A clearer case of cruelty to animals would be hard to find.

Toms was harboring 19 Rottweiler dogs inside a small house and fenced in yard. The yard was strewn with piles of feces. Trash and other debris were strewn throughout the yard. These conditions existed for at least two months, and probably longer. Toms rebuffed several offers of help. One of the dogs was emaciated. Some were antisocially dangerous.⁸ All were dirty, scared, and covered in their own excrement.

After Toms was hospitalized and her husband and humane society police officers gained access to the home, they found a hoarder's den unfit for habitation by man or beast. The house's interior surfaces were covered in feces, the stench of urine was overwhelming, a fine brown dust covered everything, and the home lacked adequate ventilation. Dogs were chained to various fixtures throughout the home, and one had escaped and was running at large.

The conditions inside and outside the house clearly existed before Toms was hospitalized in early March, and they show long-term neglect of the dogs. Deplorable conditions existed in January when Georgia Martin visited Toms' residence. Deplorable conditions still existed in February when Jeff Bliss visited. Deplorable conditions existed on March 8—before Toms' hospitalization—when Dennis Bumbaugh visited. And the deprivation and filth inside the home discovered on March 11, 2013 did not accrue during the previous three days.

The Court acknowledges that the Dickinsons contradicted the Commonwealth's evidence, but I disregard their testimony. They were completely incredible. Brian Dickinson could not remember when he was last inside Toms' home. Although Teddy testified that he was inside Toms' home as recently as days before her hospitalization, he has trouble remembering dates. Also, either Teddy lied about the extent of his assistance to Toms, or he is the world's worst helper. There is no way that Toms' house should have been as dirty and disgusting as in the photographs if Teddy Dickinson was helping to clean. To illustrate the Court's incredulity at the Dickinsons' testimony, I have attached the photographic evidence as an appendix to this Opinion.

The case cited by the Commonwealth presents circumstances similar to this case. In *Tomey*, the defendant was keeping 14 Siberian Huskies inside his home. *Tomey*, 884 A.2d at 292. Here, Toms had 19 adult Rottweilers. Though some were in the fenced-in yard, the yard was not very large in area. *Tomey*'s house had an overpowering odor of ammonia, with feces strewn throughout the house. *Id.* Identical conditions existed inside Toms' house. The

⁶ The current edition of Black's Law Dictionary defines “wanton” as “Unreasonably or maliciously risking harm while being utterly indifferent to the consequences. In criminal law, wanton usually connotes malice (in the criminal-law sense), while *reckless* does not.” Black's Law Dictionary 1719-20 (9th ed. 2009). Other relevant definitions include:

- “Merciless, inhumane, cruel . . . having no just foundation or provocation: malicious.” Merriam Webster's New Collegiate Dictionary 1330 (10th ed. 1997).

- “The word *wanton* usually denotes a greater degree of culpability than *reckless*. . . . In criminal law, *wanton* usually connotes malice, but *reckless* does not.” Garner's Dictionary of Legal Usage 936 (3d ed. 2011).

- “Marked by unprovoked, gratuitous maliciousness; capricious and unjust.” Am. Heritage Dictionary of the English Language (5th ed. 2011).

⁷ To effectuate the General Assembly's intent, see 1 Pa. C.S. § 1921, a court should interpret words according to their common meaning and usage at the time the General Assembly passed the law. See *Perrin v. United States*, 444 U.S. 37, 42 (1979) (noting that words in a federal statute must be interpreted per their ordinary, contemporary, and common meaning at the time Congress passed the statute).

19th century dictionaries defined “wanton” and “wantonness” as:

- “Reckless sport; willfully unrestrained action, running immoderately into excess.” Henry Campbell Black, A Law Dictionary 1232 (1st ed. 1891) (quoting *Cobb v. Bennett*, 75 Pa. 326, 330 (1874)).

- “A licentious act by one man towards the person of another, without regard to his rights” without malice. 2 John Bouvier, A Law Dictionary 797 (15th ed. 1883).

- “Reckless, regardless of the rights of others.” J. Kendrick Kinney, A Law Dictionary and Glossary 696 (1893).

- “Characterized by extreme recklessness, fool-hardiness or heartlessness; malicious; recklessly disregarding of right or of consequences: applied to both persons and their acts.” 8 The Century Dictionary & Cyclopedia 6817 (1895).

- “Arising from or characterized by extreme foolhardiness or recklessness, or from an utter disregard of rights or consequences.” Robert Hunter & Charles Morris, 4 The Universal Dictionary of the English Language 5118 (1897).

See also *Smith v. Wade*, 461 U.S. 30, 39 n.8 (1983), which cites period dictionaries and states that wantonness, in 19th-century tort law, meant “recklessness”.

⁸ The Court uses the term in the colloquial sense—not the legal sense, cf. 3 P.S. § 459-502-A(a) (defining a “dangerous dog” under the Dog Law).

Superior Court held that sufficient evidence of wanton deprivation existed, stating that the danger of keeping 14 large dogs in one small house was so obvious that no reasonable person could have overlooked it. *Id.* at 295.

Finally, Toms argues that 27 counts of cruelty to animals are too many. She contends that the Commonwealth failed to produce census documents and that no witness testified as to the number of citations issued. The first argument is meritless. Multiple witnesses confirm that 1 dog was captured while running loose, 18 dogs were seized from Toms' residence, and 8 puppy carcasses were found in the freezer. Section 5511(c)(1) is specific to the animal abused. The statute uses the singular when referring to the offense. Thus, the alleged abuse of each dog constitutes a separate offense. *See Commonwealth v. Glass*, 50 A.3d 720, 730 (Pa. Super. 2012) (one act of arson can lead to consecutive sentences for recklessly endangering three people); *Commonwealth v. Garcia-Rivera*, 983 A.2d 777, 782-83 (Pa. Super. 2009) (defendant could receive consecutive sentences for two counts of involuntary manslaughter resulting from a single car accident). Toms should not get a volume discount because she happened to neglect multiple dogs. She is certainly more culpable than someone who neglects only one or two animals. The second argument misconstrues the record, which contains 27 separate citations for cruelty to animals.⁹

C. The Commonwealth failed to prove that Toms committed cruelty to animals to the 8 dead Rottweiler puppies

The Commonwealth has failed to prove that Toms is guilty of cruelty to animals toward the eight dead Rottweiler puppies found inside the freezer on her property. The Court does not believe that Toms intentionally killed the puppies. I recognize that the Commonwealth needs to prove only wanton neglect, but it can't prove that either. The Commonwealth offered no expert veterinary testimony or the results of any necropsy as to whether the puppies were alive at birth—only the lay opinion of Bumbaugh. While he could testify whether it appeared that some of the puppies were alive, he could not give a cause of their death. Reasonable doubt exists that the puppies died of natural causes unrelated to neglect, or that they were born dead. The Commonwealth cannot connect their deaths to any inaction by Toms. For that reason, the Court finds Toms not guilty of the final eight counts.

D. Sentence

It is the Court's intention to affirm the sentence imposed by the magisterial district judge. I do not believe that Toms should be jailed for her crimes. In addition, I will affirm the fine imposed by the district judge, which is within the statutory limits. *See* 18 Pa. C.S. § 5511(m.1). Toms' husband has already signed over the dogs, so I do not need to order forfeiture under *id.* § 5511(m). Finally, Toms' wanton neglect shows that she is not fit to own or care for dogs. Therefore, the Court will prohibit her from owning, possessing, or otherwise caring for dogs. *Id.* § 5511(m.2) for a period equal to the maximum amount of time for which she could have been sentenced to jail (90 days for each count). The Court will not prohibit Toms from owning one properly licensed service dog.

Toms claimed that she loves dogs, specifically Rottweilers. Her actions, however, prove that she is not fit to care for them. No reasonable person could conclude that the conditions inside Toms' home evinced a love of dogs. Toms' home was nowhere close to being safe for habitation by human beings, let alone domesticated animals. And the evidence shows that she rebuffed all assistance extended her way. What sane person who loves dogs would push away helping hands and allow the dogs to live in the conditions in Toms' home? Toms steadfastly refused to acknowledge the result of her conduct, which negatively impacted the health of the dogs rescued from her property. Instead, she concocted an inane conspiracy theory with no basis in fact or reality. Her conduct was not the loving care of dogs. It was mindless hoarding.

CONCLUSION

The Court finds that Joanna Toms is guilty beyond a reasonable doubt of 19 counts of cruelty to animals. She wantonly or cruelly neglected to care for the adult Rottweiler dogs rescued from her property on March 10 and 11, 2013, or deprived those dogs of access to clean and sanitary shelter. The Commonwealth has failed to prove that the Defendant wantonly or cruelly neglected the 8 dead Rottweiler puppies found on her property on the same date.

⁹ The citations do not explicitly state whether the dog corresponding to the citation was alive or dead. However, they do so implicitly. For dogs 1-19, the citations charge Toms with "neglect[ing] and/or depriv[ing] said dog of access to clean and sanitary shelter as viewed by reliable witnesses." For dogs 20-27, the citations charge Toms merely with "neglect." From this distinction, the Court believes that dogs 20-27 are the dead puppies, because it is impossible to deprive a dead animal of access to clean or sanitary shelter.

At any rate, the distinction is without a legal difference.

An order follows.

[HEADNOTER'S NOTE: The Appendix to the Opinion, which contains several photographic exhibits, has been omitted.]

ORDER OF COURT

AND NOW THIS 12th DAY OF November, 2013, after trial *de novo* on 27 charges of cruelty to animals graded as summary offenses, 18 Pa. C.S. § 5511(c)(1),

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Court finds the Defendant, Joanna Toms, **GUILTY** beyond a reasonable doubt on Counts 1 – 19. The convictions correspond to the following Magisterial District Court 39-3-02 docket numbers:

- a. Dog 1: NT-249-2013 (Citation No. P9416540-0);
- b. Dog 2: NT-252-2013 (Citation No. P9416559-5);
- c. Dog 3: NT-255-2013 (Citation No. P9416560-6);
- d. Dog 4: NT-257-2013 (Citation No. P9416541-1);
- e. Dog 5: NT-258-2013 (Citation No. P9416542-2);
- f. Dog 6: NT-262-2013 (Citation No. P9416543-3);
- g. Dog 7: NT-266-2013 (Citation No. P9416544-4);
- h. Dog 8: NT-270-2013 (Citation No. P9416561-0);
- i. Dog 9: NT-271-2013 (Citation No. P94165545-5);
- j. Dog 10: NT-272-2013 (Citation No. P9416546-6);
- k. Dog 11: NT-250-2013 (Citation No. P9416547-0);
- l. Dog 12: NT-251-2013 (Citation No. P9416548-1);
- m. Dog 13: NT-254-2013 (Citation No. P9416549-2);
- n. Dog 14: NT-256-2013 (Citation No. P9416550-3);
- o. Dog 15: NT-260-2013 (Citation No. P9416551-4);
- p. Dog 16: NT-264-2013 (Citation No. P9416552-5);
- q. Dog 17: NT-268-2013 (Citation No. P9416553-6);
- r. Dog 18: NT-274-2013 (Citation No. P9416554-0); and
- s. Dog 19: NT-275-2013 (Citation No. P9416555-1).

2. The Court finds the Defendant **NOT GUILTY** on Counts 20 – 27, cruelty to animals. Judgments of acquittal are entered on the appeals from the following MDJ docket numbers:

- a. Dog 20: NT-273-2013 (Citation No. P9416558-4);
- b. Dog 21: NT-253-2013 (Citation No. P9416567-6);
- c. Dog 22: NT-259-2013 (Citation No. P9416568-0);
- d. Dog 23: NT-261-2013 (Citation No. P9416562-1);
- e. Dog 24: NT-263-2013 (Citation No. P9416564-3);
- f. Dog 25: NT-265-2013 (Citation No. P9416569-1);
- g. Dog 26: NT-267-2013 (Citation No. P9416565-4); and
- h. Dog 27: NT-269-2013 (Citation No. P9416566-5).

3. The sentence imposed by the magisterial district judge is **AFFIRMED** as follows:

- a. The Defendant shall pay a fine of \$300.00.
- b. The Defendant shall pay all court costs.
- c. Pursuant to 18 Pa. C.S. § 5511(m.2), the Defendant shall not exercise ownership, possession, control or custody of dogs or be employed in a job concerning the care of dogs **for a period of 1,710 days**. This portion of the sentence shall commence **30 days from the date of this Order**.
- d. Notwithstanding ¶ 2(c) of this Order, the Defendant may possess one properly licensed service dog. “Dog” means any member of the genus and species *canis familiaris*; and “service dog” means “Any dog which has been or is in the process of being trained as a guide dog, signal dog or has been trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, pulling a wheelchair or fetching dropped items.” 3 P.S. § 459-102.
- e. The Defendant is notified that violating ¶ 2(c) of this Order could subject her to further penalties, including imprisonment.
- f. Payment of all costs, fines, if any payment remains to be made, is due **within 30 days of the date of this Order**.
4. The Defendant is advised that she has a right to appeal to the Superior Court **within 30 days of the date of this Order**. If an appeal is filed, the execution of sentence will be stayed. Pa. R. Crim. P. 462(G)(2).

Pursuant to Pa. R. Crim. P. 114, the Clerk of Courts shall immediately docket this Opinion and Order of Court and record in the docket the date it was made. The Clerk shall forthwith furnish a copy of the Opinion and Order of Court, by mail or personal delivery, to each party or attorney, and shall record in the docket the time and manner thereof.

ORDER OF COURT

AND NOW THIS 18th DAY OF November, 2013, the Court having been alerted to a discrepancy in its prior order and upon noting that the discrepancy is a typographical error,

IT IS HEREBY ORDERED that the first sentence of ¶ 3(d) of the Order of Court dated November 12, 2013 is AMENDED as follows (with the correction bolded):

Notwithstanding ¶ 3(c) of this Order, the Defendant may possess one properly licensed service dog.

All other sections and provisions of the November 12, 2013 Order—including the remainder of ¶ 3(d)—remain unchanged.

Pursuant to Pa. R. Crim. P. 114, the Clerk of Courts shall immediately docket this Opinion and Order of

Court and record in the docket the date it was made. The Clerk shall forthwith furnish a copy of the Opinion and Order of Court, by mail or personal delivery, to each party or attorney, and shall record in the docket the time and manner thereof.