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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

NO. 30

CHRISTOPHER FARRELL,

Appellant.

92 Court Street
Binghamton, New York
March 11, 2025

Before:

CHIEF JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

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Chrishanda Sassman-Reynolds
Official Court Transcriber



1 CHIEF JUDGE WILSON: Next case on the calendar is
2 People v. Christopher Farrell.

3 MR. SPINAC: Morning, Your Honor. Mitchell
4 Spinac on behalf of the appellant, Christopher Farrell. I
5 reserve five minutes, if possible.

6 Your Honor, the - - - the question presented here
7 is this - - - it's a criminal case involving Agricultural
8 and Markets Law Section 353, which in the relevant - - -
9 relevant part criminalizes a person who unjustifiably
10 deprives an animal of necessary sustenance, food, or drink.

11 JUDGE GARCIA: So Counsel, what does sustenance
12 mean to you in that - - -

13 MR. SPINAC: Well, that's the key issue.

14 JUDGE GARCIA: It is. So I'd like your thoughts
15 on it. So it's sustenance, food, and drink. So it's
16 different than food and drink. So in your view, what is
17 sustenance?

18 MR. SPINAC: Sustenance is to be able to provide
19 food and drink to - - -

20 JUDGE GARCIA: Well, it has to be something else.
21 Right? Otherwise, it's just redundant. So sustenance,
22 food, and drink. So what's sustenance that's different
23 than food and drink?

24 MR. SPINAC: It would provide basic necessities
25 for life. Sustenance. But it would have - - - but - - -

1 would - - -

2 JUDGE GARCIA: So give me an example.

3 MR. SPINAC: Well, you - - - you can't - - -
4 obviously, I - - - I would submit that it - - - it - - - it
5 refers back to food and drink. And the statute goes over
6 it three times and says, in fact, that depriving necessary
7 food or drink and it - - - and it - - - it reiterates it
8 two or three times. It doesn't expand the term of
9 sustenance to anything other than that. It doesn't say
10 veterinary care.

11 JUDGE CANNATARO: It actually is redundant?

12 MR. SPINAC: Yes.

13 JUDGE CANNATARO: That sustenance, comma, food,
14 and drink is - - -

15 MR. SPINAC: It's defining it.

16 JUDGE CANNATARO: - - - explains food and drink?

17 MR. SPINAC: Right. It's - - - it's saying
18 sustenance is food and drink.

19 JUDGE CANNATARO: Doesn't that seem sort of
20 unusual for statute writing to - - - to do that, to create
21 an unnecessary word?

22 MR. SPINAC: Well, it - - - it goes - - - and - - -
23 - and it - - - and it goes further and says that sustenance
24 and - - - and drink. It - - - it - - - it replaces it. It
25 - - - it continues the - - - the thought. So we - - - we

1 would submit that if the - - - the - - - the legislature
2 could have, at any time, said veterinary care or delineated
3 what type of veterinary care is required.

4 JUDGE GARCIA: It would be broader then?

5 JUDGE HALLIGAN: Let's suppose - - -

6 MR. SPINAC: Or medical care.

7 JUDGE HALLIGAN: Suppose we disagree with you and
8 think that sustenance needs to be given some independent
9 meaning, aside from food and drink. How would you then
10 define it?

11 MR. SPINAC: I - - - I would define it as - - -
12 as providing enough to provide life.

13 JUDGE HALLIGAN: Okay.

14 JUDGE CANNATARO: Right.

15 JUDGE HALLIGAN: And so what exactly does that
16 include? Does it include providing some shelter?

17 MR. SPINAC: Yeah, it provides basic care - - -

18 JUDGE HALLIGAN: Okay.

19 MR. SPINAC: - - - such as shelter or - - - or -
20 - - that's why the statute expands in terms of, you know,
21 if you're being cruel to an animal in terms of not
22 providing - - - you know, the shelter, or for instance - -
23 -

24 JUDGE HALLIGAN: So why - - -

25 MR. SPINAC: - - - or - - - or - - - or really

1 squalid conditions.

2 JUDGE HALLIGAN: Okay. So if - - - if shelter is
3 - - - is included, why is basic veterinary care not
4 included in - - - in the necessities of life, if an animal
5 needs it in order to survive?

6 MR. SPINAC: Because you have to define what - -
7 - what type of veterinary care is needed. For a layman to
8 be charged criminally with a - - - a misdemeanor of - - -
9 of a year in prison, he'd have to have some notice as to
10 what is minimally required to understand what he's facing.

11 JUDGE HALLIGAN: So that's where your vagueness
12 argument I think, comes in, if I'm understanding you
13 correctly. But is - - - so - - - so is your argument that
14 sustenance could include veterinary care, but - - - but
15 that doesn't provide sufficient notice to - - - to pet
16 owners? Or that it doesn't include veterinary care at all?

17 MR. SPINAC: No. I think sustenance does not
18 include veterinary care. I think the legislature could
19 clearly have state - - - used the word veterinary care or -
20 - - or medical care or - - - but then the question is what
21 type of medical care? What - - - what - - - to what extent
22 do you need to? And - - - and in this case - - -

23 JUDGE CANNATARO: Is that really a question in
24 this case, though? Because this particular layman
25 defendant said - - -

1 MR. SPINAC: There was no medical - - -

2 JUDGE CANNATARO: - - - not taking him to a vet,
3 no matter what. I think he said the dog is going to die
4 anyway.

5 MR. SPINAC: Yeah. He wanted to die - - - he was
6 a elderly man, seventy-five years old. And he wanted - - -
7 he want - - - he - - - he was willing to have the dog just
8 die of old age at that point and did not deem it - - -

9 JUDGE CANNATARO: I'm going to your statement
10 that - - - you know, it depends upon what type of medical
11 care you're talking about. And I presume you want to make
12 some kind of argument that some kind of medical care is
13 maybe more elective, and some of it's very expensive, and
14 some of it's experimental. And I - - - you know, you can
15 argue all that, but I'm just saying in this case, he said
16 categorically, I'm not taking him to the vet. Period.

17 MR. SPINAC: He wanted the dog to die in his home
18 and of old age, basically.

19 JUDGE RIVERA: Well, if - - - if sustenance - - -
20 let's just go with this for a moment. Let - - - let's
21 assume sustenance includes veterinary care for a dog,
22 right? Let's just for one moment go with that. And if - -
23 - I can appreciate your point that a - - - a - - - the
24 companion, the human companion, may decide, let my dog pass
25 with age.

1 MR. SPINAC: Right.

2 JUDGE RIVERA: I - - - I get all that. But if
3 the dog is suffering in pain, does that now fall under
4 sustenance?

5 MR. SPINAC: Well - - -

6 JUDGE RIVERA: The dog is now suffering in pain.

7 MR. SPINAC: - - - in this case, how do you know
8 if the dog is in pain? How do you - - - you can't tell.
9 You don't know.

10 JUDGE RIVERA: I'm sorry. What did you say?

11 MR. SPINAC: And - - - and then what - - - what -
12 - - so - - - so is the requirement then going to be that
13 you have to provide pain care for - - - for animals? You
14 have to provide latent - - - latent care. And what type of
15 care?

16 JUDGE SINGAS: But what if you deprive a dog of
17 veterinary care and it's suffering? Like, in this case it
18 couldn't walk. It was splayed out in the middle of the
19 street. Could that be cruelty and then be violative of the
20 statute? Forget sustenance for a minute.

21 MR. SPINAC: Well, there - - - there's a separate
22 section, which - - - which he wasn't - - - of cruelty. But
23 that wasn't what was raised in this case. He - - - he - -
24 - in fact, he - - -

25 JUDGE TROUTMAN: But the question is - - -

1 MR. SPINAC: - - - it's - - - it's hard to
2 evaluate.

3 JUDGE TROUTMAN: Counselor - - -

4 MR. SPINAC: He - - - how can you - - -

5 JUDGE TROUTMAN: - - - the question is, it could
6 be cruelty? But your argument is it's not sustenance, but
7 since he wasn't charged with cruelty - - -

8 MR. SPINAC: It's facially deficient. Right. He
9 - - - he's not charged with being cruel to his dog.

10 CHIEF JUDGE WILSON: So I think Judge Singas'
11 question was going sort of to your vagueness argument about
12 - - -

13 MR. SPINAC: Excuse me. I can't - - -

14 CHIEF JUDGE WILSON: I think that Judge Singas'
15 question may have been going towards your - - - your
16 vagueness question about sustenance and asking you the same
17 thing about cruelty. That is, cruelty isn't defined
18 either. Do you think he could be charge - - - or somebody
19 - - - let's forget this particular person. Could somebody
20 be charged for cruelty to an animal, for - - - for
21 neglecting it essentially, when it was in pain?

22 MR. SPINAC: Well, it - - - it - - - it's so
23 discretionary, though. It's - - - it's - - - it's very
24 vague in terms of what - - - what - - -

25 CHIEF JUDGE WILSON: That statute, then, is also

1 vague - - -

2 MR. SPINAC: Excuse me?

3 CHIEF JUDGE WILSON: That statute, then, is also
4 vague? So what about - - - what about, and you may not be
5 familiar with these. But do you know what the child
6 welfare statutes say about neglect or abuse of a child? Do
7 they define those?

8 MR. SPINAC: You - - - you - - - you're not
9 committing neglect if - - - if you don't have the financial
10 means to pay for extraordinary medical care for a child.
11 You're - - - you're - - - you're not charged with neglect,
12 to my understanding.

13 CHIEF JUDGE WILSON: Does that sound like a
14 factual determination rather than a vagueness challenge?

15 MR. SPINAC: It's a question of degree. It's a
16 question of how much you can afford. And - - - and then
17 you - - - and if you can't afford it, and you choose not to
18 do it, you're not charged with neglect under the statute,
19 from my understanding.

20 But here, you can be charged, apparently, if
21 you've - - - if you - - - if it's determined that - - - if
22 you need - - - if - - - if a police officer sees that the
23 dog is - - - should be brought for veterinary care, you're
24 charged with a crime or you're subject to a year in jail.
25 Whereas the - - -

1 JUDGE HALLIGAN: That's not what we have here,
2 though, is it? I didn't think there was anything in the
3 record which suggested that he did not attempt to provide
4 veterinary care because of the cost?

5 MR. SPINAC: Well, there is no record because
6 this was brought before there was any trial.

7 JUDGE HALLIGAN: Right.

8 MR. SPINAC: In fact, there was no sworn
9 affidavits about the need for veterinary care. It was
10 never even evaluated. So he was just charged. And this -
11 - - and - - - and this - - - this was all done before - - -

12 JUDGE RIVERA: So then would - - -

13 MR. SPINAC: - - - a trial.

14 JUDGE RIVERA: So then, are you arguing that the
15 defendant should succeed because it's facially
16 insufficient? Even - - - even assuming for one moment - -
17 - assume for one moment - - -

18 MR. SPINAC: That's correct.

19 JUDGE RIVERA: - - - that sustenance includes
20 veterinary care. Okay.

21 MR. SPINAC: That's correct. I - - - I will go
22 along with the - - -

23 JUDGE RIVERA: So tell me what's insufficient - -
24 -

25 MR. SPINAC: - - - Kingston City Court Judge



1 decision.

2 JUDGE RIVERA: Yes. Go ahead. What's
3 insufficient with respect to the accusatory instrument - -
4 -

5 MR. SPINAC: Well, there was - - -

6 JUDGE RIVERA: - - - on the assumption that
7 sustenance would encompass veterinary care?

8 MR. SPINAC: There was no nonhearsay allegation.
9 There was no - - - there was no specific information
10 submitted. There was no evi - - - evaluation or sworn
11 affidavit from a vet - - - vet or anyone evaluating the
12 dog.

13 JUDGE CANNATARO: The dog has fleas. That's a
14 nonhearsay.

15 MR. SPINAC: Well, for fleas, I would submit is
16 not enough to be - - - you don't know how many fleas and -
17 - - and what extent. There was no affidavit as to the
18 extent of the fleas. What if the dog had a few fleas.
19 Could have a lot of fleas. We don't know how many fleas.

20 JUDGE CANNATARO: That's a requirement for a
21 facially sufficient accusatory instrument?

22 MR. SPINAC: Well, something - - - but I'm not -
23 - - I - - - I wouldn't submit that fleas, by - - - standing
24 by itself would be sufficient, in any event, as a
25 violation.

1 JUDGE CANNATARO: Why not?

2 MR. SPINAC: Because I'm not - - - I'm - - - I
3 don't know if that's sufficient to provide sustenance,
4 food, and drink in terms of - - -

5 JUDGE CANNATARO: If that's the - - - if - - - if
6 - - - if veterinary care is part of sustenance, and you
7 were asked to make that assumption in Judge Rivera's
8 question, and a dog has fleas - - - and I think it's fairly
9 common knowledge that when your dog has fleas, you - - -
10 they need veterinary care.

11 MR. SPINAC: Not necessarily. You could - - -
12 you could go over the counter and - - - and get flea
13 medication at the - - - at - - - at a - - -

14 CHIEF JUDGE WILSON: Well, that's true. But when
15 he says in his - - -

16 MR. SPINAC: I'm not a dog expert, but I'm
17 assuming that's possible, what - - -

18 CHIEF JUDGE WILSON: What - - - what he's
19 supposed to - - - I mean, the - - - the officer's statement
20 says that he's infested with fleas.

21 MR. SPINAC: Excuse me?

22 CHIEF JUDGE WILSON: He's infested with fleas,
23 right? It's not just has a flea. Infested with fleas, and
24 the response is, the dog has never been to a vet and is
25 going to die anyway. That doesn't sound like he's going to

1 go to the store and get a flea collar.

2 MR. SPINAC: Well, you're using - - - you're
3 using the - - - it's a non - - - it's an unsworn affidavit.
4 It's not an affidavit. It's a - - - it's a - - - it's a
5 hearsay statement, and it's - - - it wasn't a - - -

6 CHIEF JUDGE WILSON: It was a hearsay statement
7 from the defendant. That's not hearsay.

8 MR. SPINAC: It's - - - that's - - - that's the
9 police officer putting in his report, not in the - - -

10 JUDGE RIVERA: Well, it's an exception. It's an
11 exception.

12 MR. SPINAC: Yeah. It's - - - but it's - - -

13 JUDGE RIVERA: But I understood your point to be
14 that there are ways to treat even a flea infestation that
15 would not require veterinary care?

16 MR. SPINAC: That's correct. And he could - - -

17 JUDGE RIVERA: So the statement - - -

18 MR. SPINAC: - - - he could have went to the - -
19 -

20 JUDGE RIVERA: - - - the statement - - -

21 MR. SPINAC: - - - he could have went to a - - -

22 JUDGE RIVERA: - - - that the dog has never
23 visited a vet.

24 MR. SPINAC: Doesn't necessarily mean he hasn't
25 treated the vet - - - the dog and he hasn't - - - he had -

1 - - there's no evidence that he hasn't given the dog food
2 or drink. He's provided shelter for the dog. There's no
3 evidence that the - - - it's an unsanitary condition where
4 the dog is living. He was by his house. There's - - - you
5 know, we're - - - we're making a lot of assumptions here,
6 and charging him with a crime without sufficient affidavit
7 to - - - to support the allegations, in - - - in our view.
8 From fact - - - that's why the city court judge threw the
9 case out initially. And we - - - we would then submit on
10 the second clause that the statute itself is - - - as being
11 applied, is void for vagueness under violation of his
12 constitutional rights. Because he, as a layman, a seventy-
13 five-year-old gentleman, does not have any idea what he is
14 required to do under the statute. I don't even know right
15 now what - - - what actually is required of - - - of
16 someone who has a dog. If - - - if - - - if obviously, if
17 you have the financial means and you - - - you - - - you
18 may want to take a dog to a vet; most people do. But in
19 any event, even - - - - I have a friend who's a doctor
20 who chose to have a dog - - -

21 JUDGE RIVERA: But you could - - -

22 MR. SPINAC: - - - who didn't want to put his dog
23 down.

24 JUDGE RIVERA: - - - you could take it - - - you
25 - - - you could take your companion animal to a vet

1 hospital? This is - - - the dog is obviously in a terrible
2 condition, and simply say I can't afford anything.

3 MR. SPINAC: Right.

4 JUDGE RIVERA: You can - - - can act on this or
5 not. But it's an effort to try and address the animal's
6 needs.

7 MR. SPINAC: Well, he - - - he - - - he made - -
8 - he made a made a decision. He wanted the dog to die at
9 his home with him. That was - - - that was the assumption.

10 JUDGE RIVERA: Yes, I understand. Could he make
11 the decision? I'm sorry. If I could just go?

12 CHIEF JUDGE WILSON: Yes.

13 JUDGE RIVERA: Could he make - - - well, I think
14 he could make any decision - - -

15 MR. SPINAC: He didn't want to bring the dog to
16 - - -

17 JUDGE RIVERA: - - - he wants to. The question
18 is whether or not he's going to be criminally penalized for
19 it. So but would the statute encompass that kind of
20 determination when the dog is in pain? And - - - and it's
21 obvious to the - - - to the human that the dog is in pain.

22 MR. SPINAC: We don't - - - we don't even know
23 that, actually. There's no affidavit of - - - and how do
24 you quantify the dog's pain?

25 JUDGE RIVERA: No, no, it's a hypothetical. It's

1 just my - - -

2 MR. SPINAC: Okay.

3 JUDGE RIVERA: - - - hypothetical.

4 MR. SPINAC: All right.

5 JUDGE RIVERA: Well, the dog is - - -

6 MR. SPINAC: Limping.

7 JUDGE RIVERA: - - - is yelping in pain all
8 night.

9 MR. SPINAC: We don't know that.

10 JUDGE RIVERA: I think that's a giveaway. I - -
11 - I - - -

12 MR. SPINAC: The facts that weren't in evidence.

13 JUDGE RIVERA: I understand. It's a
14 hypothetical.

15 MR. SPINAC: Okay.

16 JUDGE RIVERA: You are an owner. You have your
17 dog. Your dog is now crying in pain, nonstop. Can't get
18 up, right? That - - - that - - - you - - - you are on
19 notice?

20 MR. SPINAC: So you - - - so you're committing a
21 crime?

22 JUDGE RIVERA: So you say the dog is going to die
23 anyway, I'm just going to leave them here?

24 MR. SPINAC: So you're - - - you're in effect
25 saying you're committing a crime by not bringing the dog to

1 an animal hospital - - -

2 JUDGE RIVERA: Well, I'm asking - - -

3 MR. SPINAC: - - - at night?

4 JUDGE RIVERA: - - - I'm asking about that
5 hypothetical.

6 MR. SPINAC: No. I don't - - - I don't think
7 that's - - - the statute doesn't call for that. There's no
8 - - -

9 JUDGE RIVERA: Is that your position?

10 MR. SPINAC: - - - the - - - it should be more
11 specific in the statute as to what would be required.

12 JUDGE RIVERA: I assume, though, then if - - -
13 let's say the dog is crying out in pain in my example and -
14 - - and the person has not given them any food or water, at
15 least attempted to give them any food or water, would that
16 fit under the statute?

17 MR. SPINAC: That - - - that would be different.

18 JUDGE RIVERA: Because that, you say, fits under
19 food - - -

20 MR. SPINAC: That - - - they - - - they address
21 that.

22 JUDGE RIVERA: It's obvious under the statute.

23 MR. SPINAC: You - - - you're not giving the dog
24 food or water, so they - - - the legislature in 1881 saw
25 fit to put that in.

1 JUDGE SINGAS: Is it your position, Counsel, that
2 without an affidavit from a veterinarian, that people could
3 never sustain their burden on this count?

4 MR. SPINAC: I think that would be a substantial
5 need in this case as - - - for a facial deficiency.
6 Because the observation of a layman would not be, I don't
7 think, sufficient to find out what's exactly needed.

8 CHIEF JUDGE WILSON: Thank you.

9 MR. SHAREDALAL: Good morning, Your Honors. And
10 may it please the court. My name is Sohil Sharedalal, and
11 I am here today on behalf of Ulster County District
12 Attorney's Office.

13 CHIEF JUDGE WILSON: Can you start with what
14 nonhearsay facts are in the accusatory instrument?

15 MR. SHAREDALAL: Yes, Your Honor. Absolutely.
16 So Christopher West puts himself as the officer and the
17 complainant herein. It's at the top of the accusatory.
18 Now, we concede that this is not the most artfully written
19 complaint. With that said, there are some observations
20 that he makes personally, specifically the flea
21 infestation, as Your Honors pointed out. Specifically,
22 also the mass on the dog's spine.

23 JUDGE RIVERA: But that's not visible.

24 JUDGE CANNATARO: Is that visible to the officer?

25 MR. SHAREDALAL: So Your Honor, it's not in the

1 in the complaint, but in the discovery in this case, this
2 officer does take photographs of the dog, and he - - -

3 JUDGE RIVERA: But - - - but we're left with the
4 accusatory instrument. There is a lot more information,
5 you're correct, of course. But we're left with the
6 accusatory instrument.

7 MR. SHAREDALAL: Yes, Your Honor. And as - - -

8 JUDGE RIVERA: Well, just reading it - - - it's -
9 - - it's hard to infer that - - - that this is visible,
10 since it's on his spine, the dog's spine.

11 MR. SHAREDALAL: So at this stage of the
12 pleading, Your Honor, in the - - - the early stages, we do
13 ask that the court give it a - - - not an absolutely
14 restrictive reading. And the reasonable inference that
15 we'd ask the court to make is the - - - the observation
16 that the officer made rendered him to then go up to the
17 defendant and ask a simple question of, why didn't you take
18 this dog - - -

19 JUDGE TROUTMAN: But doesn't the officer have to
20 clearly indicate how it is he forms these beliefs?

21 MR. SHAREDALAL: Your Honor, I - - - I am not
22 saying this is the most artfully drafted complaint. It
23 certainly could be better drafted. But the accusatory does
24 give the defendant notice. The two things that we require
25 - - -



1 CHIEF JUDGE WILSON: Can I go back - - - can I go
2 back to the reasonable inference? Because it also says a
3 mass near his heart, which I assume you would agree, that
4 isn't visibly detectable?

5 MR. SHAREDALAL: Correct, Your Honor.

6 CHIEF JUDGE WILSON: So doesn't that - - - isn't
7 then the reasonable inference that he went and talked to
8 somebody else, like a doctor or someone, and there was an
9 examination of the dog of some sort, to determine the mass
10 on the heart and the spinal mass?

11 MR. SHAREDALAL: We - - - we do have vet records.
12 Obviously, as - - - as it pertains to the accusatory, and
13 specifically in that context, what I - - - what I can say
14 about the accusatory is it gives the defendant notice about
15 putting up a defense as to the condition of the dog. And
16 it asserts enough that - - -

17 JUDGE TROUTMAN: Isn't it that a supporting
18 supporting deposition would not be required under those
19 circumstances, when it is not readily visible that this
20 mass is near the heart?

21 MR. SHAREDALAL: Your Honor, a supporting
22 deposition from a veterinarian would certainly help this
23 accusatory. There is no denying it. We concede it. It
24 would certainly put us in a better position to - - -

25 JUDGE RIVERA: Well, let - - - let's assume for



1 one moment that the court reads this and says, well, the
2 only nonhearsay or hearsay exception allegations are the
3 flea infestation and the statements made by the defendant.
4 The dog has never visited a vet, and Mogley is going to die
5 anyway. How does that - - - how is that then facially
6 sufficient for purposes of the charge?

7 MR. SHAREDALAL: So - - -

8 JUDGE RIVERA: Because the charge, unless you
9 have some other argument, appears to only be based on
10 failure to provide sustenance. Yes?

11 MR. SHAREDALAL: Yes, Your Honor. And
12 specifically at - - - what - - - he's charged with the
13 whole statute. So under the statute, he is, by not
14 providing proper sustenance, he then - - - he basically
15 subjects the dog to cruelty, which under 350, subsection 2
16 of the AML tells you what cruelty is.

17 JUDGE RIVERA: If - - -

18 JUDGE HALLIGAN: On the fleas, for a moment. You
19 agree that you can go to a pet store and get a flea wash to
20 remove fleas from a dog, right?

21 MR. SHAREDALAL: Correct. And he did not do that
22 here.

23 JUDGE HALLIGAN: I understand. So - - - so is
24 your - - - are - - - are we supposed to understand that the
25 conduct giving rise to the charge here is the failure to go

1 get a flea wash and clean the dog, or the failure to seek
2 veterinary care? I thought you were relying on the latter.

3 MR. SHAREDALAL: So we are, Your Honor. If you
4 let an animal suffer unjustifiably in this state, you are
5 in violation of the statute, period.

6 JUDGE HALLIGAN: Okay. But - - -

7 MR. SHAREDALAL: It's in the text of the statute.

8 JUDGE HALLIGAN: - - - but I think I heard you
9 just say that - - - that what gives rise to the charge is
10 the failure to seek veterinary care?

11 MR. SHAREDALAL: Yes, Your Honor. Given the
12 dog's condition.

13 JUDGE HALLIGAN: And if the fleas could be
14 removed by an over-the-counter product, then why is there a
15 need to seek veterinary care for the fleas?

16 MR. SHAREDALAL: Because it's simply one of the
17 ailments that plagues this dog. As - - -

18 JUDGE HALLIGAN: An ailment that need not be
19 cured by veterinary care?

20 MR. SHAREDALAL: And, unfortunately, it's the
21 least of the dog's problems, even though it is a big one.
22 Because the - - -

23 JUDGE HALLIGAN: Because we're talking about the
24 - - - the - - - the nonhearsay allegations in the complaint
25 and - - - and those are the fleas. The reason I'm asking

1 is, I'm struggling a bit with the vagueness question,
2 right? And this is one example. But I think also - - - so
3 for example, I took my dog to the vet. The vet said here
4 are a range of vaccines you might give your dog. Some are
5 clearly necessary. Others you should decide whether you
6 think you want to provide this care or not. And I make a
7 decision. So in your view, have I fulfilled any obligation
8 I have by going to the vet? And what about the care that I
9 have declined to provide my animal in the course of that
10 visit to the vet?

11 MR. SHAREDALAL: So Your Honor, it - - -

12 JUDGE HALLIGAN: And how do I know from the
13 statute whether I might be charged?

14 MR. SHAREDALAL: So I - - - it depends on, first,
15 why you're taking the dog to the veterinarian. So what it
16 comes down to is this is not necessarily about what kind of
17 treatment the dog deserves, or the animal deserves. This
18 statute was promulgated back in '81, and - - -

19 JUDGE HALLIGAN: When I read the statute, how do
20 I know? I mean, the question of vagueness, I think, is
21 whether it gives notice to an everyday person about what -
22 - - what they might face criminal exposure for. Right? So
23 when I read the statute - - - and your view is that
24 sustenance needs to be read to include veterinary care, how
25 do I know? You know, if I choose to forego treatment, if I

1 - - - what if I say it's the middle of the night, my dog is
2 clearly in extremis, but I know that going to the overnight
3 emergency vet clinic will cost me hundreds of dollars that
4 I don't have; I'm not going. Chargeable or not?

5 MR. SHAREDALAL: Your Honor, it would depend on
6 the justifiability of the pain.

7 JUDGE HALLIGAN: I didn't - - -

8 MR. SHAREDALAL: What the statute comes down to
9 is - - -

10 JUDGE HALLIGAN: So - - - so in the event that
11 the dog is clearly in pain, it's the middle of the night,
12 there is a vet clinic available, but I cannot afford to pay
13 the fee, do you think you can charge me under the statute
14 or not?

15 MR. SHAREDALAL: If you did the best you could
16 under those circumstances, to provide the care that you
17 could to the best of your abilities - - -

18 JUDGE HALLIGAN: Well, if I say I can't afford
19 it, then - - - then you - - - you think you can't charge
20 me?

21 MR. SHAREDALAL: No. So Your Honor, poverty is
22 not necessarily what is under consideration here.

23 JUDGE HALLIGAN: What is "best you can do under
24 the circumstances" mean? It seems to me it's unclear what
25 it means, and that's the challenge I'm - - - I'm struggling

1 with.

2 JUDGE CANNATARO: Yeah. How does that work for
3 an accusatory instrument, "the best you can do"? That
4 might be a defense. But it - - - is everyone who some
5 authority thinks isn't providing what they subjectively
6 feel is an adequate degree of veterinary care, going to get
7 charged with a violation of this section?

8 MR. SHAREDALAL: Certainly not, Your Honor. And
9 that's not what fifty years of jurisprudence shows us. In
10 every case that's come before the courts, the neglect is
11 severe. It's so obvious on its face. These animals are in
12 decrepit conditions. Every single one of them.

13 JUDGE CANNATARO: That's the problem with this
14 accessory instrument, Counsel. It's not so clear on its
15 face. When - - - when you when you pare down to all the
16 nonhearsay allegations, all you really are left with are a
17 flea infestation and a failure to provide, based on a
18 statement that defendant himself made, a failure to provide
19 quote unquote, "adequate veterinary care". And we're
20 talking about the second one. And that seems incredibly
21 subjective and quite frankly, vague. And I haven't heard
22 your explanation for why it's not.

23 MR. SHAREDALAL: So Your Honor, specifically as
24 to the - - - the sufficiency of the accusatory on its face.
25 The accusatory gives you the time, the date, the

1 jurisdiction, the - - - the conditions that the dog is
2 experiencing, the masses, the exact spot of the masses, the
3 dog's name - - -

4 CHIEF JUDGE WILSON: Those are - - - those are
5 hearsay, right?

6 MR. SHAREDALAL: Sorry, Your Honor?

7 CHIEF JUDGE WILSON: Those - - - the conditions
8 the dog is experiencing are hearsay. We want to focus on
9 the nonhearsay observations.

10 MR. SHAREDALAL: Yes, Your Honor. So if you were
11 to take the - - - the veterinary care, the - - - or the
12 spondylosis out of it, it does still give you enough.

13 CHIEF JUDGE WILSON: And the heart - - -

14 MR. SHAREDALAL: It does give the defendant - - -

15 CHIEF JUDGE WILSON: - - - the heart mass?

16 MR. SHAREDALAL: - - - and you take the masses
17 out of it, it still gives the defendant enough notice.

18 JUDGE RIVERA: So - - - so someone who has a dog
19 who has a visible flea infestation, and - - - and decides,
20 I'm not taking this dog to the vet, I'll deal with the
21 fleas in my house or leave the dog outside. That person is
22 criminally liable under the statute?

23 MR. SHAREDALAL: If that dog is showing
24 objective, plain signs that a person of ordinary
25 intelligence can look at and say that dog is in pain, then



1 yes, that would be - - -

2 CHIEF JUDGE WILSON: But if it's in - - -

3 JUDGE CANNATARO: Have you ever given a dog a
4 flea bath?

5 MR. SHAREDALAL: Yes, Your Honor.

6 JUDGE CANNATARO: Do you know how long it takes?

7 MR. SHAREDALAL: A while.

8 JUDGE CANNATARO: Weeks?

9 MR. SHAREDALAL: Yeah.

10 JUDGE CANNATARO: Sometimes months. So how would
11 a person know? Maybe - - - maybe the defendant, your
12 putative defendant, is in the process of trying to
13 eradicate the fleas. It just hasn't taken hold yet.
14 They're - - - they're still going to get charged?

15 MR. SHAREDALAL: So Your Honor, the facts here
16 are - - - are pretty clear as to the - - - the flea
17 infestation. The flea infestation, again, for the record,
18 was as bad, so the dog was anemic. And the - - - the - - -

19 CHIEF JUDGE WILSON: But that's - - -

20 JUDGE RIVERA: Okay. But that's not here. So
21 let's just stay with what's here. But let - - - let me ask
22 you something else. We may have gone down this road
23 already and we, I think, get your point.

24 But you did say something else before. That he
25 is charged with 353 writ large. And it sounds to me like

1 you're saying that when we read the instrument, we should
2 not be only looking for whether or not it - - - it would
3 satisfy sustenance, but whether or not, based on these
4 allegations, it's enough to satisfy the requirement of
5 cruelty. Am I understanding you correctly?

6 MR. SHAREDALAL: Your Honor, we believe we have
7 an argument on both. So the appellant's own - - -

8 JUDGE RIVERA: But I - - - I - - - I've read this
9 instrument many, many, many times over, and it is very
10 clear that it is about sustenance.

11 MR. SHAREDALAL: So - - -

12 JUDGE RIVERA: I understand county court's
13 position, but it seems that you can't get out of that box.
14 Tell me how you get out of that box.

15 MR. SHAREDALAL: So Your Honor, if we don't get
16 out of that box, and this court is - - - is talking about
17 sustenance, appellant's own definition of sustenance, from
18 the Oxford Dictionary on page 13 of the record - - -

19 JUDGE RIVERA: Yes.

20 MR. SHAREDALAL: - - - is sustenance means food
21 and victuals. Well, victuals means food and provisions.
22 Provisions means something of use. The People's definition
23 from Merriam Webster's Dictionary is the same as this
24 court's in Basile. It's so much more than just food and
25 water, Your Honors.

1 JUDGE RIVERA: Well - - -

2 MR. SHAREDALAL: It's the basic necessities of
3 life.

4 JUDGE RIVERA: - - - is there - - - is there - -
5 - it sounds like sustenance and cruelty are inextricably
6 intertwined in the statute. I mean, is there any point at
7 which a deprivation of sustenance is not cruel, for
8 purposes of the statute?

9 MR. SHAREDALAL: I think that you could certainly
10 - - -

11 JUDGE RIVERA: I mean, there could be cruelty
12 that has nothing to do with sustenance, of course, physical
13 abuse and so forth.

14 MR. SHAREDALAL: You - - - you can certainly
15 deprive or refuse an animal sustenance to the point where
16 you are engaging in cruelty, certainly, under this statute.
17 The statute and its predecessors since 1828, Your Honors
18 have had the same spirit. To prevent animal cruelty in
19 this state.

20 JUDGE HALLIGAN: But the complaint itself uses
21 the words failure to provide necessary sustenance. So it
22 seems to me that that's what we have to look at.

23 MR. SHAREDALAL: Yes.

24 JUDGE HALLIGAN: Not - - - not more generally,
25 whether there are allegations - - - nonhearsay allegations



1 of cruelty?

2 MR. SHAREDALAL: So and - - - and under
3 sustenance and the definition of sustenance that the People
4 give, and the appellant gives, we believe - - - and this
5 court's holding in Basile. And Your Honors, this - - -

6 JUDGE HALLIGAN: Do you think - - - just to go
7 back to the fleas for a second. Do you think that most pet
8 owners know that if their animal has fleas, whether they're
9 trying to get rid of them or perhaps they haven't noticed
10 them yet or maybe they have seen them, and they think it's
11 not a big deal, that they could be charged with a criminal
12 violation along these lines?

13 MR. SHAREDALAL: So Your Honor, this is not - - -
14 you know, what if the dog has three fleas, what if the dog
15 has four fleas? The facts here - - -

16 JUDGE HALLIGAN: That is the allegation, the
17 nonhearsay allegation in the complaint, and that's why I'm
18 focused on it.

19 MR. SHAREDALAL: Well, Your Honor, it's an
20 infestation. And - - - and if we're going to do
21 definitions, the definition of infestation is to have a
22 population of parasitic creatures on an animal to the point
23 of disease.

24 JUDGE HALLIGAN: But do you - - -

25 MR. SHAREDALAL: Which is exactly what this dog

1 had.

2 JUDGE HALLIGAN: - - - do you think that - - -
3 that most pet owners understand that they could face a
4 criminal charge in that event?

5 MR. SHAREDALAL: Well, Your Honor, what a pet
6 owner - - - a responsible pet owner has a duty of care. So
7 a pet owner should, on - - - in this state, be on notice
8 that if there are objective, clear signs - - -

9 JUDGE HALLIGAN: The dog has fleas.

10 MR. SHAREDALAL: - - - if the dog is in pain
11 because of these fleas, so if the - - -

12 JUDGE RIVERA: But again - - -

13 JUDGE HALLIGAN: That claim is not in the
14 complaint.

15 JUDGE RIVERA: - - - that's not asserted. That -
16 - - that - - - if - - - if - - - if the officer, who
17 obviously does have good intentions, had asserted that
18 there were observations related to this flea infestation
19 regarding pain or bites or what - - - or anything else,
20 perhaps you have a different argument. But a flea
21 infestation actually can be treated by going to a groomer.
22 It can be treated by over-the-counter products. Right?

23 MR. SHAREDALAL: Yes, Your Honor.

24 JUDGE RIVERA: And they'll all be cheaper, likely
25 than a vet visit. And a vet visit might only get you the



1 exact same thing I've just described. Give the dog these
2 products and I've got the groomer upstairs, schedule - - -
3 schedule a bath.

4 MR. SHAREDALAL: Well, as - - - and it wasn't in
5 front of this court, but there is a case in New York State,
6 People v. Romano, which talks about exactly that, which is
7 the lack of grooming at first, perhaps, doesn't call - - -
8 doesn't cause the animal objective clear signs of pain.
9 But when you do it for long enough, it certainly can get to
10 that point, and that will not be excusable under the law.

11 JUDGE RIVERA: There's nothing here to give us a
12 sense of the staging, even if we agreed with you. Right?

13 MR. SHAREDALAL: I'm sorry, Your Honor?

14 JUDGE RIVERA: In - - - in the accusatory
15 instrument, there's not some allegation there that would
16 help us with kind of this staging that you're referring to.
17 Right? So a sort of stage one of the fleas; stage two
18 maybe it's an infestation; stage three, where it's now
19 become really dangerous for this dog and painful.

20 MR. SHAREDALAL: So respectfully, Your Honor, I
21 believe that - - - and - - - and we submit that you don't
22 have to go through that analysis because it's a lot simpler
23 than that. If the dog is exhibiting clear, objective signs
24 of pain and suffering, you have a duty of care - - -

25 CHIEF JUDGE WILSON: That's the problem here, is

1 that it's - - - at least, as I understand it, the officers
2 saw that the dog was lying in the street. The dog couldn't
3 get up. The dog may have been visibly in - - - you know,
4 exhibiting signs of pain, but the officer didn't put any of
5 that into the accusatory instrument.

6 MR. SHAREDALAL: And Your Honor, that is
7 something that we concede, and - - - and we understand that
8 the accusatory can certainly be better drafted.

9 JUDGE SINGAS: Is this an accused - - - is this
10 accusatory information as far as you're concerned, is it an
11 information, or is it a complaint?

12 MR. SHAREDALAL: So county court asserted that it
13 was a complaint. We would be overjoyed if this court were
14 to affirm that. But if this court is of the opinion that
15 it is a complaint - - - but this court does hold that
16 veterinary care should be and can certainly be included
17 under the definition of sustenance in - - - in the progeny
18 of this court and other courts. And - - - or just under
19 the ambit of this statute, under the cruelty provision, the
20 People would still submit that's a win for us.

21 JUDGE CANNATARO: You're - - -

22 JUDGE SINGAS: I don't think I really understand
23 the answer to that question.

24 JUDGE CANNATARO: - - - your light is on. I just
25 want to - - -

1 CHIEF JUDGE WILSON: Wait. Let - - - did you
2 want to ask a follow-up?

3 JUDGE SINGAS: I don't understand. Is it an
4 information?

5 MR. SHAREDALAL: I - - - if this court were to
6 side with county court, we would submit it is.

7 JUDGE SINGAS: What's the People's position?

8 MR. SHAREDALAL: We did assert that it was an
9 information, yes, Your Honor.

10 JUDGE SINGAS: And I mean, I just have a follow-
11 up question on veterinary care. It seems to me that it's a
12 continuum. And where is the line between what's necessary
13 veterinary care and what's not necessary? And how is
14 anyone supposed to know what that line is by reading the
15 statute?

16 MR. SHAREDALAL: Well, Your Honor, the line is
17 unjustifiable. That - - - the legislature very clearly
18 drew the line in the sand where human property rights and -
19 - - and the inherent rights of the animals begin. And that
20 line is unjustifiable. And now who decides whether or not
21 the animal is suffering unjustifiably? The jury. That
22 word "unjustifiable" doesn't give any more discretion than
23 the word "reasonable". And that's why this statute is not
24 void for vagueness as applied to this defendant.

25 Because the fact that this statute asks a jury,

1 an officer, a - - - a judge about whether or not the
2 treatment and the circumstances show whether or not the
3 person who is charged with the duty of care acted
4 unjustifiably, doesn't give them more discretion than other
5 statutes, is what we submit.

6 So accordingly, Your Honor, we would submit that
7 this statute is not void for vagueness as applied to this
8 defendant and as applied to veterinary care under this
9 statute. Thank you, Your Honors.

10 MR. SPINAC: I would - - - I would just simply
11 object and note that if this court is struggling with the
12 idea of what is - - - what is required as notice for
13 violation of the statute in terms of veterinary care or
14 sustenance, food, and drink, clearly, my client, a seventy-
15 five-year old gentleman who's very - - - is not well
16 educated, would be un - - - would have problems having any
17 notice as to what would be required.

18 JUDGE GARCIA: Counsel, let me - - -

19 MR. SPINAC: And to hold him criminally
20 responsible would be a travesty of justice.

21 JUDGE GARCIA: - - - go with that thought. Let's
22 say, hypothetically, a dog gets hit by a car, is in obvious
23 pain, and the owner decides not to take it to a vet or seek
24 any type of treatment and it suffers for a week, and that's
25 all in a complaint. Is that complaint valid or not valid?

1 If we agree with you that this is void for vagueness?

2 MR. SPINAC: Well, that - - - it would depend on
3 the injuries hit by - - -

4 JUDGE GARCIA: We're going to say you're right.
5 Sustenance is vague. It's void for vagueness. So now I
6 have that scenario. That's not a violation of the statute?

7 MR. SPINAC: It's - - - technically, no, because
8 it - - - it - - - it's still not - - - it's not - - - the
9 statute is not defining. It should be more clearly
10 drafted.

11 JUDGE RIVERA: Why is it not cruelty?

12 MR. SPINAC: Excuse me?

13 JUDGE RIVERA: Why is it cruelty?

14 MR. SPINAC: Well, cruelty was a different issue.
15 It's - - - it's - - - when you look at cruelty, you're
16 looking at more the circumstances of how you treat - - -
17 the way you're caring for the dog and the conditions you're
18 keeping the dog in, things of that nature is where I look
19 at cruelty. So when - - - when you're - - - when you have
20 a dog being run over by a car, obviously, maybe you could
21 say if the dog is being left to be run over and then laying
22 in the street after that, that could be a different issue,
23 potentially.

24 JUDGE GARCIA: So I take it home, and it just
25 suffers for a few weeks. If we declare sustenance - - - it

1 void for vagueness, your view would be that's not
2 chargeable under the statute?

3 MR. SPINAC: Under the statute? No. Because you
4 have to still delineate. I would think that you - - - you
5 - - - there's a duty to require veterinary care or a
6 minimum of some sort of - - - the - - - the statute would
7 be much - - - drafted much - - - the legislature should
8 really redraft the statute and - - - and make it clear and
9 give people notice as to what's required of animals.

10 JUDGE RIVERA: Counsel, what - - - what is your
11 view as to whether or not the accusatory instrument is a
12 complaint or an information? What's your view?

13 MR. SPINAC: I believe it's - - - it's not - - -
14 it's - - - it's - - - it's - - -

15 JUDGE RIVERA: It's not what? Which one is it?

16 MR. SPINAC: It's not a - - - it's not a - - -
17 it's - - - it's - - - it's a complaint. And we would
18 submit that it's - - - there - - - there's no such - - -

19 JUDGE RIVERA: Why is that? Why is that?

20 MR. SPINAC: There's no sufficient - - - it's all
21 hearsay, and it's nothing - - - there's nothing
22 substantial. If they were trying to make - - - they're
23 making a case that there's a lack of veterinary care. But
24 there's - - - there's - - - but it would be simple if - - -
25 if they had gotten an affidavit from a - - - they - - -

1 they brought - - - the dog was brought to the vet, but they
2 could clearly have submitted an affidavit.

3 JUDGE TROUTMAN: And do you agree that the
4 requirements of a complaint and an information are
5 different?

6 MR. SPINAC: Right.

7 JUDGE TROUTMAN: And that less is required of a
8 complaint than an information?

9 MR. SPINAC: Right.

10 JUDGE TROUTMAN: But your argument here is even
11 with a lesser standard, the People didn't meet it?

12 MR. SPINAC: They haven't met - - - no. And - -
13 - and I think it's - - - it - - - and - - - and clearly
14 from my - - -

15 JUDGE RIVERA: But why is it a complaint rather
16 than an information? Your view?

17 MR. SPINAC: Because I think that there's - - -
18 there's no - - - there's no - - - it's all hearsay and
19 there's no specifics as to - - - and - - - and to - - - and
20 to evaluate the - - - the latent effects of the
21 spondylosis, you can't treat that anyway. And - - - and
22 the heart mass. He - - - he has no - - - how is he going
23 to know if there's a heart - - - if there's any mass on his
24 heart? And what is the requirement that he's going to have
25 to have to address that in a - - - with - - - with



1 veterinary care?

2 JUDGE CANNATARO: Who's the "he" you're talking
3 about?

4 MR. SPINAC: My client. He's not going to have
5 any knowledge of that even. And to put that - - - put that
6 burden on him - - -

7 JUDGE CANNATARO: Isn't that why you go to a vet,
8 to get diagnosis and treatment?

9 MR. SPINAC: Well, that's - - - that would be - -
10 - more - - - most people would do that if they could afford
11 it. In - - - in this case, he - - - he chose - - - he - -
12 - he was on the impression that the dog was - - - was - - -
13 was going to die, and he was - - - he wanted the dog to die
14 at home and of old age. An elderly gentleman.

15 JUDGE RIVERA: But the dog can be dying with - -
16 - suffering incredible pain, just as a human could?

17 MR. SPINAC: So then the question is what - - -
18 also, is there a requirement in the statute to euthanize
19 every animal, if - - - if you think there's - - - it's
20 sufficient pain?

21 JUDGE RIVERA: Well, I didn't say anything about
22 euthanasia.

23 MR. SPINAC: But that would be the next step.

24 JUDGE RIVERA: Not - - - not - - - well - - -

25 MR. SPINAC: Unless you can treat - - -

1 JUDGE RIVERA: If there is great - - -

2 MR. SPINAC: - - - assuming you can - - - unless
3 you can treat it.

4 JUDGE RIVERA: - - - if they're in great pain,
5 and - - - and perhaps there is some medical treatment that
6 might save the dog?

7 MR. SPINAC: So it's palliative care? Like - - -

8 JUDGE RIVERA: But if you - - - if you make no
9 effort to at least find out?

10 MR. SPINAC: Well, so the statute's requiring
11 everybody to have palliative care for animals, where you're
12 required. Then it's a crime to not - - - to not - - - if
13 you think there's pain in a - - - in an animal that you - -
14 - it's - - - it's a crime not to give palliative care as -
15 - - and what - - - to what - - - and what degree of
16 palliative care is necessary?

17 JUDGE RIVERA: No. Does the - - - does the
18 statute encompass making no effort to get information about
19 the status of the dog and what might be something that's
20 available to the dog?

21 MR. SPINAC: Well, we're - - - we're assuming he
22 - - - maybe he did know what - - - what - - - and what the
23 options were, and he realized that this - - - this is the
24 only route to go at this point. We don't know. That's the
25 point. There's no facts in evidence.

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JUDGE RIVERA: We don't know? I'm sorry, we don't know?

MR. SPINAC: There's no facts in evidence at this point. It's just an allegation of a crime at this - - -

CHIEF JUDGE WILSON: Thank you.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Christopher Farrell, No. 30 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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