Is A Deer An "Animal"? It Depends Who You Ask.

By Megan Senatori, DeWitt Ross & Stevens

The first issue to consider when reviewing the effectiveness of animal cruelty and neglect laws is so obvious, that many people forget to consider it. How does the law define an "animal"?

Because animal cruelty and neglect is almost entirely a matter of state law, the laws vary in all 50 states. One important difference among states is how the law defines an "animal." For example, some states provide protections only for mammals. Other states (like Oregon) provide protections for every living being (including fish). Wisconsin takes a somewhat blended approach, defining an "animal" in Chapter 951 ("Crimes Against Animals") as every living: "warm-blooded creature except a human being; reptiles, and amphibians."

Case Story: The Kuenzi Brothers

The issue of how "animal" is legally defined is a critical component of animal cruelty and neglect laws, as a case that recently went to the Wisconsin Court of Appeals confirmed.

In *State v. Kuenzi*, 2011 WI App 30, 332 Wis.2d 297, 796 N.W.2d 222, the Court considered whether the Legislature intended Chapter 951 to apply to wild animals. The case arose out of criminal charges issued against two brothers (Rory and Robby Kuenzi). The criminal complaint alleged the following facts:

> In January 2009, a sheriff's deputy, acting on a tip, found five deer with significant injuries near a snowmobile trail in Waupaca County. Four of the deer were dead, and the fifth had to be euthanized. Several of the deer had broken legs, and one of these had apparently crawled some distance before dying. Another deer, found tied to a tree, had apparently suffocated trying to free itself. Tracks at the scene suggested that snowmobiles were used to injure and kill the deer.
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> Further investigation revealed that, on the day before the discovery, Rory and Robby Kuenzi were each operating snowmobiles on a trail when they came across a group of thirty or forty deer in a field. The Kuenzis left the snowmobile trail and began chasing the deer. They struck and ran over several of the deer. Robby Kuenzi rode on top of one deer and did a "burn out," causing the deer's abdomen to rip open. Rory Kuenzi, with his snowmobile, struck another deer in its back legs, knocking it down. The two men, acting in concert, held that deer down, tied a strap around its neck, dragged it to a wooded area, and tied it, still alive, to a tree. They apparently planned to retrieve the deer at some point, but never returned. Later, having moved on to a different location, Rory Kuenzi struck and killed another deer. This time, Rory field-dressed the deer and took it with him.

2011 WI App at ¶¶ 4-5.

Chapter 951 makes it a crime to treat "any animal" in a "cruel" manner. This is a simple case then, right? If you asked a class of kindergarteners to raise their hand if a deer is an animal, every hand would undoubtedly go up. Not so fast.

The Kuenzi brothers argued in their defense that: "the animal cruelty statute cannot be applied to their actions, no matter how cruel or senseless, because they were engaged in taking 'wild animals' and the taking of non-captive wild animals is a hunting activity regulated by WIS. STAT. ch. 29. In the Kuenzis' view, chapter 29, and only that chapter, regulates hunting and, therefore, they may take a wild animal by any means without fear of prosecution so long as their means are not specifically prohibited by chapter 29." 2011 WI App at ¶ 3.

While the legal argument the Kuenzi brothers advanced may seem ludicrous to some, the trial court judges who handled the cases actually agreed with the Kuenzi brothers. Id. at ¶ 7. The Kuenzi brothers filed motions to dismiss the criminal charges against them, and those motions were granted. Id. In fact, two different trial court judges agreed with the above legal argument – Judge Philip M. Kirk dismissed the charges against Rory Kuenzi, and a different judge, Judge John P. Hoffmann, dismissed the charges against Robby Kuenzi. Id. at ¶ 2, n. 2.

The State of Wisconsin appealed the dismissal of the criminal charges to the Wisconsin Court of Appeals. Fortunately, reason prevailed, and the Wisconsin Court of Appeals held that Chapter 951, indeed, applies to wild animals. The Court held, in part, that:

> [T]he legislature defines "animal" in chapter 951—and, thus, in § 951.02—in a way that unambiguously includes non-captive wild animals. The broad definition states: " 'Animal' includes every living ... [reptile, amphibian, and] [w]arm-blooded creature, except a human being." WIS. STAT. § 951.01(1). When words are specifically defined by the legislature, their meaning is as defined, and we need not resort to other rules of statutory construction. *Wisconsin Citizens Concerned for Cranes & Doves v. DNR*, 2004 WI 40, ¶ 21, 270 Wis. 2d 318, 677 N.W.2d 612. Here, the legislature has provided a clear definition that includes all warm-blooded animals.

Id. at ¶ 18. The Court also concluded that Chapter 951 did not controvert Chapter 29 (relating to the hunting of wild animals). As a result of the Court of Appeals' opinion, the criminal charges against the Kuenzi brothers were reinstated. For a complete copy of the Court of Appeals' opinion, visit: http://www.wicourts.gov/ca/opinions/09/pdf/09-1827.pdf.

Conclusion

The *Kuenzi* case teaches important lessons. First, that the effectiveness of animal cruelty and neglect laws depends in large measure on which "animals" the law covers. Second, that how we treat animals is often reflective of how we treat our fellow human beings. Those of you who already understand this latter lesson will not surprised to learn that a year before the Court of Appeals reinstated the criminal charges against Rory Kuenzi for the senseless violence against a herd of deer, he was found guilty of homicide by drunken driving for a 2004 hit-and-run accident that resulted in the senseless death of a 20 year old young man, Kevin McCoy.