No. 03-24-00357-CR

In the
Court of Appeals
For the
Third Judicial District of Texas
At Austin

Cause No. 21-01658-1
In County Court at Law No. 5 of
Williamson County, Texas

DANA BOEHM,
Appellant
v.
THE STATE OF TEXAS
Appellee

STATE'S APPELLATE BRIEF

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TO THE HONORABLE THIRD COURT OF APPEALS:

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Texas Rule of Appellate Procedure 9.4(g) and Texas Rule of Appellate Procedure 39.1, the State does not request oral argument because Appellant's sufficiency challenge can be adequately determined from the record before this Court. Tex. R. App. P. 9.4(g); Tex. R. App. P. 39.1. However, if this Court deems oral argument necessary for the resolution of this appeal, the State does not waive its right to present oral argument.

STATEMENT OF FACTS

I. Spring 2016 to March 2021: Jax's life

Osvaldo "Ozzy" Silva Jr. wanted an Old English Bulldog and purchased a puppy he named Jax from a breeder in the spring of 2016 (8RR:228). Jax was bowlegged from a spinal issue, which Appellant, veterinarian Dana Boehm, noticed when Jax became her patient in 2017 (9RR:184, 184-85; 11RR:37, 136). However, Silva was told that Jax could live a normal life (9RR:184-85).

In addition to bringing Jax for veterinary care at appellant's clinic, Animal Wellness Hospital, the Silvas also used appellant's boarding services (9RR:184, 186; 11RR:136). During these stays, appellant and a volunteer, Heidi Latham, noted that Jax had issues urinating and defecating in his kennel, with Latham describing Jax as a "messy little boy, like most animals are when they are away from home" (10RR:177,

173). Indeed, Jax's records from 2019 noted issues with Jax peeing, indicated he was not potty-trained, and required multiple baths per day (11RR:137-38).

Jax did not engage in this behavior when home (9RR:202). He would usually have an accident if left alone for seven hours, but the Silvas arranged for Henry Flores, Silva's father-in-law, to let Jax out and walk him during the day if they were away too long (9RR:202-03; 10RR:7, 8). Jax had "free roam" of their home but liked to follow his family and be wherever they were (9RR:205, 212-13). The Silvas kept several beds in different rooms of the house so Jax would have a soft place to sit as he followed them from room to room (9RR:212-13).

Silva described Jax as moderately active (9RR:201). However, Jax developed joint pain, for which appellant prescribed him joint supplements (9RR:205). Jax also injured his leg in January 2021 by jumping off the couch (9RR:185). Appellant saw him, prescribed him pain medications, and recommended limiting Jax's movement (9RR:185-86). With these measures, Jax improved and did not have any issues walking when the Silvas took a vacation in March 2021 and arranged for Jax to board with appellant from the 13th to the 20th (9RR:183-84, 187, 188; 10RR:8-9). Video from the Silvas' home on the morning of the 13th captured Jax independently following the Silvas around their home and walking without difficulty on their tile floor (9RR:187, 188; State's Ex. 1).

II. March 13th through March 20th: Boarding at Animal Wellness Hospital

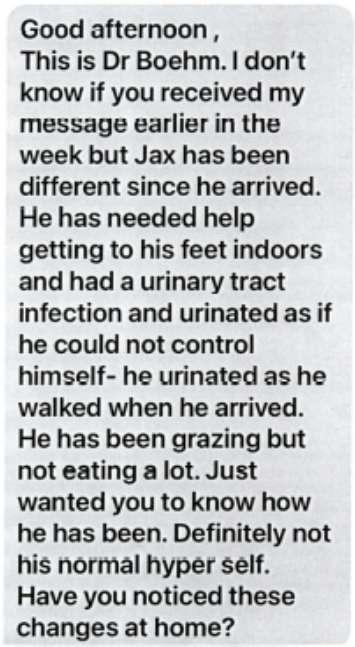
Flores brought Jax to appellant's clinic the morning of Saturday, March 13, 2021 (10RR:8). Jax needed help getting into the car for the trip but was able to get out without help (10RR:40). He did not have any trouble standing or have any injuries (10RR:10). The dog urinated on the bushes by the clinic when they arrived (10RR:9-10). Since precautions against COVID-19 were in place, only staff were allowed inside, so Flores called as directed by the sign outside the clinic and waited for someone to come get Jax (10RR:9-10, 37; State's Ex.6).

Brook DeAngelis, a senior in high school working with appellant, retrieved Jax (11RR:250, 251, 252). She remembered he was stubborn and reluctant to walk (11RR:253). To her, he seemed uncomfortable and not able to move by himself, and after attempts to encourage him inside by pulling on a leash, she had to lift him to bring him up into the clinic (11RR:253). He slipped a few times on the tile floors, peed a couple of times, and needed help to make the step leading to the kennels (11RR:254). As DeAngelis knew Jax was on joint medication chews and had joint problems, she expected him to need help (11RR:253, 259). She still informed appellant of what she had seen (11RR:255). In addition to the joint supplement, appellant gave Jax Galliprant, a nonsteroidal anti-inflammatory medication, and Gabapentin, beginning the day he arrived (11RR:69; State's Ex. 4).

On Tuesday, March 16th, Silva contacted the clinic to see how Jax was doing and was told he was fine and was playing with the other dogs (9RR:189, 191).

Sometime during Jax's stay, P.H., another high school student that appellant had hired to help in the clinic, gave Jax a bath and noticed that the dog was "acting weird and being a little off balance" and was not able to get "around super great" (10RR:159). He seemed uncomfortable and was lacking energy, which P.H. informed appellant who told her "not to mess with him again" (10RR:160). The only time P.H. saw appellant interacting with Jax her "moving him from one kennel to another after [P.H.] had cleaned the kennels" (10RR:160).

On Friday, March 19th, a urinalysis was performed for Jax (State's Ex. 4). Appellant prescribed three different medications for Jax that day: the antibiotic Enrofloxacin, another antibiotic Cefpodoxime, and the steroid Prednisone (State's Ex. 4). Appellant stopped giving Jax Galliprant, with his last dosage taken on the 18th (11RR:71; State's Ex 4). Appellant also texted Silva:



(State's Ex. 2).

Jax had not been having those issues at home, so the Silvas tried to contact the clinic (9RR:192; State's Ex. 2).

On Saturday, March 20th, Jax was set to leave the clinic (10RR:176). Latham was volunteering that morning and helped appellant clean up Jax after he urinated while waiting for his ride; she observed that Jax could not stand on his own (10RR:172, 173, 176, 179, 180). Appellant wiped Jax down with a wet washcloth, soap, and water while Latham held him (10RR:180). Appellant then dried him and redressed bandages that had been on him (10RR:180). Appellant's phone contained several photographs of Jax that were taken that morning, including two that appeared to depicted wounds on Jax (11RR:273, 274; State's Ex. 12, 13, 14).

III. March 20th: Jax briefly returns home

Flores picked Jax up from the clinic that morning (9RR:194; 10RR:10). As he described it, "when they brought him out, two ladies had like bed sheets, one in back and one in front, and they were carrying [Jax] like a pack of potatoes" (10RR:10). The women assisted Flores with getting Jax in the car, and when they removed the bedsheet, Flores noticed bandages on Jax's body (10RR:11). Jax smelled of urine and appeared "drugged up[b]ig time" (10RR:12). Flores asked why Jax was in the condition he was in and was told that they had given him a pill (10RR:12). Appellant came out and gave Flores a set of pills and indicated that Jax needed to go to a doctor to have his spine checked (10RR:13).

Flores was shocked at the condition Jax was in and called his wife to meet him at the Silvas' home (10RR:12, 13). Jax was unable to walk on his own and had to be carried with towels (9RR:194, 10RR:15). According to Flores, the dog was "very limp," "like a zombie," and "didn't raise his head up at all" (10RR:13, 16). They set him on a dog bed in the house and gave him water, which Jax drank for a long lime, "[l]ike he was really thirsty," lowered his head again, and did not move (10RR:15; State's Ex. 1).

Flores called the Silvas and tried to explain Jax's condition (9RR:195; 10RR:16). He and his wife stayed with Jax until the Silvas arrived that evening and told them that appellant had indicated that they should take Jax to the doctor to get his spine evaluated (9RR:195; 10RR:16).

The Silvas tried to give Jax a bath because he was covered in urine and smelled of urine and feces (9RR:195, 196). They removed the bandages on him when they bathed him but could not get the urine off him (9RR:196, 216). Silva could not remember rebandaging the areas which had exposed bones but definitely took Jax to Austin Veterinary Emergency and Specialty Center (or "AVES") in Austin that night (9RR:196, 216-17, 226; 11RR:34, 36).

IV. March 20th through March 21s: Evaluation at AVES

When Jax arrived at AVES, he was unable to walk and could not stand without assistance (11RR:34, 50). He had an elevated heart rate and multiple wounds on his hind limbs and ankles and also had irritation or abrasion on his belly and scrotum

(11RR:34, 35). The Silvas also reported issues with Jax regurgitating (11RR:73, 74). The initial diagnosis was tetraparesis, or general weakness of the limbs, which was secondary to a possible systemic disease (11RR:111).

For Jax's skin irritation, urine scalding and severe allergies or dermatitis were possible causes (11RR:111). Urine scald involves the development of redness, inflammation, and irritation from an animal's fur being soaked with urine or exposed to cleaning detergent that can lead to bacterial infection (11RR:44, 45). As urine is very acidic and thus abrasive to the skin, urine scald can develop if an animal is not kept clean and dry (11RR:54-55). Jax was given a bath of chlorhexidine, an antiseptic, antibacterial solution, because of the extent of trauma to his skin (11RR:63).

After cleaning the wounds and removing Jax's fur on the 21st to ensure the wounds could be adequately cleaned and monitored, they were noted to be very deep with the wounds on his back legs potentially exposing underlying bone (9RR:216-17; 11RR:50; State's Ex. 7-10). One wound showed evidence of attempting to heal itself but also revealed dead tissue on the edge (11RR:52-53; State's Ex. 7-9). The team of vets at AVES believed that the wounds, which were three to seven days old, were from Jax laying on a hard surface for extended periods of time since the wounds were present over areas like bony prominences that did not have much soft tissue to cushion them (11RR:35, 51, 53).

The regurgitation, which continued the first couple of days Jax was at AVES both spontaneously and every time his stomach was touched, required the team to

administer antibiotics by injection because Jax could not keep oral medications down (11RR:74, 112).

The AVES team stopped giving Jax Prednisone on the 21st, fearing that since he had an infection (evidenced by the irritation on his belly, a fever, and elevated white blood cell counts), the steroid could suppress his immune system and hinder his body's ability to fight the infection (11RR:74, 75, 81, 82). They were also unable to find a reason, or "an indication for Prednisone" is his case (11RR:74). To ease the regurgitation, they placed a feeding tube through Jax's nose to help remove excess fluid from his stomach (11RR:79).

Based on their evaluation of Jax, the team at AVES believed that something happened with his mobility prior to him being brought to AVES (11RR:57). "[H]e remained recumbent without adequate bedding over his tarsi which caused those wounds that then opened and then became infected and then later down the course worried that that infection spread throughout his body and resulted in a progression of his weakness and his mental symptoms and development of other wounds" (11RR:57-58). They requested his medical records from appellant on the 21st and received them on the 22nd (11RR:35-36).

V. Medical Records

Appellant's medical records for Jax, beginning around April 2017, noted the curvature in Jax's spine and bow-legged walk due to the deformity (11RR:37). Lindsey Vaughn, the medical director, hospital director, and veterinarian over AVES, was one

of Jax's medical providers at AVES and did not believe that the spinal deformities, which had been something chronic that Jax had his entire life, would worsen in a matter of hours and cause his symptoms (11RR:33, 37, 38). She also did not believe the spinal deformity could cause sudden bladder control problems, though such problems could develop over the course of time (11RR:39).

Jax's records indicated that Jax typically received a courtesy bath prior to leaving boarding, but in the most recent stay, it was noted in the middle that Jax was really messy, suddenly having issues of being able to keep himself clean, which had not been noted prior (11RR:40, 42). There were comments in the records that state that Jax would urinate when coming to the facility, but Vaugn could not recall a concern about urinating spontaneously at home or if a workup was done to determine what was behind it (11RR:41). Instead, the majority of his issues were about his chronic spinal issues or limb deformities (11RR:41).

In Vaughn's opinion, a disk that hits the spinal cord could cause something like sudden onset of incontinence, but other things, like Prednisone or a diuretic or high doses of pain medication, could also cause incontinence (11RR:40). A severe urinary tract infection could sometimes cause incontinence, though less common, and a review of the records left Vaughn unsure if Jax had a urinary tract infection because the urinalysis in the records did not document such an infection to Vaughn (11RR:40, 76-77). Appellant must have believed Jax had the infection because she began Jax on the two antibiotics at the same time which surprised Vaughn (11RR:75-76).

Vaughn was also unsure why appellant had prescribed Prednisone, as the steroid could suppress immune function, which was undesired in patients with infections (11RR:75, 75). The records suggested it was prescribed for pain, but Prednisone does not treat pain (11RR:186, 187, 202). Vaughn was also concerned about the suddenness with which Jax had been taking Galliprant and then was switched to Prednisone, since the proximity could cause complications like ulcers (11RR:69-71). Had the switch been medically necessary, protective measures that could be put in place include putting the animal on a proton pump inhibitor to prevent ulcers from developing or a medication called Misoprostol could also be used when transitioning the animal from one drug to another, but there was no mention of employing such measures in Jax's medical records (11RR:72).

VI. March 20th to March 24th: Treatment at AVES

Since Jax was not able to walk on his hind limbs when he was a patient at AVES, issues with his spine like disk disease, trauma, tumor on the spinal cord, infections, or inflammatory causes were considered; however, since Jax improved while under their care, he did not undergo advanced imaging to determine the underlying cause (11RR:49). They followed a protocol for patients with mobility issues that involved moving the animal to its other side every four hours to prevent constant pressure on the same spots and also trying to see if the animal could stand to get its body moving before laying down again (11RR:53-54). This encouraged mobility

rehabilitation as well as sought to prevent secondary tissue issues or bacterial infections (11RR:55).

The combination of Jax's incontinence and mobility issues presented a challenge for the AVES team as he needed something soft to rest on but would hold urine (11RR:46-47). While pee pads were an option, they placed a urinary catheter to keep Jax clean and dry, which enabled them to monitor his urine production as well as prevent him from urinating on himself and causing further irritation to his skin (11RR:54, 63).

On the 21st, the overnight shift noticed that Jax had mucoid nasal discharge, which was another sign of infection (11RR:116). He also developed an ulcer near his rectum (11RR:116). The next day, Jax developed swelling on his left forelimb (9RR:197; 11RR:81).

While urine scalding typically improves within 48 hours of adequate antibiotics and maintaining the cleanliness and dryness of the affected area, Jax's abdominal inflammation did not improve until later (11RR:65-66). However, his skin became less red and irritated (11RR:79). His regurgitation improved (11RR:79). He began to have longer periods of time where he could stand, though he would still eventually collapse without support (11RR:79).

At this point, some of Jax's symptoms were getting worse but some were getting better (11RR:118). Most troubling, Jax continued to get new wounds (11RR:118). When changing Jax's bandage, on the 24th, "his left arm basically busted

open with an infection and purulent or infected material came out" (11RR:80-81, 130). This was the first time a wound had appeared on a non-pressure location (11RR:58, 81; State's Ex. 11).

Vaughn spoke with the Silvas about Jax's future and the possibility that the continued development of wounds on his legs would require surgical intervention via skin grafts because there was not enough tissue to close the wounds (9RR:198; 11RR:81, 82). The Silvas had already turned down test suggested to diagnosis Jax because of the costs (9RR:222). The Silvas opted to euthanize him, which Vaughn did on March 24th (9RR:198; 11RR:12, 81, 113).

VII. Investigation

Before Jax was put down, Silva called law enforcement on the 23rd to report what had happened because he could not believe the condition Jax had deteriorated to when in appellant's care and it "didn't seem like it was normal" (9RR:198, 225).

Detective R. Loegel was assigned to the investigation (10RR:73). Eventually, she obtained a search warrant for appellant's clinic which was executed around nine o'clock in the morning of Thursday, May 20th (10RR:79). Appellant was there with two other individuals (10RR:112).

The officers found the clinic—besides the front area—cluttered and messy, with exposed needles laying on many surfaces, piles of scissors and bowls in a sink, unidentified pills scatted on a counter, and a disordered operating room featuring a metal table with iodine stains and dirty floor (State's Ex. 5).

Per its sign, the clinic had opened at 7:30 a.m. (10RR:137; State's Ex. 6). However, the officers found many animals in soiled kennels that had not been removed from their waste (State's Ex. 5). The clinic had three areas where animals were kept:

- An inside laundry room in which officers found two of the metal kennels occupied with dogs that had urinated and defecated and an unoccupied kennel containing a urine-soaked towel which looked like it had been used as a cushion for an animal (State's Ex. 5);
- An outdoor covered storage area featuring metal crates and portioned rooms, some with no food or water and some with dogs in visibly soiled spaces (State's Ex. 5);
- And an outdoor uncovered fenced cage housing three dogs which was soiled with urine and feces (State's Ex. 5).

Animal control officers were called to the clinic to determine "if it was safe for the animals that were currently there that day," which included about a dozen dogs and four kittens, because Loegel "didn't feel like the situation was good" (10RR:135). At the conclusion of the investigation, appellant was charged with cruelty to nonlivestock animals under Section 42.092(b)(3), Penal Code (CR:15).

SUMMARY OF THE ARGUMENTS

The evidence is sufficient to support the jury's conclusion that appellant unreasonably failed to provide necessary care to Jax by failing to remove Jax from his waste as the jury heard evidence that appellant knew Jax had issues urinating when he was boarded, that Jax had injuries indicating that he was left in his urine when picked up from appellant's clinic, and that appellant's help usually found the animals in soiled

kennels, which the jury saw evidence of in the video from the search warrant's execution. The jury also rationally found that appellant failed to care for Jax's wounds from the evidence that appellant habitually did not provide bedding for animals in their kennels, Jax's wounds were from prolonged contact with hard surfaces, the wounds developed during the time Jax was in appellant's care to the point where they exposed bone, and that when bandaging the wounds, appellant did not shave Jax. Finally, given the testimony about known gastrointestinal ulceration that can occur when Galliprant and Prednisone are given in close proximity without protective measures and that there was no indication why appellant would have prescribed Prednisone, an immune-suppressing steroid, when Jax had an infection, the evidence was sufficient to show that appellant failed to provide care necessary to maintain Jax in a good state of health by her use of the medications.

The trial court did not err when it included the allegation that appellant failed to provide necessary care for Jax by prescribing and administering medications which are contraindicated, specifically Prednisone and Gallipant, in the jury charge. While appellant argues that the alleged manner and means cannot be a violation of Section 49.092(b)(3) because it is an action rather than an omission, the construction of the statute as a whole—including applicable definition of "necessary care"—encompasses both actions and omissions that fail to provide necessary care to an animal. This is because the definition of "necessary care" given by subsection 42.092(a)(7) sets a level that must be met for application of the offense and that triggers application of the

statute when that level is not met. Such failure can occur by omission—an absolute failure to act—or actions that fail to achieve the level of necessary care. As such, the trial court did not err in including the allegation in the jury charge.

The trial court did not err in including that statutory definition of "recklessly" in the jury charge. As the Legislature specifically included "recklessly" as a mental state—in contrast to its omission in cruelty to livestock animals penalized by Section 42.09—and is currently considering expanding the offense to include criminally negligent conduct, any construction that would omit the applicability of "recklessly" as a mental state is contrary to the plain language of the statute. Additionally, an examination of the statute's focus—inadequate care when unreasonable—mixes aspects result-of-conduct and circumstances-of-conduct that fit the definition of "recklessly" in Section 6.03(c) that the court tracked when charging the jury. As such, the court did not err in its charge to the jury.

REPLY TO APPELLANT'S FIRST POINT OF ERROR

I. The evidence is sufficient to support the determination of appellant's guilt for the offense charged.

Appellant's challenge to the sufficiency of the evidence against her involves a construction of the alleged offense as well as consideration of the testimony and other evidence presented to the jury. Under the applicable standards of review and applicable law, the jury rationally found appellant guilty considering the evidence presented at trial.

a. Standard of Review

When reviewing the sufficiency of the evidence, appellate courts review all record evidence in the light most favorable to the verdict to determine whether any rational jury could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Stahmann v. State*, 602 S.W.3d 573, 577 (Tex. Crim. App. 2020); *Ogbuehi v. State*, 706 S.W.3d 689, 694–95 (Tex. App.—Austin 2025, no pet.).

Circumstantial evidence is as probative as direct evidence in establishing guilt, *Clayton v. State*, 235 S.W.3d 772, 778 (Tex. Crim. App. 2007), and "[a] criminal conviction may be based upon circumstantial evidence." *Temple v. State*, 390 S.W.3d 341, 359 (Tex. Crim. App. 2013).

"The jury is the sole judge of credibility and weight to be attached to the testimony of the witnesses." *Stahmann*, 602 S.W.3d at 577. Courts presume juries resolve conflicts in favor of their verdict and defer to that determination. *Merritt v. State*, 368 S.W.3d 516, 525-26 (Tex. Crim. App. 2012).

Juries may also draw reasonable inference from the evidence and "are 'free to apply common sense, knowledge, and experience gained in the ordinary affairs of life in drawing reasonable inferences from the evidence.'" *Ogbuehi*, 706 S.W.3d at 694 (quoting *Eustis v. State*, 191 S.W.3d 879, 884 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd)).

The sufficiency of the evidence is measured against the offense as defined by a hypothetically correct jury charge. *See Malik v. State*, 953 S.W.2d 234, 240 (Tex. Crim. App. 1997). Such a charge "accurately sets out the law, is authorized by the indictment, does not unnecessarily increase the State's burden of proof or unnecessarily restrict the State's theories of liability, and adequately describes the particular offense for which the defendant is tried." *Id.* Thus, "[i]n some cases,…a sufficiency-of-the-evidence issue turns on the meaning of the statute under which the defendant has been prosecuted." *Ogbuehi*, 706 S.W.3d at 694 (quoting *Liverman v. State*, 470 S.W.3d 831, 836 (Tex. Crim. App. 2015)). Construing a statute to determine its meaning is a question of law reviewed de novo. *Id.*

When construing a statute, the court seeks to "effectuate the collective intent or purpose of the legislatures who enacted the legislation." *Watkins v. State*, 619 S.W.3d 265, 271 (Tex. Crim. App. 2021). The court should focus on the literal text of the statute and "attempt to discern the fair, objective meaning of the text at the time of its enactment." *Watkins*, 619 S.W.3d at 271-72.

"The overarching rule of statutory construction is that we construe a statute in accordance with the plain meaning of its text unless the text is ambiguous or the plain meaning leads to absurd results that the legislature could not possibly have intended." *Ex parte Vela*, 460 S.W.3d 610, 612 (Tex. Crim. App. 2015). Courts presume that every word has been used for a purpose and try to give each word, phrase, clause, and sentence effect if reasonably possible. *Watkins*, 619 S.W.3d at 272. Courts read words

and phrases in context and construe them according to the rules of grammar and common usage. *Id.* "If the plain language is clear and unambiguous," the "analysis ends because 'the Legislature must be understood to mean what it has expressed, and it is not for the courts to add or subtract from such a statute.'" *Ogbuehi*, 706 S.W.3d at 695 (quoting *O'Brien v. State*, 544 S.W.3d 376, 384 (Tex. Crim. App. 2018)).

b. Applicable Law

At the time of the offense, section 42.092, Penal Code, provided that one way a person commits the offense of cruelty to nonlivestock animals is if the person intentionally, knowingly, or recklessly fails unreasonably to provide necessary food, water, care, or shelter for an animal in the person's custody and the conduct does not meet the exceptions provided for in subsection (f). Tex. Penal Code §42.092(b)(3) (2017). "'Necessary food, water, care, or shelter' includes food, water, care, or shelter provided to the extent required to maintain the animal in a state of good health." Tex. Penal Code §42.092(a)(7) (2017). "'Custody' includes responsibility for the health, safety, and welfare of an animal subject to the person's care and control, regardless of ownership of the animal." Tex. Penal Code §42.092(a)(4) (2017).

The mental states of intentionally, knowingly, and recklessly defined in section 6.03, Penal Code, are incorporated into the offense. *See* Tex. Penal Code §6.03 (1994); Tex. Penal Code §42.092(b)(3) (2017). Those definitions provide:

- "A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result." Tex. Penal Code §6.03(a) (1994).

- "A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result." Tex. Penal Code §6.03(b) (1994).

- "A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all circumstances as viewed from the actor's standpoint." Tex. Penal Code §6.03(c) (1994).

The Court of Criminal Appeals has analyzed the definitions and remarked that:

> Section 6.03 of the Texas Penal Code sets out: four culpable mental states—intentionally, knowingly, recklessly, and criminally negligently; two possible conduct elements—nature of conduct and result of the conduct; and the effect of the circumstances surrounding the conduct." *Price v. State*, 457 S.W.3d 437, 441 (Tex. Crim. App. 2015).

When charging a jury, a court must tailor the definition of the applicable mental state(s) to the offense based on the offense's category, determined by the focus or gravamen of the statute: "result-of-conduct," "nature-of-conduct," and "circumstances-of-conduct offenses." *Robinson v. State*, 466 S.W.3d 166, 170 (Tex. Crim. App. 2015); *see Young v. State*, 341 S.W.3d 417, 423–24 (Tex. Crim. App. 2011); *Love v. State*, 706 S.W.3d 584, 604 (Tex. App.—Austin 2024, pet. ref'd). Result-of-

conduct offenses, such as murder or assault causing bodily injury, focus on the product of conduct regardless of the specific manner through which the result was caused. *Young*, 341 S.W.3d at 423. Nature-of-conduct offenses concern the act or conduct, like sexual assault, where the act itself is the gravamen of the offense regardless of the result. *Id.*. Circumstances-of-conduct offenses involve "otherwise innocent behavior that becomes criminal only under specific circumstances." *Id.*. The "where, when, and how" contribute to determining if an offense occurred, such as a marksman being blameless when firing a rifle at a target at a shooting range but culpable when firing the rifle into a crowded parking lot. *Id.*

As appellant notes, Appellant's Brief 41, in *Cardoso v. State*, the Fourth Court of Appeals, relying on the Court of Criminal Appeals' opinion in *Amaya v. State*, categorized cruelty to animals as a nature-of-conduct offense. *Cardoso v. State*, 438 S.W.3d 815, 822 (Tex. App.—San Antonio 2014, no pet.); *see Amaya v. State*, 733 S.W.2d 168, 174 (Tex. Crim. App. 1986) (listing offenses that involve "conduct that is inherently 'criminal' in nature" including murder, kidnapping, assault, sexual assault, and cruelty to animals). When assessing jury charge error in a cruelty to nonlivestock animals case, this Court assumed without deciding that the offense's gravamen was nature-of-conduct. *Long v. State*, No. 03-20-00070-CR, 2022 WL 92026, at *4 (Tex. App.—Austin Jan. 7, 2022, no pet.). However, these opinions did not provide a statutory analysis as laid out by *Young* to determine the category of the crime. *Young*, 341 S.W.3d at 423 ("Generally the statutory language determines whether a crime is a

"result of conduct," "nature of conduct," or "circumstances of conduct" offense."). Indeed, *Cardoso*'s reliance on *Amaya* is clearly erroneous as the crimes listed as being "inherently 'criminal' in nature" have been identified by the Court of Criminal Appeals as result-of-conduct offenses (murder, assault). *See Amaya*, 733 S.W.2d at 174.

Indicating the focus on the result of conduct, result-of-conduct offenses generally "require a direct object [the result] for the verb [the conduct] to act upon" and may include different subsections naming different acts that cause the same result. *Young*, 341 S.W.3d at 423-24. For instance, section 19.02(b)(1) provides that a person commits murder "if the person intentionally or knowingly causes the death of an individual." Tex. Penal Code §19.02(b) (2023). The verb ("causes") acts upon the direct object ("the death") which is modified by a preposition ("of an individual"). Similarly, the assault statute criminalizes a person with the mentioned mental state "caus[ing] bodily injury to another," "threaten[ing] another" and "caus[ing] physical contact with another," with the verbs ("causes" and "threatens") acting upon the direct object ("bodily injury" and "physical contact"). Tex. Penal Code §22.01(a)(1) (2024).

The Court of Criminal Appeals has stated that nature-of-conduct offenses "generally use different verbs in different subsections, an indication that the Legislature intended to punish distinct types of conduct." *Young*, 341 S.W.3d at 424. However, this does not appear to be the case when grammatically examining the sexual assault statutes. For instance, in the sexual assault statute, the verb phrase

"causes the penetration of" and "causes …contact" permeates that statute. Tex. Penal Code §22.011(a) (2021). Instead, the focus on the penetration or contact being "without consent"—the nature of the action that changes otherwise lawful action to criminalized conduct.

The naming of particular circumstances that exist rather than the acts a defendant might perform under those circumstances indicate a circumstances-of-conduct offense. *Young*, 341 S.W.3d at 424. Therefore, the offense depends upon the circumstances surrounding the conduct that make the offense a crime. *Id.*

c. Section 42.092(b)(3) allows for the criminalization of a person for intentionally, knowingly, or recklessly failing unreasonably to provide necessary care for an animal in the person's custody.

In her brief, Appellant makes two arguments related to the construction of Section 42.092(b)(3). First, she argues that as the requirement that a person fails to act to commit the offense renders the crime a nature-of-conduct offense for which the mental state of reckless cannot apply as its definition lacks a meaning applicable to nature. Second, she argues that any act of failure must be an omission and that any manner and means describing an affirmative act cannot fall within the definition. Each of these arguments will be analyzed in turn.

i. The plain language of Section 42.092(b)(3) allows the offense to be committed recklessly.

When construing the reach of a statute, the Court of Criminal Appeals has directed courts to look to the plain meaning of the text and presume every word has

been used for a purpose. *Watkins*, 619 S.W.3d at 272; *Vela*, 460 S.W.3d at 612. As Section 42.092(b) states that the offense is committed "intentionally, knowingly, or recklessly," the plain language of the statute supports that the Legislature intended all mentioned mental states to support an offense.[1] Tex. Penal Code §42.092(b)(3). This inclusion is purposeful, as evidenced by a comparison with Section 42.09 which criminalizes cruelty to livestock animals and only applies to intentional or knowing conduct. *See* Tex. Penal Code §42.09 (2007). It is worth noting that Section 42.09 used to criminalize the cruelty to any type of animal and was amended in 2007, when Section 42.092 was originally promulgated, by House Bill 2328; from its origination, Section 42.092 included three culpable mental states in comparison to Section 42.09's two, which again is indicative of purposeful legislative inclusion. Acts 2007, 80th Leg., R.S., Ch. 886 (H.B. 2328), Sec. 1, eff. September 1, 2007. Further supporting Legislative intent to include "recklessly" is House Bill 285, which is currently pending and seeks to expand the commission of Section 42.092(b) by a criminally negligent mental state. *See* Tex. H.B. 285, 89th Leg., R.S. (2025).

Despite the plain language and difference from its sister cruelty to livestock animals statute, appellant would have this Court strike "recklessly" from Section 42.092(b)(3) under the theory that the unreasonable failure to provide necessary care

[1] The Legislature did not have to name the applicable mental states for the crime. Per Section 6.02(c), if a statute does not prescribe a mental state, "intent, knowledge, or reckless suffices to establish criminal responsibility." Tex. Penal Code §6.02(c) (2005). Thus, the Legislature's choice to include each mental state is purposeful.

must be a nature of conduct offense for which there is no applicable definition of reckless and therefore no application of reckless as a mental state. *See* Tex. Penal Code §6.03(c). Appellant's argument proffers an intriguing theory: that a court-created analysis of statutory application can effectively amend a statute by striking an included word from the legislative text. But as this Court has recognized, "it is not for the courts to add or subtract from such a statute." *Ogbuehi*, 706 S.W.3d at 695. Instead, courts must avoid construction that "leads to absurd results that the legislature could not possible have intended," and the Legislature's purposeful inclusion of "reckless" in Section 49.092(b) requires its application. *Vela*, 460 S.W.3d 612. As such, appellant's argument must fail, and a reckless mental state must be one by which Section 42.092(b)(3) can be violated.

That conclusion still leaves the question of what category the cruelty to nonlivestock animals under Section 42.092(b) falls and what the gravemen of the offense is.

Section 42.092(b) contains numerous ways a person can committee the offense of cruelty to nonlivestock animals. Some of those focus on the result of an actor's conduct, like torturing, killing, or causing serious bodily injury, while also adding a circumstance element—"cruel"—in subsection (b)(1). Tex. Penal Code §42.092(b)(1). An example of a circumstance of conduct appears in subsection (b)(2), which criminalizes the killing, administration of poison, or causing serious bodily injury to an animal (albeit in a manner that is not cruel) when done without the owner's effective

consent—the circumstance that renders an otherwise result of offense crime a circumstance of the offense crime. Tex. Penal Code §42.092(b)(2).

Subsection (b)(3) continues this mix of result and circumstance focus: a person commits an offense if the person intentionally, knowingly, or recklessly fails unreasonably to provide necessary care to an animal in the person's custody. Tex. Penal Code §42.092(b)(3). The subsection mirrors the construction of a result-of-conduct offense by having a verb phrase ("fails to provide") acting upon a direct object ("necessary care") which is modified by circumstances that must exist for the act to be criminal (that the failure to provide be unreasonable and that the animal be in the person's custody). *See Young*, 341 S.W.3d at 423-24. The statute mixes a focus on the product of the conduct (a failure to provide necessary care) with the specific circumstance of unreasonableness. Importantly, the statute defines necessary care (meaning care "provided to the extent required to maintain the animal in a state of good health"), which must be construed and considered when determining the focus of the offense. Tex. Penal Code §42.092(a)(7). Looking at the language as a whole, Section 49.092(b)(3)'s focus is on ensuring an animal is provided necessary care by criminalizing that failure when done unreasonably. Thus, like other parts of the statute, the subsection's gravamen is both on the result and circumstance specified.

ii. The definition of "necessary care" allows acts that fall below the standard set to be criminalized as a failure under Section 42.092(b)(3).

Appellant also argues that the word "fails" in Section 42.092(b)(3) also indicates that the subsection only criminalizes omissions to act. However, the language of the statute as a whole requires the construction of the verb phrase "fails to provide" with the meaning of "necessary care," which means that failing to provide care to the extent required to maintain an animal in a state of good health is what is criminalized. Acts that provide care but do not provide care to the extent required to keep an animal in a state of good health (when done unreasonably and with the designated mental states) fall within the ambit of the statute. Tex. Penal Code §49.092(a)(7), (b)(3). A person can fail to provide necessary food, water, care, or shelter by omission, like by not providing food or water at all (an omission), or by providing inadequate levels of food or water (an action). If a person put a Band-Aid on a bullet wound, that person could fail to provide necessary care by action. Section 42.092 focuses on the level of care and whether it meets the level required by the definition. Whether an act or omission falls within the statutory definition is a question for the factfinder to determine and not a matter of law alone.

d. The evidence established that appellant failed unreasonably to provide Jax necessary care by failing to remove Jax from his waste while in her care.

The evidence presented to the jury was sufficient to show that appellant knowingly or recklessly failed unreasonably to provide Jax necessary care—specifically

care that would maintain the animal in a good state of health—by failing to remove Jax from his waste. *See* Tex. Penal Code §42.092(a)(7). As the jury heard, appellant knew that Jax had urinary issues when he stayed to board. Her records indicated he was not potty-trained and required multiple baths per day (11RR:137-38; 11RR:238-39). Even appellant's part-time, volunteer Latham knew Jax as "messy little boy," meaning he "[j]ust tended to like to urinate and defecate in his kennel, like frequently" (10RR:177, 173).

From this evidence, the jury could infer that appellant knew that Jax needed more attention to keep from staying in his waste when he was boarded. The jury could reasonably infer from the evidence, like appellant admits, that she was short-staffed and did not have a lot of help. Appellant's Br. 34. The jury could also rationally infer that appellant would have been aware that her lack of help could cause her to fail to remove Jax from his waste in a timely manner with the clinic's other demands. *See* Tex. Penal Code §6.03(b).

While it is unknown how many animals were in appellant's care between the 13th and the 20th, the jury could have inferred it could have been similar to the dozen dogs and four cats that appellant was responsible for when the search warrant was executed (State's Ex. 5). As the jury saw numerous animals in soiled kennels at that time, it could have rationally concluded that appellant habitually took more animals than she could adequately remove from their waste and that this happened with Jax (State's Ex. 5).

The jury was also free to consider and weigh the evidence of Jax's condition on the 20th. As Silva testified, Jax was covered in urine and feces that needed a substantial 15-to-20-minute bath when they got home (9RR:195, 196, 216). The jury could have rationally inferred that some of this was from Jax continuing to urinate that day but also from appellant's cursory wiping of Jax after urinating on himself before he got picked up. As Latham testified, she held Jax so appellant "could wipe him down with a wet wash cloth, soap and water," rather than wash the urine off with a bath (10RR:180).

Finally, the evidence of Jax's suspected urine scald also supported the jury's verdict. Vaughn testified that urine scald was a possible cause of the redness, inflammation, and irritation he had on his abdomen and scrotum (11RR:44, 45, 54-55). She also explained that urine scald results from an animal's fur being soaked with urine (11RR:44). The jury also heard that during Detective Loegel's investigation, she spoke with a veterinarian who recognized urine scalding from photos the detective provided for review (10RR:141). Per the sources the detective spoke with, not allowing a dog to go out to the bathroom would amount to a lack of reasonable care (10RR:142). From this evidence, the jury was free to rationally conclude that appellant allowed Jax to stay in his waste which led to the development of urine scald. The jury rationally concluded that such treatment—which led to injury—failed to keep Jax in a state of good health.

e. The evidence established that appellant unreasonably failed to care for Jax by failing to care for his wounds.

The jury was also rational to find that appellant failed to provide necessary care for Jax wounds. There are a few theories based on the evidence that the jury could have rationally found.

Firstly, there was a lack of necessary care—again, statutorily defined as care "provided to the extent required to maintain the animal in a state of good health"—for what caused the wounds and continued his injuries. *See* Tex. Penal Code §42.092(a)(7). As the jury heard, Flores dropped Jax off woundless on the 13th and by the time Jax was seen for treatment at AVES on the 20th, the team believed Jax's wounds were between three to seven days old (10RR:10; 11RR:51, 53). Some extended to the bone (9RR:216-17; 11RR:50, 180). The jury heard that Vaughn believed the wounds were caused by Jax laying on a hard surface for an extended period of time (10RR:10; 11RR:35).

The jury could have reasonably found that providing cushion for a dog like Jax to rest on instead of a hard surface was necessary in light of Silva's testimony that he kept many beds for Jax in their home so the dog would have a soft place to be as he followed the family from room to room (9RR:212-13). Additionally, both Vaughn and expert veterinarian Carly Patterson shared their opinion with the jury that Jax needed some soft padding or bedding (11RR:46-47, 182). The jury was shown evidence that appellant's clinic had bedding (specifically numerous pet cushion almost piled up to

the ceiling of the laundry room in the video from the search warrant's execution), from which the jury could infer that appellant too knew was appropriate to provide for the animals in her care (State's Ex. 5).

The jury could have rationally concluded that appellant failed to provide such cushioning to Jax—causing and exacerbating the wounds—during his time in appellant's custody in light of the evidence of the conditions of the clinic. The video from the search warrant provided evidence to the jury that the clinic's kennels were metal and the larger kennel rooms were on the ground (State's Ex. 5). While appellant had bedding she could have used, not one of the kennels had a cushioned bed in it (State's Ex. 5). This aligns with the testimony the jury heard from P.H. which established that she did not see any bedding or padding in the kennels except for the large dog kennels which had a raised bed (10RR:161). There were some kennels with raised beds and a few with towels that could be used for cushions in the video, but the jury could have rationally found that appellant did not provide Jax with cushioning during his stay which subsequently caused and continued the development of his wounds and that this failure was unreasonable (State's Ex. 5).

The second theory of lack of necessary care for Jax's wounds involves appellant's bandaging of them without shaving the fur around the area. As the jury heard, proper wound care would have required Jax to have been shaved (11RR:62, 234). Petterson testified that applying a bandage on an animal's wound without shaving could do nothing to protect the wound as well as "could potentially make

things worse if it's just compressing whatever infectious […] is in that bandage location" (11RR:234). Indeed, as part of his treatment, AVES shaved Jax on the 21st to ensure that wounds would be adequately cleaned and to eliminate as much of his infection as possible (11RR:61-62; State's Ex. 7-10). Given that the jury was provided evidence that appellant diagnosed Jax with a urinary tract infection on the 19th and prescribed him two different antibiotics that day, the jury could surmise that appellant's failure to shave the area around the wounds was unreasonable and amounted to a failure to provide necessary care (State's Ex. 2, 4).

f. The evidence established that appellant failed unreasonably to provide necessary care for Jax by prescribing and administering medications which are contraindicated, specifically Prednisone and Galliprant.

Appellant argues that the manner and means which alleged that she failed unreasonably to provide necessary care for Jax by prescribing and administering medications which are contraindicated, Prednisone and Galliprant cannot be a means of violating section 42.092(b)(3) because the allegation is an act and not an omission. Appellant's Br. 50. Appellant reasons that "fails unreasonably to provide necessary food, water, care, or shelter for an animal in the person's custody" must be an omission and cannot be an act. Tex. Penal Code §42.092(b)(3). However, the definition of "necessary care" indicates that it includes acts of care that fall below its standard the Legislature spelled out in the statute. Tex. Penal Code §42.092(a)(7). An act of care that does not maintain an animal in a state of good health can be a failure to provide "necessary care." As the jury heard from the evidence, appellant's act of

prescribing and administering the medications was indeed a failure to provide care to the extent necessary to maintain Jax in a state of good health.

As the jury heard, appellant prescribed Jax Galliprant, a nonsteroidal anti-inflammatory medication, for his osteoarthritis from the 13th to the 18th (11RR:69, 71, 186; State's Ex. 4). On the 19th, she began giving him Prednisone at the same time she prescribed two antibiotics for a urinary tract infection (11RR:75-77; State's Ex.2, 4).

The jury heard testimony that giving an animal Galliprant, a nonsteroidal anti-inflammatory medication, close in time to Prednisone, a steroid, was not advised because it could cause gastrointestinal ulceration and bleeding (11RR:69, 70, 71, 73, 187). According to Vaughn, in routine cases, that was not enough time as the medications could cause a complication and it should be avoided if possible (11RR:71). Similarly, Patterson testified that she would not prescribe Galliprant and Prednisone concurrently and would have an extended period of 5 to 7 days between them to avoid the complication (11RR:187).

The jury was given two reasons why appellant was unreasonable in her prescribing and administering the medication. First, the jury heard that protective measures could be put in place to prevent the unwanted side effect, like giving the animal a proton pump inhibitor or a different medication, Misoprostol, but appellant did not record give Jax any other medication (11RR:72, 73). Since appellant included the joint supplements she administered to Jax on her invoice but none of the preventative medications, the jury could rationally infer that appellant did not take the

steps to avoid ulceration and thus unreasonably failed to provide necessary care that would maintain Jax in a state of good health (State's Ex. 4).

Secondly, the jury heard that there was no medical reason for Jax to be on Prednisone (11RR:74, 75). Jax's medical records indicated that appellant gave Jax Prednisone to treat pain and inflammation, but Prednisone does not treat pain (11RR:186, 187). As a steroid that does reduce inflammation, the jury heard that Prednisone worked by suppressing the immune system—an undesirable effect in a patient with an infection as the absence of an immune response, infectious agents like bacteria or fungal organisms can roam throughout the body unchecked (11RR:118; 188). Patterson informed the jury that Prednisone could amplify an infection in a sick animal and "could let the infection just grow and explode in the body to the point where it becomes fatal" (11RR:188).

From this testimony and these proffered reasons, the jury rationally concluded that prescribing and administering Prednisone and Gallipant as appellant did was contraindicated and an unreasonably failure to provide necessary care to Jax. Further supporting this finding was the evidence that indicated that Jax experienced a likely complication as he was having issues with regurgitation when brought to AVES (11RR: 69, 70, 71, 73, 74). As Vaughn explained to the jury, the regurgitation was indicative of an issue with Jax's stomach or intestines (11RR:74). It required the placement of a feeding tube through his nose and the injection of his medication because he could not keep oral pills in his system (11RR:79, 112). The jury was

rational to infer that Jax's regurgitation was a result of appellant's medication choices that unreasonably failed to maintain Jax in a state of good health.

As the evidence supported the jury's verdict under all three manner and means alleged as ways appellant failed to provide necessary care to Jax, the State respectfully requests that this Court uphold its determination and affirm appellant's conviction.

REPLY TO APPELLANT'S SECOND POINT OF ERROR

II. The trial court did not err when it charged the jury that appellant failed to provide necessary care for Jax by actions.

Appellant argues that the trial court erroneously included the alleged manner and means of prescribing and administering Prednisone and Galliprant for Jax when the medications were contraindicated. Appellant claims that since the allegation alleged an act and not an omission, it cannot be prosecuted as a failure to provide necessary care. However, as mentioned above, the meaning of "necessary care" as defined in subsection 42.092(a)(7) sets a level of care which can lead to failure by not meeting and can include action. As such, the trial court did not err in charging the jury with the alleged manner and means.

a. Standard of Review

When preparing a jury charge, a trial court must deliver to the jury a written charge distinctly setting forth the law applicable to the case. Tex. Code Crim. Proc. art. 36.14 (1981). Jury instructions must apply the law to the facts adduced at trial and conform to the allegations in the indictment. *Sanchez v. State*, 376 S.W.3d 767, 773

(Tex. Crim. App. 2012); *Torres v. State*, 691 S.W.3d 138, 147 (Tex. App.—Austin 2024, pet. ref'd).

When addressing alleged jury-charge error, courts must first decide if error exists before addressing whether the alleged error resulted in any harm. *Torres*, 691 S.W.3d at 14. The amount of harm needed for a reversal depends on whether a complaint regarding "that error was preserved in the trial court." *Swearingen v. State*, 270 S.W.3d 804, 808 (Tex. App.—Austin 2008, pet. ref'd). If no objection was made, as in this case, a reversal is warranted only if the error "resulted in 'egregious harm.'" *See Neal v. State*, 256 S.W.3d 264, 278 (Tex. Crim. App. 2008) (quoting *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1984)).

b. As the allegation regarding appellant's prescribing and administering contraindicated medications fell within the statutory prohibition of failing to provide care necessary to maintain an animal in a state of good health, the trial court did not err in including the allegation in the jury charge.

The trial court did not err when it included the allegation that appellant failed to provide necessary care for Jax by prescribing and administering medications which are contraindicated, in the jury charge.[2] As mentioned above, Section 42.092(b)(3)

[2] The clerk's record does not include any motion to quash the information, which would have properly raised the issue of the allegation not being a way a violation of Section 42.092(b)(3) can occur at trial (CR:2-8). It is curious if an appellant can attack the sufficiency of a charged offense as given in the jury charge that follows an information without objecting to the charge before trial. As article 1.14(b) provides, "If the defendant does not object to a defect, error, or irregularity of form or substance in an […] information before the date on which the trial on the merits commences, he waives and forfeits the right to object to the defect, error, or irregularity and he may not raise the objection on appeal or in any other postconviction proceeding." Tex. Code Crim. Proc. art. 1.14(b)

criminalizes the failure to provide care required to keep an animal in a state of good health. Tex. Penal Code §42.092(b)(3). Such a failure can be done by omission—the failure to provide care at all—as well as by actions that fall short of the statutory definition of "necessary care." As the jury charge had to apply the law to the facts and conform to the allegations in the information, the court's charge to the jury required the inclusion of the manner and means. *See Sanchez*, 376 S.W.3d at 773; *Torres*, 691 S.W.3d at 147. Discussed above in the sufficiency argument, the State presented evidence establishing that appellant's alleged act fell below the standard of care by failing to meet the level of care necessary to maintain Jax in a state of good health as it alleged in its charge. As such, the trial court did not err by including the allegation in the jury charge.

REPLY TO APPELLANT'S THIRD POINT OF ERROR

III. The trial court did not err when it included the definition of reckless and included reckless as a mental state for the offense in the jury charge.

Appellant also argues that the trial court erred when it included "recklessly" in the jury charge. As discussed above, the Legislature clearly intended that a person can commit the offense of cruelty to nonlivestock animals under Section 42.092(b)(3) "intentionally, knowingly, or recklessly." Tex. Penal Code §42.092(b)(3). However, under the theory that a failure to act is a nature-of-the-conduct offense, appellant argues that a reckless mental state cannot apply as the definition does not include a

(1991). Appellant's presentation of this argument on appeal may be waived for failure to object to the allegation before trial.

nature-of-conduct application and should not been included in the jury charge. *See* Tex. Penal Code §6.03(c). However, an analysis of the statutory language supports the inclusion of "recklessly."

Discussed above, a jury charge must tailor the definition of applicable mental states to the category of the offense alleged, which have been recognized as "result-of-conduct," "nature-of-conduct," and "circumstances-of-conduct" depending on the gravamen of the offenses. *Robinson*, 466 S.W.3d at 170 ; *see Young*, 341 S.W.3d at 423–24; *Love*, 706 S.W.3d at 604. The gravamen of Section 42.092 is the failure to provide necessary care unreasonably. *See* Tex. Penal Code §42.092(b)(3). The focus on the result—inadequate care—done in a specific manner—unreasonably—combine to make the offense both a result-of-conduct and circumstance-of-conduct offense. While "cruelty to animals" has been labeled a nature-of-conduct crime without analysis, *Cardoso*, 438 S.W.3d at 822, the origin of that categorization was a case discussing how offenses like murder, kidnapping, assault, sexual assault, and cruelty to animals were "inherently 'criminal' in nature," not necessarily nature-of-conduct offenses. *See Amaya*, 733 S.W.2d at 174.

As the definition of reckless in Section 6.03(c) includes both result and circumstance application, the trial court did not err in providing the definition that tracked the complete statutory language in the jury charge. As such, the ruling below should be affirmed.

PRAYER

The State of Texas respectfully urges the Court to overrule appellant's points of error and affirm her conviction.

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CERTIFICATE OF COMPLIANCE

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CERTIFICATE OF SERVICE

The State will serve a copy of the foregoing instrument to appellant's counsel, Robert Daniel, though EFile.

/s/ Carly Dessauer

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