IOWA'S ANIMAL TORTURE LAW FOLLOWING *STATE V. MEERDINK*: A CALL FOR CLARITY AND ENFORCEMENT

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ABSTRACT

On July 10, 2013, the Iowa Court of Appeals handed down its decision overturning Zachary Meerdink's conviction for animal torture. The opinion issued by the court of appeals obfuscated and weakened Iowa's statutory animal anti-cruelty protections. The purpose of this Article is to bring clarity to this area by analyzing and critiquing the Meerdink *decision. From this analysis, guidance is offered to the courts and legislature on ways to ensure efficient and effective enforcement of the statutory scheme.*

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"I . . . suspect that we cherish dogs because their unblemished souls make us wish—consciously or unconsciously—that we were as innocent as they are, and make us yearn for a place where innocence is universal and where the meanness, the betrayals, and the cruelties of this world are unknown."[1]

I. INTRODUCTION

One evening after returning from running errands with her small children, Jamie Holladay met her boyfriend, Zachary Meerdink, at the front door to the couple's apartment.[2] Meerdink walked past Holladay with a blank look on his face and left the apartment with his seven-month-old Boston Terrier named Rocky under his arm.[3] A few minutes later, Meerdink returned to the apartment, again with a blank stare, carrying a baseball bat and informed Holladay that Rocky was dead.[4] A subsequent investigation determined that Meerdink had bludgeoned Rocky to death with a baseball bat and left him near a pool of blood and brain matter.[5] Meerdink was found guilty by the Iowa District Court for Scott County of animal torture under Iowa Code section 717B.3A.[6] On appeal, the Iowa Court of Appeals overturned Meerdink's conviction in an opinion that obfuscated and weakened animal anti-cruelty protections provided by the Iowa legislature.[7]

The purpose of this Article is to analyze and critique the *State v. Meerdink* decision and, in doing so, prescribe an appropriate method for interpreting and applying the existing animal-cruelty statutes in Iowa. Notably, this Article does not seek to redefine the policy lines enacted by Iowa's legislature in terms of what constitutes unlawful acts toward

1. DEAN KOONTZ, A BIG LITTLE LIFE: A MEMOIR OF A JOYFUL DOG NAMED TRIXIE 264 (2009).
2. State v. Meerdink, No. 12-0877, 2013 WL 3457628, at *1 (Iowa Ct. App. July 10, 2013).
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.* at *1, *3 (citing IOWA CODE § 717B.3A (2011)).
7. *See id.* at *3–6.

animals; instead, it seeks to ensure that courts enforce the lines already drawn.

Although animals are considered property under traditional common law doctrine,[8] all 50 states and the District of Columbia have provided animals with statutory legal protections.[9] Along with a moral obligation to protect powerless, sentient beings, one of the most powerful policy rationales backing these protections is the link between violence against

8. *See* Charles E. Friend, *Animal Cruelty Laws: The Case for Reform*, 8 U. RICH. L. REV. 201, 201–02 (1974) (discussing how property concepts underlie statutes governing the treatment of animals); *see also* Steven M. Wise, Dyson Lecture, *Nonhuman Rights to Personhood*, 30 PACE ENVTL. L. REV. 1278, 1280–81 (2013) (detailing the lack of foundational rights afforded to animals due to a presumption that they lack personhood and "the capacity to possess any legal right").

9. ALA. CODE §§ 13A-11-14 to -14.1 (LexisNexis Supp. 2013); ALASKA STAT. § 11.61.140 (2012); ARIZ. REV. STAT. ANN. § 13-2910 (Supp. 2013); ARK. CODE ANN. §§ 5-62-103 to -104 (Supp. 2013); CAL. PENAL CODE §§ 597–597.1 (West 2010 & Supp. 2014); COLO. REV. STAT. § 18-9-202 (2013); CONN. GEN. STAT. ANN. § 53-247 (West Supp. 2014); DEL. CODE ANN. tit. 11, § 1325 (2007 & Supp. 2012); D.C. CODE §§ 22-1001 to -1002 (LexisNexis 2010); FLA. STAT. ANN. §§ 828.12, .13 (West 2006 & Supp. 2014); GA. CODE ANN. § 16-12-4 (West 2009); HAW. REV. STAT. §§ 711-1108.5 to -1109 (2014); IDAHO CODE ANN. §§ 25-3504 to -3505 (Supp. 2013); 510 ILL. COMP. STAT. ANN. 70/3.01 to .03-1 (West 2014); IND. CODE ANN. §§ 35-46-3-12 to -12.5 (LexisNexis Supp. 2013); IOWA CODE §§ 717B.2–.3A (2013); KAN. STAT. ANN. § 21-6412 (Supp. 2012); KY. REV. STAT. ANN. §§ 525.125–.135 (LexisNexis 2008); LA. REV. STAT. ANN. §§ 14:102.1–.2 (2012); ME. REV. STAT. ANN. tit. 17, § 1031 (Supp. 2013); MD. CODE ANN., CRIM. LAW §§ 10-604, 10-606 (LexisNexis 2012); MASS. GEN. LAWS ANN. ch. 272, § 77 (West Supp. 2014); MICH. COMP. LAWS ANN. § 750.50b (West Supp. 2013); MINN. STAT. ANN. §§ 343.21–.22 (West 2012); MISS. CODE ANN. §§ 97-41-1 to -2, -16 (West 2011 & Supp. 2013); MO. ANN. STAT. §§ 578.009–.012 (West Supp. 2014); MONT. CODE ANN. § 45-8-211 (2013); NEB. REV. STAT. ANN. §§ 28-1009, -1012 (LexisNexis Supp. 2013); NEV. REV. STAT. §§ 574.55, .100 (2013); N.H. REV. STAT. ANN. § 644:8 (LexisNexis Supp. 2013); N.J. STAT. ANN. §§ 4:22-17 to -20 (West 1998 & Supp. 2013); N.M. STAT. ANN. §§ 30-18-1 to 1.2 (2013); N.Y. AGRIC. & MKTS. LAW §§ 353 to 353-a (McKinney 2004 & Supp. 2014); N.C. GEN. STAT. §§ 14-360, -363.2 to .3 (2013); N.D. CENT. CODE §§ 36-21.2-01 to 12 (Supp. 2013); OHIO REV. CODE ANN. §§ 959.01–.03, .13–.131 (LexisNexis 2013); OKLA. STAT. ANN. tit. 21, §§ 1685–1686 (West Supp. 2014); OR. REV. STAT. ANN. §§ 167.315–.332 (West 2003 & Supp. 2013); 18 PA. CONS. STAT. ANN. § 5511 (West Supp. 2013); R.I. GEN. LAWS §§ 4-1-2 to -5 (1998 & Supp. 2013); S.C. CODE ANN. §§ 47-1-40 to -50 (Supp. 2013); S.D. CODIFIED LAWS §§ 40-1-2.2 to -2.4, -12, -20 to -21, -27, -36 (2004); TENN. CODE ANN. §§ 39-14-202, -212, -214 (2010 & Supp. 2013); TEX. PENAL CODE ANN. §§ 42.09–.092 (West 2011); UTAH CODE ANN. §§ 76-9-301, -305 (LexisNexis 2012); VT. STAT. ANN. tit. 13, §§ 352, 352a, 354 (2009 & Supp. 2013); VA. CODE ANN. §§ 3.2-6566 to -6570 (2008 & Supp. 2013); WASH. REV. CODE ANN. §§ 16.52.205–.207 (West Supp. 2014); W. VA. CODE ANN. § 61-8-19 (LexisNexis 2010); WIS. STAT. ANN. §§ 951.02, .09, .18 (West 2005 & Supp. 2013); WYO. STAT. ANN. § 6-3-203 (2013).

animals and violence against humans.[10] This link manifests itself in several variations, including (1) abusers who harm animals demonstrating or developing a lack of empathy, which later carries over to human victims; (2) domestic abusers using violence against animals as a way to emotionally abuse and control victims; and (3) children carrying out abuse against animals as a possible sign that the children themselves are victims of domestic abuse.[11]

This policy rationale, along with the public's response to incidents of animal cruelty,[12] led to the passage of Iowa's animal-cruelty laws and demonstrates the need for strict enforcement of these laws. This Article will discuss the shortcomings of the *Meerdink* decision in four Parts. Following this introduction, Part II discusses Iowa's statutory scheme for preventing and dealing with animal-cruelty cases. Part III analyzes and critiques the *Meerdink* decision, which arose out of a prosecution under the animal-torture statute. Part IV concludes the Article by describing *Meerdink*'s implications and offering suggestions for the enforcement of the animal-torture statute to continue to protect animals and humans from violence.

II. A PRIMER ON IOWA ANIMAL-CRUELTY LAWS

Under traditional common law doctrine, animals are viewed as property without innate legal rights.[13] Any legal protections benefitting animals must be specifically prescribed by statute. The Iowa legislature promulgated statutory protections specific to nonlivestock animals in 1994,

10. *See* Will Coxwell, Student Article, *The Case for Strengthening Alabama's Animal Cruelty Laws*, 29 LAW & PSYCHOL. REV. 187, 188–91 (2005); Heather D. Winters, Comment, *Updating Ohio's Animal Cruelty Statute: How Human Interests Are Advanced*, 29 CAP. U. L. REV. 857, 881–83 (2001). *See generally* CRUELTY TO ANIMALS AND INTERPERSONAL VIOLENCE: READINGS IN RESEARCH AND APPLICATION (Randall Lockwood & Frank R. Ascione eds., 1998).

11. Winters, *supra* note 10, at 881–83; *see also* Coxwell, *supra* note 10, at 188–91.

12. Even isolated incidents of violence against animals become national news and stoke the fires of public outrage. *See, e.g.*, Jeff Eckhoff, *Iowa Court: Killing Dog with Bat Not Torture*, USA TODAY (July 10, 2013), http://www.usatoday.com/story/news/nation/2013/07/10/iowa-court-killing-dog-with-bat-not-torture/2507513/; Alyssa Newcomb, *Iowa Man's Conviction for Killing Puppy with Baseball Bat Overturned*, ABC NEWS (July 12, 2013), http://abcnews.go.com/blogs/headlines/2013/07/iowa-mans-conviction-for-killing-puppy-with-baseball-bat-overturned/.

13. *See* Wise, *supra* note 8, at 1280–81.

setting forth protections against "animal neglect"[14] and "animal abuse."[15] A violation of either provision was a misdemeanor.[16]

By 2000, a string of well-publicized and violent animal abuse cases generated sufficient pressure on the Iowa legislature to reevaluate and strengthen the animal-cruelty statutes.[17] The 2000 amendment to the statutory scheme created a new section criminalizing "animal torture"—the statute applied in *Meerdink*.[18] Subsequent alterations to the statutory scheme amended the procedural mechanisms for dealing with neglected animals,[19] and created an exception to the anti-cruelty protections for scientific research facilities.[20]

The resulting and current statute thus provides protections against animal neglect, animal abuse, and animal torture.

Animal neglect occurs when:

> "[a] person [] impounds or confines, in any place, an animal . . . if the person does any of the following: fails to supply the animal during confinement with a sufficient quantity of food or water; fails to provide a confined dog or cat with adequate shelter; or tortures, deprives of necessary sustenance, mutilates, beats, or kills an animal by any means which causes unjustified pain, distress, or suffering."[21]

The animal neglect statute differentiates the severity of the crime on

14. 1994 Iowa Acts 210.

15. A person was "guilty of animal abuse if the person intentionally injure[d], maim[ed], disfigure[d], or destroy[ed] an animal owned by another person, in any manner, including intentionally poisoning the animal." *Id.* at 209.

16. *Id.* at 209–10.

17. *See* Judy Pasternak, *Cat Massacre at Iowa Shelter Splits a Town*, L.A. TIMES (Sept. 8, 1997) http://articles.latimes.com/1997/sep/08/news/mn-30066 (reporting events that occurred in Iowa but gained national attention, after which the prosecuting county attorney received "thousands of letters" and "e-mail from all over the globe" about the incident); *see also* Mark J. Parmenter, Note, *Does Iowa's Anti-Cruelty to Animals Statute Have Enough Bite?*, 51 DRAKE L. REV. 817, 825–27 (2003) (mentioning several other instances of animal violence that took place in Iowa around 2000, including one in which the abuser used a staple gun to torture a cat).

18. 2000 Iowa Acts 475 (enacting § 717B.3A). Meerdink was charged with "animal torture under IOWA CODE § 717.B.3A(1)." State v. Meerdink, No. 12-0877, 2013 WL 3457628, at *1 (Iowa Ct. App. July 10, 2013).

19. 2002 Iowa Acts 300–03 (codified at IOWA CODE §§ 351.37, 717B.1, 717B.4–.5).

20. 2008 Iowa Acts 195.

21. IOWA CODE § 717B.3(1) (2013).

the basis of the culpable mental state and the result to the animal, declaring: "A person who negligently or intentionally commits the offense of animal neglect is guilty of a simple misdemeanor. A person who intentionally commits the offense of animal neglect which results in serious injury to or the death of an animal is guilty of a serious misdemeanor."[22]

Animal abuse occurs when a "person intentionally injures, maims, disfigures, or destroys an animal owned by another person, in any manner, including intentionally poisoning the animal."[23] The statute carves out several exceptions, which include a person acting with consent of the owner, veterinary care, hunting, and self-defense.[24] Importantly, a companion animal's owner cannot be prosecuted for animal abuse because of the statutory requirement that the animal be "owned by another."[25] Animal abuse is an aggravated misdemeanor.[26]

Most relevant to this Article is the animal torture statute, which provides: "A person is guilty of animal torture, regardless of whether the person is the owner of the animal, if the person inflicts upon the animal severe physical pain with a depraved or sadistic intent to cause prolonged suffering or death."[27] Like the animal abuse statute, certain acts are exempt from the animal torture statute's reach, including, for example, veterinary care such as euthanasia.[28] However, unlike the animal abuse statute, the animal torture statute does not exempt an animal owner that violates the statute from punishment. A person can be convicted of animal torture regardless of whether they are the animal's owner, and consent of the

22. *Id.* § 717B.3(3).

23. *Id.* § 717B.2.

24. *Id.*; *see* State v. West, No. 06-1316, 2007 WL 2963990, at *5 (Iowa Ct. App. Oct. 12, 2007) (overturning a conviction for animal abuse when the defendant killed a dog who was "worrying" his domestic deer under an exception for a person "reasonably acting to protect the person's property from damage caused by an unconfined animal" set out in § 717B.2(8)).

25. The exception from prosecution of an owner for abuse carried out against their own animal explains why Zachary Meerdink could not be charged under the animal abuse statute. IOWA CODE § 717B.2; *see* State v. Meerdink, No. 12-0877, 2013 WL 3457628, at *1 (Iowa Ct. App. July 10, 2013).

26. IOWA CODE § 717B.2.

27. *Id.* § 717B.3A.

28. *See id.* § 717B.3A(2)(b) ("This section shall not apply to . . . [a] licensed veterinarian practicing veterinary medicine as provided in chapter 169."); *see also id.* § 162.13(4) ("Dogs, cats, and other vertebrate animals upon which euthanasia is permitted by law may be destroyed by a person subject to this chapter or chapter 169, by a humane method . . . .").

owner is not set out as an exception.[29] A conviction under the animal torture statute uses a tiered sentencing structure up to a class D felony:

> (1) For the first conviction, the person is guilty of an aggravated misdemeanor. The sentencing order shall provide that the person submit to psychological evaluation and treatment according to terms required by the court. The costs of the evaluation and treatment shall be paid by the person. In addition, the sentencing order shall provide that the person complete a community work requirement, which may include a work requirement performed at an animal shelter or pound, as defined in section 162.2, according to terms required by the court.
>
> (2) For a second or subsequent conviction, the person is guilty of a class "D" felony. The sentencing order shall provide that the person submit to psychological evaluation and treatment according to terms required by the court. The costs of the psychological evaluation and treatment shall be paid by the person.[30]

Thus, when looking at the overall statutory scheme, several distinctions among the statutes become clear. Animal neglect, in contrast to animal abuse or torture, requires that the animal be impounded or confined.[31] Confinement is clear when the animal is kept in an enclosure of some kind.[32] It is also "sufficient to show [confinement if] the [animal] was kept or confined within the house, and could not leave the house without human help."[33] However, when confinement of the animal is merely incidental to an act of animal torture or abuse, sufficient evidence may not exist to support a finding of impoundment or confinement for the purposes of the animal neglect statute.[34] Another clear distinction between animal

29. *Id.* § 717B.3A.

30. *Id.* § 717B.3A(3)(a).

31. *Compare id.* § 717B.3, *with id.* § 717B.3A.

32. *See* State v. Rudolph, No. 03-0062, 2003 WL 22900464, at *1 (Iowa Ct. App. Dec. 10, 2003) (sufficient evidence existed for a conviction under Iowa Code § 717B.3 when the dog died while confined to a kennel outside the defendant's house); *see also* State v. Pontious, No. 00-1693, 2002 WL 31882852, at *1–3 (Iowa Ct. App. Dec. 30, 2002) (finding that providing a penned-in area was sufficient to show confinement, even though dogs often roamed the neighborhood).

33. State v. Liendo, No. 10-0920, 2011 WL 446550, at *2 (Iowa Ct. App. Feb. 9, 2011).

34. State v. Wilson, No. 08-1040, 2009 WL 1913695, at *2 (Iowa Ct. App. July 2, 2009) (the act of restraining a dog while killing it with a samurai sword was insufficient to constitute confinement because it was merely incidental to the animal

neglect and animal abuse or animal torture is that the former does not always require an affirmative act, whereas the latter two do.[35]

The distinctions between animal abuse and animal torture are more subtle but significant. First, a distinction exists based on the actor: the owner of an animal cannot be convicted of abusing that animal under the animal abuse statute,[36] whereas the owner of an animal can be convicted of torturing that animal under the animal torture statute.[37] Logically then, this extends to the owner-consent exception to animal abuse as well, which does not appear as an exception to the animal torture statute.[38] The practical significance of this distinction is that when prosecuting an owner for an affirmative bad act committed against the owner's animal, prosecutors must prove animal torture rather than simply abuse.

In addition, an exception exists under the animal torture statute, which is not found in the animal abuse statute, for "carrying out a practice that is consistent with animal husbandry practices."[39] This exception likely reflects the legislature's desire to carve out from the realm of animal torture prosecutions acts that might otherwise be deemed depraved but are well-established and accepted in Iowa's farming culture. No need exists for a similar exception under the animal abuse statute because, due to the exception for owner consent, animal husbandry practices already are excepted.

The next important distinction is the culpable mental states required for each crime: animal abuse requires only that the person act "intentionally,"[40] whereas animal torture requires a heightened standard of "depraved or sadistic intent."[41] Moreover, the "depraved or sadistic intent"

torture that took place). The court's conclusion that the animal neglect statute and the animal torture statute are mutually exclusive may explain why Zachary Meerdink was charged only with animal torture and not animal neglect. *See* State v. Meerdink, No. 12-0877, 2013 WL 3457628, at *1 (Iowa Ct. App. July 10, 2013).

35. *Compare* IOWA CODE § 717B.3 (can apply when a person "fails to provide" shelter or "fails to supply" food or water for an animal), *with id.* § 717B.3A (may only apply when a person "inflicts" severe physical pain), *and id.* § 717B.2 (may only apply when a person "intentionally injures, maims, disfigures, or destroys an animal").

36. *Id.* § 717B.2.

37. *Id.* § 717B.3A.

38. *Compare id.* § 717B.2(1), *with id.* § 717B.3A(2).

39. *Compare id.* § 717B.3A(2)(c), *with id.* § 717B.2.

40. *Id.* § 717B.2.

41. *Id.* § 717B.3A.

must be to "cause prolonged suffering or death."[42] Coupled with the intent distinction is the result element of both statutes: animal abuse requires that the actor "injures, maims, disfigures or destroys an animal,"[43] whereas animal torture requires that the actor inflicts upon the animal "severe physical pain."[44]

Perhaps the most important distinction between animal abuse and animal torture is the potential ramifications for the defendant. Whereas animal abuse is punishable only as an aggravated misdemeanor,[45] as is a first conviction for animal torture,[46] a second conviction under the animal torture statute is a class D felony.[47] In addition, a defendant convicted of animal torture must submit to "psychological evaluation and treatment," and a defendant convicted of his or her first animal torture offense must "complete a community work requirement, which may include a work requirement performed at an animal shelter or pound."[48]

The animal torture statute was applied in a written opinion only once prior to *Meerdink*. In *State v. Wilson*, the Iowa Court of Appeals upheld a conviction for animal torture, finding sufficient evidence existed to satisfy the statute because a "jury could reasonably find Wilson chopped and stabbed his dog to death with a samurai sword. The puppy was yelping in pain for up to nine minutes and, afterwards, Wilson exhibited a remorseless demeanor."[49] This case set the stage that Zachary Meerdink would later stand on.

42. *Id.*

43. *Id.* § 717B.2.

44. *Id.* § 717B.3A.

45. *Id.* § 717B.2. An aggravated misdemeanor carries a "maximum penalty" of "imprisonment not to exceed two years" and "a fine of at least six hundred twenty-five dollars but not to exceed six thousand two hundred fifty dollars." *Id.* § 903.1(2).

46. *Id.* § 717B.3A(3)(a)(1).

47. *Id.* § 717B.3A(3)(a)(2). Under Iowa law, a class D felon "shall be confined for no more than five years, and in addition shall be sentenced to a fine of at least seven hundred fifty dollars but not more than seven thousand five hundred dollars." *Id.* § 902.9(1)(e).

48. *Id.* § 717B.3A(3)(a)(1)–(2). The statute criminalizing animal abuse does not contain provisions requiring offenders to submit to psychological treatment or complete community service. *See id.* § 717B.2.

49. State v. Wilson, No. 08-1040, 2009 WL 1913695, at *2 (Iowa Ct. App. July 2, 2009). *But see* State v. Meerdink, No. 12-0877, 2013 WL 3457628, at *6 n.1 (Iowa Ct. App. July 10, 2013) ("Based on [*Wilson*]'s procedural posture, we did not discuss the legislature's intent in using the language '*depraved* intent to cause death.'").

III. ANALYSIS AND CRITIQUE OF *MEERDINK*

In spring 2012, Zachary Meerdink was convicted of animal torture after a bench trial.[50] The court found that Meerdink beat his seven-month-old Boston Terrier, Rocky, to death with a baseball bat and demonstrated no remorse for doing so.[51] In July 2013, the Iowa Court of Appeals overturned the conviction on a challenge to the sufficiency of the evidence.[52] It did so in an unpublished opinion, authored by one judge, concurred with by another judge, and dissented from by the third judge on the panel.[53]

A. Meerdink*'s Reversal of Animal Torture Conviction for Insufficient Evidence*

In reversing Meerdink's conviction for animal torture, the court of appeals concluded as a matter of law that "insufficient evidence [existed to prove that] Meerdink acted with a '*depraved* intent to cause death.'"[54] That was the only holding the court of appeals reached, as the lower court's rulings regarding the other two elements of the statute—that Meerdink "inflicted severe physical pain" on the puppy and that he "caused death"—were not contested on appeal.[55] While the appellate court reviewed various proposed definitions of the term "depraved," the court did not settle on a single definition.[56] Instead, it noted that "[a]fter considering the definitions of 'depraved,' we conclude '*depraved* intent to cause death' does not equal an 'intent to cause death.'"[57] The court then surveyed the evidence and found it insufficient as a matter of law to show a depraved intent.[58]

While the court recognized that Meerdink killed the dog, it found that

50. *Meerdink*, 2013 WL 3457628, at *1–3.

51. *Id.* Although the court did not mention the puppy's name in its opinion, news media included its name in reports covering the decision. *See, e.g.*, *Appeals Court: Beating a Puppy to Death with Baseball Bat Is Not Torture*, N. IOWA TODAY (July 11, 2013) http://northiowatoday.com/2013/07/11/appeals-court-beating-a-puppy-to-death-with-baseball-bat-is-not-torture/.

52. *Meerdink*, 2013 WL 3457628, at *3–6.

53. *See id.*

54. *Id.* at *6.

55. *See id.* at *3–6.

56. *Id.* at *5 ("In sum, 'depraved' is variously defined as (1) corrupt, (2) perverted, (3) heinous/shockingly atrocious . . . , (4) heinous/odious . . . , and (5) morally horrendous/moral depravity. . . .").

57. *Id.* at *6.

58. *Id.*

he did so because the puppy bit a child and was not responsive to training.[59] The court pointed out that no one witnessed Meerdink kill the puppy and that the evidence did not show "how many times the dog was struck."[60] Further, the court noted that Meerdink's demeanor before and after the act was not "happy or eager."[61] Thus, the court concluded Meerdink "killed the dog in response to the dog biting a child and only after the dog had become more aggressive over time and unresponsive to remedial measures."[62]

The dissent, in contrast, viewed the evidence as sufficient.[63] While the dissent agreed that depraved intent to cause death requires more than intent to cause death, it disagreed with the court's application of the standard of review and rules of statutory construction.[64] Specifically, the dissent explained:

> A reasonable fact-finder would not have had to engage in any speculation to find that Meerdink took a baseball bat to the head of the puppy in response to the puppy's accident. A reasonable fact-finder could have found this conduct to be an extreme response to an ordinary and foreseeable occurrence.[65]

The dissent further pointed out that the testimony of Meerdink's girlfriend regarding the "puppy's propensity to bite and its unresponsiveness to remedial measures" did not mandate reversal of the conviction because: (1) "the statute does not provide for a justification defense"; (2) no evidence showed that the puppy bit "anyone or anything on the day of his death"; and (3) a reasonable fact finder could have inferred that Meerdink's girlfriend's "sudden defense of [him] at trial reflected her remorse at having reported the incident to police following her reconciliation with him."[66] Finally, the dissent criticized the court for citing the facts that the puppy may have died quickly and that Meerdink did not have a "gleeful demeanor" after killing the puppy.[67] According to the dissent, neither prolonged suffering nor a gleeful demeanor was a

59. *Id.*
60. *Id.*
61. *Id.*
62. *Id.*
63. *Id.* (Vaitheswaran, J., dissenting).
64. *Id.*
65. *Id.* at *7.
66. *Id.*
67. *Id.* at *7–8.

predicate to establishing the element of "depraved intent to cause death."[68]

Following the Iowa Court of Appeals' reversal of Meerdink's conviction and sentence, the State filed an application for further review with the Iowa Supreme Court, which was denied.[69]

B. *Shortcomings of* Meerdink*'s Interpretation and Application of Iowa's Animal Torture Statute*

The court of appeals's opinion raises several concerns regarding the interpretation and enforcement of Iowa's animal torture law. First, the decision lacks clarity as to what proof is required to demonstrate depraved intent to prove animal torture. Second, the court's interpretation of the animal torture statute departs from accepted rules of statutory interpretation. Third, in determining the evidence was insufficient, the opinion fails to apply the sufficiency of the evidence standard properly.

1. Meerdink *Fails to Expressly Define "Depraved Intent"*

To decide the sufficiency of the evidence challenge, the court of appeals had to determine the precise meaning of "depraved," as used in the statute.[70] Only after determining the meaning of that term could the court then apply that standard to the evidence in the trial record.[71] The court obviously recognizes this need, because it begins its analysis by stating that "[t]o determine whether sufficient evidence establishes Meerdink acted with 'depraved' intent, we must first interpret the term."[72] Thus, one would expect that the opinion would go on to formulate an explicit definition of "depraved." However, it never does.[73] Instead, the court reviews various definitions of the term without deciding which, if any, of them is correct:

> In sum, "depraved" is variously defined as (1) corrupt, (2) perverted, (3) heinous/shockingly atrocious ("extreme wickedness, brutality, or cruelty"), (4) heinous/odious ("hateful"), and (5) morally horrendous/moral depravity ("shameful wickedness" or "an extreme

68. *Id.*

69. *See* Application for Further Review, *Meerdink*, No. 12-0877, (Iowa July 25, 2013); IOWA SUPREME COURT, FURTHER REVIEW VOTING RESULTS: NOVEMBER 4, 2013 (2013), *available at* http://www.iowacourts.gov/wfdata/files/FurtherReviews/November42013FRResults.pdf (denying further review to *State v. Meerdink*).

70. *Meerdink*, 2013 WL 3457628, at *4.

71. *See id.* at *6.

72. *Id.* at *4.

73. *See id.* at *4–6.

> departure from ordinary good morals as to be shocking to the moral sense of the community," or "an act of vileness"). The definitions of "depraved" consistently show that "a depraved intent to cause death" requires more than an "intent to cause death."[74]

Thus, rather than settling on a definition, the court instead merely notes the definitional choices and concludes that depraved intent means more than simply intent—something that was never in question.[75]

Perhaps most curious about the court's opinion is that the court specifically criticizes the district court for not defining "depraved intent," saying that the district court "erred" in not doing so and that "a definition is necessary."[76] Yet that admonishment to the district court itself is followed by a nondefinition. Rather than defining depraved, the court of appeals merely acknowledges that the term's presence in the statute elevates the intent requirement—which was never in doubt.[77] While the court makes clear that something more than "intent to cause death" is required, it provides little to no guidance as to what that something more is. How high or how low the bar for depraved intent may be is left unanswered.

74. *Id.* at *5.

75. Because the court did not settle on a definition, one might conclude the court was simply holding that the evidence was insufficient under any of the possible definitions. That conclusion, however, is not supported by the remainder of the court's opinion. After setting forth possible definitions, the court next purports to apply various rules of statutory interpretation to winnow down the statute's meaning from among the definitional choices—an act that would be unnecessary if the evidence were insufficient to meet each and every possible definition. *See id.* at *5–6. In addition, it seems unlikely that the court held the evidence to be insufficient under any and all of the proposed definitions, given its own admonishment that the district court erred in "fail[ing] to define 'depraved intent'" and its assertion that "a definition is necessary." *Id.* at *6.

76. *Id.* at *6. This criticism of the district court is itself questionable because while it was necessary for the court of appeals to define the term in order to reverse for insufficient evidence, it does not follow that it was necessary for the district court to define the term in order to convict. The district court found that Meerdink had depraved intent under any plausible and ordinary meaning of the term, making a definition unnecessary. *See* State v. Hoffer, 383 N.W.2d 543, 548 (Iowa 1986) (citations omitted) ("In a criminal trial the court must instruct the jury by defining the crime; however, words in an instruction need not be defined if they are of ordinary usage and are generally understood.").

77. *Meerdink*, 2013 WL 3457628, at *6 ("After considering the definitions of 'depraved,' we conclude '*depraved* intent to cause death' does not equal an 'intent to cause death.'").

That definitional shortcoming not only leaves the court's application of the test in the remainder of its opinion murky—how can a question of sufficiency of the evidence be measured against an unknown standard?—but also leaves law enforcement officers, prosecutors, and district courts in a state of uncertainty as to what proof is required to establish depravity under the statute.[78] A definition providing that depraved intent means something more than just intent offers little to no guidance.

2. Meerdink *Misapplies Iowa's Rules of Statutory Interpretation*

Although *Meerdink* does not expressly interpret the animal torture statute, the opinion nonetheless implicitly interprets parts of the statute contrary to rules of statutory interpretation. Most notably, the opinion implicitly conflates the statutory terms "depraved" and "sadistic,"[79] and erroneously inserts the "prolonged suffering" prong into the "cause death" prong.[80] The failure to give each term its own meaning renders the terms "depraved" and "cause death" superfluous. In addition, *Meerdink* improperly invokes rules of interpretation, looking to the statute's title in defining particular terms without first finding ambiguity.[81] Finally, *Meerdink* implicitly reads into the animal torture statute a justification defense that is nowhere to be found in the statute's plain language.[82] These shortcomings result in an opinion that fails to apply the animal torture statute properly.

First, *Meerdink* misinterprets critical statutory language. It is axiomatic that in interpreting a statute "each term is to be given effect" and courts must not "read a statute so that any provision [is] rendered superfluous."[83] Animal torture requires proof of either a "depraved *or* sadistic" intent.[84] It does not require both. Yet, the court of appeals conflates these two terms in its analysis of the sufficiency of the evidence of

78. *See* Application for Further Review, *supra* note 69, at 18 ("This ruling has left the meaning of 'depraved intent' muddied and makes it difficult for the public or law enforcement to ascertain the reach of the statute.").

79. *See Meerdink*, 2013 WL 3457628, at *6.

80. *See id.* (noting that "Meerdink was gone for only a few minutes").

81. *Id.* at *5.

82. *See id.* at *6.

83. Neal v. Annett Holdings, Inc., 814 N.W.2d 512, 520 (Iowa 2012) (citations omitted) (internal quotation marks omitted); *see also* City of Riverdale v. Diercks, 806 N.W.2d 643, 656 (Iowa 2011).

84. IOWA CODE § 717B.3A (2013) (emphasis added).

Meerdink's depravity.[85] The court stresses that after killing his puppy, Meerdink "did not look happy or eager."[86] While sadistic intent necessarily entails the defendant taking pleasure in one's acts, depraved intent does not.[87]

Specifically, depraved intent, under its ordinary and commonly understood meaning,[88] means "heinous; morally horrendous."[89] An act that is "heinous" is "shockingly atrocious or odious."[90] When faced with similar statutory language, at least one other state court has interpreted "depraved" in accordance with this "common meaning in everyday usage."[91] This is consistent with Iowa law, which requires courts to give

85. *See Meerdink*, 2013 WL 3457628, at *6 ("[T]he phrase 'depraved or sadistic manner' conveys 'the clear intent to punish only the most serious and egregious conduct.'" (quoting People v. Knowles, 709 N.Y.S.2d 916, 920 (Rensselaer Cnty. Ct. 2000))).

86. *Id.*

87. The sufficiency of the evidence of depraved intent was the sole issue raised on appeal. No argument on appeal explicitly challenged the district court's legal interpretation of "depraved." Thus, Meerdink potentially waived any argument that the statute should be narrowly construed by not asking the court to construe it. At the very least, *Meerdink*'s statutory interpretation—to the extent it was not presented as a separate issue on appeal—should be viewed with skepticism in future cases.

88. When words of a statute are not defined, a court must define them in accordance with their ordinary meaning. State v. Hearn, 797 N.W.2d 577, 583 (Iowa 2011); *see also* State v. Bonstetter, 637 N.W.2d 161, 164 (Iowa 2001) ("We normally construe statutes on the basis of their ordinary and commonly understood meanings.").

89. BLACK'S LAW DICTIONARY 506 (9th ed. 2009); *see also Hearn*, 797 N.W.2d, at 583 (defining term in criminal statute in accordance with its ordinary meaning by using Black's Law Dictionary); State v. White, 563 N.W.2d 615, 617 (Iowa 1997) ("The dictionary provides a ready source for ascertaining the common and ordinary meaning of a word."). Black's Law Dictionary alternately defines "depraved" as "corrupt; perverted." BLACK'S LAW DICTIONARY, *supra*, at 506. That definition, however, is not available in this context because "corrupt" is defined as "having an unlawful or depraved motive," which is circular and therefore not helpful. *Id.* at 397. In addition, "perverted" is not helpful in defining "depraved" under this statute because it overlaps greatly with "sadistic," so if adopted would effectively render the term "depraved" meaningless under the statute. *See* WEBSTER'S UNABRIDGED DICTIONARY 1447 (2d ed. 2001) (defining "perversion" as "any of various means of obtaining sexual gratification that are generally regarded as being abnormal"); *id.* at 1690 (defining "sadism" as "sexual gratification gained through causing pain or degradation to others").

90. BLACK'S LAW DICTIONARY, *supra* note 89, at 791.

91. People v. Knowles, 709 N.Y.S.2d 916, 920 (Cnty. Ct. Rensselaer County 2000).

words that are not defined in a statute their ordinary meaning.[92] For example, in assessing whether a defendant acted with depravity, courts have asked whether "a reasonable person would find [the defendant's] conduct to be morally debased, posing a high degree of risk, and manifesting a total lack of concern for the [animal's] death or suffering."[93] Notably, these other courts have neither required nor focused on the existence of evidence of happiness or eagerness to prove depravity.[94] Thus, depravity does not require that the defendant took pleasure in his actions, contrary to what the court of appeals's opinion suggests.[95] In effectively interpreting "depraved" as functionally synonymous with "sadistic," the court of appeals conflated the terms and failed to give "depraved" its own ordinary meaning.[96]

Similarly, the court of appeals also conflated the elements contained in the term "to cause prolonged suffering or death," rendering the disjunctive element "to cause death" superfluous.[97] The court did so in the context of determining the sufficiency of the evidence of depraved intent.[98] The statute provides two ways to prove depraved intent: the state can prove the defendant acted with a depraved intent to cause prolonged suffering *or* it can show the defendant acted with a depraved intent to

92. City of Riverdale v. Diercks, 806 N.W.2d 643, 655–56 (Iowa 2011) (quoting Anderson v. State, 801 N.W.2d 1, 3 (Iowa 2011)); *White*, 563 N.W.2d at 617 ("In the absence of a legislative definition of a term or a particular meaning in the law, we give words their ordinary meaning.").

93. State v. Witham, 876 A.2d 40, 42 (Me. 2005).

94. *See, e.g.*, *Knowles*, 709 N.Y.S.2d at 920; State v. Van Tran, 864 S.W.2d 465, 479 (Tenn. 1993).

95. While the court of appeals's opinion does not expressly state that evidence of defendants taking pleasure in their acts is necessary to prove "depraved intent," this is what the opinion requires in practice. *See* State v. Meerdink, No. 12-0877, 2013 WL 3457628, at *6 (Iowa Ct. App. July 10, 2013). If such evidence was merely one way to prove depravity, but not the only way, there is no reason that the absence of such evidence would have been noteworthy to the court. Rather, the court would have deferred to the district court's view of the evidence of the defendant's emotionless demeanor as suggestive of his cold indifference rather than noting his lack of pleasure. *See infra* note 127 and accompanying text (finding "remorseless demeanor" can be indicative of depravity).

96. While criminal statutes "establishing the scope of criminal liability are to be strictly construed with doubts resolved therein in favor of the accused" in accordance with the rule of lenity, the Iowa Supreme Court recognizes "[a]t a minimum, however, our cases stand for the proposition that the rule of lenity does not apply if there is no ambiguity." State v. Hearn, 797 N.W.2d 577, 584, 587 (Iowa 2011).

97. *See Meerdink*, 2013 WL 3457628, at *6.

98. *See id.*

cause death.[99] Meerdink was only prosecuted under the latter.[100] Even so, the court held the evidence was insufficient as a matter of law to prove depraved intent, noting that: (1) "Meerdink was gone for only a few minutes," and (2) "the evidence at trial does not establish nor allow an inference as to how many times the dog was struck."[101] But these would be evidentiary deficiencies only if the statute required the state to prove prolonged suffering as part of every animal torture case. It does not. The court of appeals thus ignored the clear language of the statute by effectively requiring prolonged suffering in order to prove depraved intent.

Second, the court of appeals also erroneously interpreted the statute insofar as it resorted to rules of interpretation without first establishing that the statute's meaning was ambiguous.[102] Namely, the court applied two rules of interpretation—use of the overall statutory scheme as well as the title of the statute—to discern the meaning of "depraved."[103] It was not permitted to do so, however, because it did not first attempt to analyze the term's plain meaning and conclude that the term was ambiguous.[104] As other courts have recognized, "depraved" has "a common meaning in everyday usage."[105] The practical effect of the court's improper use of the rules of interpretation was to elevate the proof required to show depravity by replacing the statutory term "depraved" with "torture."[106] Given that

99. IOWA CODE § 717B.3A (2013) (requiring the state show "depraved or sadistic intent to cause prolonged suffering *or* death" (emphasis added)).

100. *See Meerdink*, 2013 WL 3457628, at *3.

101. *Id.* at *6.

102. Voss v. Iowa Dep't of Transp., 621 N.W.2d 208, 211 (Iowa 2001) ("'If the statutory language is plain and the meaning is clear, we do not search for the legislative intent beyond the express terms of the statute.' If a statute is ambiguous, however, the court will resort to rules of statutory interpretation to ascertain the meaning of the statute." (citation omitted) (quoting Horsman v. Wahl, 551 N.W.2d 619, 620–21 (Iowa 1996))).

103. *Meerdink*, 2013 WL 3457628, at *5.

104. As the court noted, "the title of a statute cannot limit the plain meaning of the text." *Id.* at *5 (quoting State v. Tague, 676 N.W.2d 197, 201 (Iowa 2004)) (internal quotation marks omitted).

105. *Id.* at *7 (Vaitheswaran, J., dissenting) (quoting People v. Knowles, 709 N.Y.S.2d 916, 920 (Cnty. Ct. Rensselaer County 2000)) (internal quotation mark omitted).

106. Even if the court had found "depraved" to be ambiguous, it still would have been improper to interpret it to mean "torture." The definition of "torture" supplied by the court focuses on "sadistic intent" to the exclusion of "depraved intent." *See id.* at *5 (majority opinion) (defining torture as "[t]he infliction of intense pain . . . to punish . . . or to obtain sadistic pleasure" (first and third alterations in original)

the legislature unambiguously chose a lower standard associated with the common meaning of "depraved" in selecting the term, the court was in error.

Third, the court of appeals in *Meerdink* implicitly reads a justification defense into the statute, which is not part of the statutory language.[107] While some states' animal torture laws do include such a defense, Iowa's does not.[108] It was improper for the court to incorporate such a defense into the statutory elements of animal torture by interpreting the depraved intent element to include consideration of whether the killing was justified.[109] In doing so, it violated the rules of statutory interpretation.[110] Moreover, to the extent a statute does include a justification defense, such a defense almost always includes an element of proportionality—something the court failed to read into its judicially created defense.[111] The effect of the court's erroneous insertion of the justification defense into the statute was to exempt Meerdink from the statute's reach, given the court of appeals' conclusion that the killing was a justified response to the puppy biting a child.[112]

(quoting BLACK'S LAW DICTIONARY 1528 (8th ed. 2004)) (internal quotation marks omitted)). Thus, defining "depraved intent" in that manner would be improper because it would render the term "depraved" superfluous within the statute. *See supra* note 89 and accompanying text.

107. *See Meerdink*, 2013 WL 3457628, at *7 (Vaitheswaran, J., dissenting) ("[T]he statute does not provide for a justification defense.").

108. *Compare* N.Y. AGRIC. & MKTS. LAW § 353–a(1) (McKinney 2004) ("A person is guilty of aggravated cruelty to animals when, *with no justifiable purpose* . . . ." (emphasis added)), *with* IOWA CODE § 717B.3A (2013).

109. *See Meerdink*, 2013 WL 3457628, at *6 (finding insufficient evidence that Meerdink killed the puppy with depraved intent because the killing occurred "in response to the dog biting a child and only after the dog had become more aggressive over time and unresponsive to remedial measures").

110. *See* Eugene R. Milhizer, *Group Status and Criminal Defenses: Logical Relationship or Marriage of Convenience?*, 71 MO. L. REV. 547, 607 n.302 (2006) (addressing codification of criminal law, resulting in limits on "courts' authority to create affirmative defenses, including justification defenses").

111. See Paul H. Robinson, *Criminal Law Defenses: A Systematic Analysis*, 82 COLUM. L. REV. 199, 216 (1982) ("All justification defenses have the same internal structure: *triggering conditions* permit a *necessary* and *proportional response*.").

112. *See Meerdink*, 2013 WL 3457628, at *6. Under the record in this case, that conclusion was clearly erroneous because it was contrary to the district court's finding that Meerdink killed the dog in response to an accident that occurred moments before it was killed. *See infra* Part III.B.3.

3. Meerdink *Fails to Properly Apply Iowa's Sufficiency-of-the-Evidence Standard*

The court in *Meerdink* held the evidence was insufficient to establish depraved intent. In reaching that conclusion, the court erred in two ways. First, the court failed to follow well-established standards that required it to view the evidence in the light most favorable to the verdict, making all reasonable inferences.[113] Instead, the court of appeals made an independent determination of the facts.[114] Second, because the court of appeals misinterpreted the statute to effectively require proof of sadistic intent to cause prolonged suffering,[115] the appellate court erred in concluding that the evidence was insufficient because it lacked such proof.[116]

In resolving the challenge to the sufficiency of the evidence, the relevant inquiry before the court of appeals was whether the evidence could "convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt."[117] Further, on review, the court is obligated to view the evidence in the light most favorable to the verdict and to make any inferences and presumptions that can fairly be deduced from the evidence.[118] The court is not allowed to selectively review the evidence but instead must review the evidence as a whole.[119] In doing so, it must broadly and liberally construe the district court's findings of fact.[120]

Further, when reviewing the sufficiency of evidence of intent, the court of appeals must be mindful that intent is "seldom susceptible to proof

113. The court acknowledged that this was the applicable standard of review. *See Meerdink*, 2013 WL 3457628, at *3 (quoting State v. Leckington, 713 N.W.2d 208, 213 (Iowa 2006)).

114. *Id.* at *6.

115. *See supra* Part III.B.3.

116. *See Meerdink*, 2013 WL 3457628, at *6.

117. *See* State v. Veal, 564 N.W.2d 797, 803 (Iowa 1997) (citing State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984)).

118. State v. Romer, 832 N.W.2d 169, 174 (Iowa 2013) ("In reviewing challenges to the sufficiency of evidence supporting a guilty verdict, courts consider all of the record evidence viewed in the light most favorable to the State, including all reasonable inferences that may be fairly drawn from the evidence." (quoting State v. Sanford, 814 N.W.2d 611, 615 (Iowa 2012))); State v. Leckington, 713 N.W.2d 208, 213 (Iowa 2006).

119. State v. Farnum, 397 N.W.2d 744, 747 (Iowa 1986) (stating the question is "whether the evidence, taken as a whole, [is] sufficient to support the conviction[]").

120. *See id.* at 750 ("The trial court was free to accept or disregard evidence according to its own evaluation of credibility.").

by direct evidence."[121] Moreover, a "fact finder may determine intent by such reasonable inferences and deductions as may be drawn from facts proved by evidence in accordance with common experience and observation."[122] Such inferences need not be the only reasonable inferences but simply "more likely than not" true.[123] When the facts of this case are viewed under these liberal and deferential standards, sufficient proof existed of Meerdink's depraved intent.

Using the ordinary meaning of depraved intent, as discussed in section III.B.2, the state must prove that the defendant intended a heinous and morally corrupt action.[124] In applying this ordinary meaning, courts focus on the circumstantial evidence that indicates depravity: namely, whether the defendant's actions "pos[ed] a high degree of risk[] and manifest[ed] a total lack of concern for the [animal's] death or suffering."[125] Specifically, courts consider facts demonstrating the act's brutality, the senselessness of the act, the helplessness of the victim,[126] and the defendant's lack of remorse[127] in evaluating the sufficiency of the evidence surrounding a finding of depravity.

The facts, when properly viewed in the light most favorable to the verdict and making all reasonable inferences, support the trial court's finding of depravity for four reasons. First, the act was unquestionably

121. State v. Kirchner, 600 N.W.2d 330, 334 (Iowa Ct. App. 1999) (citing State v. Finnel, 515 N.W.2d 41, 42 (Iowa 1994)); *see also* IOWA R. APP. P. 6.904(3)(p) ("Direct and circumstantial evidence are equally probative.").

122. State v. Howard, 404 N.W.2d 196, 198 (Iowa Ct. App. 1987).

123. State v. Finnel, 515 N.W.2d 41, 42 (Iowa 1994) ("The requirement of proof beyond a reasonable doubt is satisfied if it is more likely than not that the inference of intent is true." (quoting State v. Olson, 373 N.W.2d 135, 136 (Iowa 1985))).

124. *See supra* notes 88–96 and accompanying text.

125. *See* State v. Witham, 876 A.2d 40, 42 (Me. 2005).

126. *See* State v. Black, 815 S.W.2d 166, 182 (Tenn. 1991) ("[T]his brutal and senseless execution style murder of a helpless child, who could not protect herself, evinces torture or depravity of mind . . . .").

127. Whether a defendant exhibited a lack of remorse focuses on the defendant's conduct after the act. *See* State v. Wilson, No. 08-1040, 2009 WL 1913695, at *2 (Iowa Ct. App. July 2, 2009) (finding depravity, in part, because "afterwards, [the defendant] exhibited a remorseless demeanor"). Thus, a lack of remorse might be demonstrated by showing the defendant did not seem sad or regretful. In contrast to the court of appeals' *Meerdink* decision that narrowly considered whether the defendant seemed "happy" after he killed the puppy, see *supra* Part III.B.2, a focus on the lack of remorse looks broadly at any and all actions the defendant took that would be inconsistent with remorse. While remorselessness could include taking pleasure from the earlier action, it also would include indifference.

brutal. Meerdink bludgeoned the puppy to death with the baseball bat.[128] As documented by the police officer called to the scene, the beating left behind a large pool of blood and brain matter.[129] The officer further noted the beating had crushed part of the puppy's skull; photos taken by the officer showed that the puppy had a bloodied eye, bloodied mouth, and significant bruising in his head region.[130] A reasonable fact finder could find the brutality of Meerdink's actions to be circumstantial evidence of depraved intent.

Second, the act was senseless. Meerdink was a grown man who had owned the puppy since it was four months old.[131] The puppy was only seven months old, which to a reasonable person would suggest that the puppy was still trainable.[132] The puppy was also a family pet in a household with small children.[133] The trial court explicitly found the trigger for the act was a foreseeable and, relatively speaking, minor inconvenience—the puppy had an accident in the house.[134] Meerdink certainly had other options available than beating his puppy to death: he could have enlisted help from a professional, continued to work on training his puppy, or as a last resort, taken the puppy to an animal shelter. Further, the actions of Meerdink's girlfriend the night he killed the dog show that, in her view, his acts were senseless. When Meerdink told her the dog was dead but refused to tell her what had happened, she "kind of panicked" and "got hysterical."[135] She immediately removed her children from his presence.[136] Later that evening, she kicked him out of the apartment.[137] A reasonable fact finder could find that her reaction demonstrates the senselessness of Meerdink's actions and serves as further circumstantial evidence of his depraved intent.

Third, the puppy was helpless. The puppy was a Boston Terrier, which is a small breed that when fully grown typically weighs under 25

128. State v. Meerdink, No. 12-0877, 2013 WL 3457628, at *2 (Iowa Ct. App. July 10, 2013).

129. *Id.* at *1.

130. *Id.* at *7 (Vaitheswaran, J., dissenting).

131. *Id.* at *1 (majority opinion).

132. *Id.* at *7 (Vaitheswaran, J., dissenting).

133. *Id.* at *8 ("A reasonable fact-finder could have found depravity based on . . . the fact that the animal was a family pet.").

134. *Id.* at *7 ("A reasonable fact-finder could have found this conduct to be an extreme response to an ordinary and forseeable occurrence.").

135. *Id.* at *1 (majority opinion).

136. *Id.*

137. *Id.*

pounds.[138] In addition to the puppy's size, his defenselessness is demonstrated by the fact that Meerdink—who had recently had two shoulder surgeries—was able to hold the puppy under one arm while carrying a baseball bat and then was able to control the puppy enough to bludgeon it.[139] Moreover, the puppy was only seven months old.[140] In a similar case, a court noted the fact that the animal was a "relatively young dog, eight months old, 28 pounds, basset mixed breed" in affirming the district court's holding that the act of killing the dog demonstrated depraved intent.[141] Here, too, the trial court was entitled to make inferences based upon this evidence of the puppy's helplessness to support a finding of depravity.[142]

Finally, Meerdink's actions after killing the puppy demonstrate his lack of remorse. A defendant's "remorseless demeanor" can support a finding of depraved intent.[143] After Meerdink killed the puppy, he announced to his girlfriend that the "dog [is] dead."[144] While he did not look "happy" or "eager," he also did not exhibit regret or sadness over the fact that he had just left his bloodied and beaten puppy lying in a field.[145] Later, Meerdink continued his attitude of indifference when he refused, despite his girlfriend's request, to dispose of the puppy's remains.[146] A reasonable fact finder could conclude that Meerdink's remorseless demeanor was indicative of his depraved intent.

Through circumstantial evidence, the district court was entitled to conclude that Meerdink acted with depraved intent by taking deliberate actions that "pos[ed] a high degree of risk, and manifest[ed] a total lack of

138. *Get to Know the Boston Terrier*, AM. KENNEL CLUB, http://www.akc.org/breeds/boston_terrier/index.cfm (last visited June 15, 2014) (describing full-grown Boston terriers as not weighing more than 25 pounds).

139. Application for Further Review, *supra* note 69, at 10.

140. *Meerdink*, 2013 WL 3457628, at *7 (Vaitheswaran, J., dissenting).

141. *See* People v. Knowles, 709 N.Y.S.2d 916, 920 (Rensselaer Cnty. Ct. 2000).

142. *Meerdink*, 2013 WL 3457628, at *1 (noting that the district court reiterated that Meerdink had killed a *young* dog in the portion of its ruling dealing with finding depraved intent).

143. *See* State v. Wilson, No. 08-1040, 2009 WL 1913695, at *2 (Iowa Ct. App. July 2, 2009) (noting that defendant "exhibited a remorseless demeanor" in affirming conviction over challenge to sufficiency of the evidence).

144. *Meerdink*, 2013 WL 3457628, at *1.

145. *See id.* at *8 (Vaitheswaran, J., dissenting).

146. *Id.* at *1 (majority opinion).

concern for the [animal's] death or suffering."[147]

The court of appeals' conclusion that the abovementioned evidence was insufficient as a matter of law to show depraved intent reflects two underlying shortcomings. First, the court of appeals did not follow the standard of review that required it to give deference to the district court's factual findings and not to make independent determinations of the weight of the evidence. The court of appeals did exactly the opposite when it concluded that "Meerdink killed the dog in response to the dog biting a child and only after the dog had become more aggressive over time and unresponsive to remedial measures."[148] That version of the facts was plainly rejected by the trial court, which could have reasonably found it lacked credibility because the testimony supporting that defense came from Meerdink's girlfriend, with whom he had reconciled by the time of trial.[149]

Moreover, that testimony ran counter to that same witness's statements about what Meerdink said to her on the night the puppy was killed.[150] She testified that Meerdink had called her about an accident the puppy had the evening he killed the puppy.[151] That call contained no information about the puppy biting anyone.[152] Thus, the trial court was entitled to reject the "dog bite defense" testimony as "post-hoc rationalization"[153] and instead credit the State's evidence that the puppy's accident that night had triggered the killing.[154] In rejecting the evidence

147. *See* State v. Witham, 876 A.2d 40, 42 (Me. 2005). That Meerdink's behavior met the ordinary meaning of "depraved" is further illustrated by the public commentary following the court of appeals' reversal of his conviction. Widespread public reaction to the ruling indicated a common understanding that beating a puppy to death with a bat is depraved. *See, e.g.*, Eckhoff, *supra* note 12; Newcomb, *supra* note 12. Interpretation of the statute based on the common understanding of "depraved" would require courts to apply the statute in a way that adequately encapsulates the public's disdain for such behavior, which ultimately underlies and motivates the enactment of criminal statutes.

148. *Meerdink*, 2013 WL 3457628, at *6.

149. *Id.* at *8 (Vaitheswaran, J., dissenting) ("[A] reasonable fact-finder could have inferred that [the girlfriend]'s sudden defense of Meerdink at trial reflected her remorse at having reported the incident to police following her reconciliation with him.").

150. *Id.* at *1 (majority opinion).

151. *Id.*

152. *Id.*

153. *Id.* at *7 (Vaitheswaran, J., dissenting).

154. While the court raised concerns that there was no physical evidence of how many times the puppy was hit, it failed to note that there was no physical evidence that the puppy bit anyone. *See id.* at *1–6 (majority opinion). That double standard is

that supported the verdict and instead crediting conflicting evidence, the court failed to apply the correct standard of review.[155] Its failure to do so is particularly troubling in this case because the conflicting testimony about the asserted justification for Meerdink's violent conduct came from his on-and-off-again girlfriend.[156] Indeed, the deferential standard of review exists because it is the trial court that views a witness's demeanor, placing it in the best position to make credibility determinations.[157] Thus, the court of

troubling because particularly with an animal victim—and certainly with a dead animal victim—the need for circumstantial evidence will be strong.

155. In contrast to the court's conclusion here, evidence is not insufficient simply because conflicting evidence exists. *See* State v. Lopez, 633 N.W.2d 774, 786 (Iowa 2001) (rejecting witness's conflicting testimony and noting that trial court "as fact finder could believe some of the testimony, all of the testimony, or none of it"). Thus, even though all evidence in the record must be considered when determining the sufficiency of the evidence, that does not mean all of the evidence must be credited. State v. Hopkins, 576 N.W.2d 374, 377 (Iowa 1998) ("[W]hen the evidence is in conflict, the fact finder may resolve those conflicts in accordance with its own views as to the credibility of the witnesses. In assessing witness credibility and the weight of the evidence, a fact finder is guided by its common sense and prior experience." (citation omitted)).

156. *Meerdink*, 2013 WL 3457628, at *1–2.

157. Deference to trial courts' credibility determinations is particularly imperative in cases in which a witness recants or contradicts prior testimony. *See* State v. Taylor, 689 N.W.2d 116, 133 (Iowa 2004) (noting, in domestic abuse case in which key witnesses' testimony changed, the court was free to reject the "exculpatory testimony of the defendant and the victim" as contrary to the weight of the credible evidence). For example, Iowa courts recognize the difficult evidentiary issues that arise in the context of domestic abuse cases stemming from the "common phenomenon of a reluctant witness in . . . domestic violence prosecution[s]." State v. Richmond, No. 11-1763, 2012 WL 3860752, at *4 (Iowa Ct. App. Sept. 6, 2012) (collecting sources summarizing testimony of domestic violence experts concerning the hesitance of battered women to testify against their abusers). While various explanations exist as to why domestic abuse witnesses are reluctant to testify against their abuses, all suggest psychological underpinnings to such a phenomenon. *See, e.g.*, State v. Rodriguez, 636 N.W.2d 234, 245 (Iowa 2001) (suggesting domestic abuse victims may "deny that the incident took place, be reluctant to testify against her batterer, and refuse to assist in the prosecution" out of "fear"); A. Bonomi et al., *"Meet Me at the Hill Where We Used to Park": Interpersonal Processes Associated with Victim Recantation,* 73 SOC. SCI. & MED. 1054, 1059 (2011) (finding perpetrators' use of "sophisticated strategies to persuade their victim, namely, minimization and descriptions of their suffering . . . triggered sadness, guilt and sympathy in their victim," leading victims to recant to "protect" the perpetrator). While *Meerdink* involves animal abuse not domestic abuse, the links that exist between these types of abuses suggest that courts similarly be mindful of the psychological and relationship reasons that might cause a witness to change her testimony or to be reluctant to testify regarding animal abuse in the home. *See supra* note 10 and accompanying text; *see also* Charles Siebert, *The Animal-Cruelty*

appeals overstepped its bounds in reweighing the evidence and supplanting its own credibility determinations in place of the district court's.[158]

In viewing the evidentiary record as a whole—as the court of appeals is required to do[159]—a reasonable fact finder could have inferred that Meerdink's actions were not a justifiable response to a biting incident, but an extreme and heinous response to a common trigger—the frustrations of having and house training a puppy.[160]

In addition to improperly reweighing the evidence, the court of appeals also improperly focused on evidence that was not relevant to the depraved intent element.[161] First, the court of appeals pointed out as exculpatory evidence that Meerdink did not look "happy or eager."[162] As discussed in Subsection III.B.2, unlike sadistic intent, depraved intent does not require that the actor take pleasure in the actions.[163] Thus, the court of appeals should not have given weight to whether Meerdink looked "happy

Syndrome, N.Y. TIMES, June 13, 2010, http://www.nytimes.com/2010/06/13/magazine/13dogfighting-t.html?pagewanted=all&_r=0 (describing animal abuse and domestic violence as linked by "the need for power and control").

158. It appears the court may have confused its duty to construe criminal laws strictly with its duty to broadly construe and defer to the district court's fact finding. The former gives the reviewing court no authority to construe the evidence against the verdict, and the latter requires it to, in fact, defer to the evidence supporting the verdict. *Compare* State v. Hearn, 797 N.W.2d 577, 583 (Iowa 2011) (lenity requires "that *provisions* establishing the scope of criminal liability are to be strictly construed with doubts resolved therein in favor of the accused" (emphasis added)), *with Taylor*, 689 N.W.2d at 131 (reiterating that for sufficiency-of-the-evidence challenges, "a reviewing court considers all the evidence and views the record in the light most favorable to the trial court's decision").

159. *See supra* note 119 and accompanying text.

160. *See Meerdink*, 2013 WL 3457628, at *7 (Vaitheswaran, J., dissenting). Even if the court of appeals were allowed to view the evidence anew, that still would not result in the evidence in this case being insufficient as a matter of law. First, there was no evidence that the puppy bit anyone that day, making application of the judicially-created justification defense dubious. *See supra* notes 151–54 and accompanying text. And even under the facts credited by the court of appeals, the defendant was not justified as a matter of law in killing the puppy because his action was disproportionate to the provocation. *See supra* notes 107–11 (pointing out that a justification defense must entail proportionality analysis).

161. These errors resulted from the court's conflating of the terms "sadistic" and "depraved," as well as its focus on the "prolonged suffering" prong in lieu of the "death" prong relied upon by the district court. *See supra* Part III.B.2.

162. *Meerdink*, 2013 WL 3457628, at *6.

163. *See supra* Part III.B.2.

or eager."[164] Indeed, an inference of cold-bloodedness could reasonably be made from Meerdink's lack of emotion of any type.[165] Second, the court of appeals also viewed the fact that the defendant was outside with the dog for "only a few minutes" as exculpatory evidence.[166] However, the prong invoked by the district court was depraved intent to cause death, not depraved intent to cause prolonged suffering.[167] Under the death prong, the amount of time it took to kill the dog is not relevant as a matter of law. The district court did not have to find that Meerdink intended to, or did in fact cause, prolonged suffering, and the court of appeals was incorrect to assume that his blank demeanor or the amount of time or swings it took him to kill the puppy negated the district court's finding of depraved intent to cause death.[168]

IV. POST-*MEERDINK* ENFORCEMENT OF ANIMAL TORTURE: CONSEQUENCES AND CALL FOR ACTION

A. *Consequences of* Meerdink

The immediate and practical effect of the court of appeals's opinion is that Zachary Meerdink ultimately faced no criminal repercussions for brutally killing his puppy. Meerdink was not held criminally responsible under the animal torture law and could not be held criminally responsible under the animal abuse and animal neglect laws.[169] Thus, *Meerdink* represents a failing at some level, whether legislative or judicial.

Of course, *Meerdink* has negative implications beyond the parties and the animal victim in that case. At best, *Meerdink* leaves the law in this area muddied; lacking certainty as to how high or how low the bar is for what constitutes depravity, law enforcement officers and prosecutors may be less

164. *Meerdink*, 2013 WL 3457628, at *6.

165. *See id.* at *1 (quoting Meerdink's girlfriend's testimony that she told the police that Meerdink "had a blank look on his face" after the killing).

166. *Id.* at *6.

167. *Id.* (emphasis added).

168. For similar reasons, the court's focus on testimony about how many times Meerdink swung the bat was misplaced. While such testimony may be useful in some, but not all, cases to show depraved intent to cause prolonged suffering, under the death prong it does not matter how many swings it took Meerdink to bludgeon the puppy to death. *See supra* Part III.B.2.

169. As noted above, owners are exempted from the animal abuse law and the animal neglect law requires a level of confinement arguably not present here. *See supra* notes 31–38 (discussing the court's finding that the animal neglect and animal torture statutes are mutually exclusive).

likely to pursue animal torture cases.[170] And those cases they do pursue may become more complicated and costly as prosecutors struggle to ensure that they are presenting sufficient evidence to satisfy an amorphous standard.

At worst, *Meerdink* may directly undermine the enforcement of animal torture by interpreting the statute in a way that creates an enforcement gap, whereby those who brutally kill their own animals will able to escape prosecution simply because they did not act with a sadistic intent to cause prolonged suffering.[171] Given the link between violence against animals and violence against people, that enforcement gap has implications not just for animals but also for people.[172] The end result is that rather than animal abusers being brought into the legal system for psychological evaluation, treatment, and punishment, animal abusers instead will go unchecked and undeterred.

B. *Post*-Meerdink *Call for Action*

Because of the potential consequences stemming from the shortcomings of the court of appeals's opinion in *Meerdink*, a need exists for clarification of the animal torture statute. Such clarification will not only reduce confusion about the law in this area, but also will facilitate enforcement of the statute.

First, and preferably, the Iowa Supreme Court should, at the next opportunity, issue an opinion explicitly interpreting the depraved intent element in the animal torture statute. Because the court of appeals decided this issue on first impression, it did not have the benefit of an Iowa Supreme Court decision in this area.[173] Further, as noted in subsection

170. *See* Application for Further Review, *supra* note 69, at 18 ("This ruling has left the meaning of 'depraved intent' muddied and makes it difficult for the public or law enforcement to ascertain the reach of the statute.").

171. To the extent *Meerdink* is relied upon for general principles, it will create confusion insofar as it runs roughshod over Iowa's standards of appellate review and rules of statutory interpretation. *See supra* Part III.B.2–3.

172. *See supra* note 10 and accompanying text.

173. The routing statement in Meerdink's appellate brief notes that the interpretation of the animal torture statute is "a substantial issue of first impression" because the statute has not been interpreted by the Iowa Supreme Court. *See* Appellant's Brief and Argument and Request for Oral Argument at 3, *Meerdink*, No. 12–0877, 2013 WL 3457628 (Iowa Ct. App. July 10, 2013). Similarly, the State's application for further review to the Iowa Supreme Court also notes that this is an issue of first impression. *See* Application for Further Review, *supra* note 69, at 1 ("This case presents an important question of law that has not been, but should be, settled by the

III.B.1, the court of appeals decision does not actually define the depraved intent element, thus discouraging law enforcement officials and prosecutors from pursuing convictions.[174]

Second, and absent the Iowa Supreme Court's resolution of the matter (or in spite of it should the highest court fail to adopt the interpretation set forth in subsection III.B.2), the legislature should amend Iowa's animal torture statute to define "depraved intent."[175] The term should be defined in accordance with its ordinary meaning. The definition further should specify that depraved does not require that the defendant take pleasure from harming the animal. The legislature also should make clear that justification is not a defense under this statute, and evidence of defendants' justifications for their actions should not be considered in determining whether they possessed the requisite culpable mental state. Finally, the statute should be amended to make clear that the intent prong requires intent to cause *either* prolonged suffering *or* death. This final

Supreme Court."). However, "[f]urther review by the supreme court is not a matter of right, but of judicial discretion. An application for further review will not be granted in normal circumstances." IOWA R. APP. P. 6.1103(1)(b). The appellate rule states:

> The following, although neither controlling nor fully measuring the supreme court's discretion, indicate the character of the reasons the court considers: (1) The court of appeals has entered a decision in conflict with a decision of this court or the court of appeals on an important matter; (2) The court of appeals has decided a substantial question of constitutional law or an important question of law that has not been, but should be, settled by the supreme court; (3) The court of appeals has decided a case where there is an important question of changing legal principles; (4) The case presents an issue of broad public importance that the supreme court should ultimately determine.

Id. It was under this standard that the application was denied.

174. The State raised this concern in its Application for Further Review to the Iowa Supreme Court: "The decision by the Court of Appeals has not clarified the definition, and a Supreme Court ruling is needed to provide clarity and predictability to this criminal statute." Application for Further Review, *supra* note 69, at 1. Though neither bill was passed, their proposals exhibit an awareness of the issue within the legislature.

175. Other legislative action beyond the scope of this Article may also be appropriate. *See* S.F. 2020, 85th Gen. Assemb., 2d Sess. (Iowa 2014) (proposing to increase penalties for animal neglect from a simple misdemeanor to a serious misdemeanor punishable by up to one year in jail and $1,875 in fines, and increase penalties for neglect resulting in the serious injury or death of an animal from a serious misdemeanor to an aggravated misdemeanor punishable by up to two years in jail and $6,250 in fines); S.F. 2021, 85th Gen. Assemb., 2d Sess. (Iowa 2014) (proposing to increase the penalties for first-offense animal torture from an aggravated misdemeanor to a class D felony punishable by up to five years in jail and $7,500 in fines).

amendment would make it clear that if the act results in the death of the animal, prolonged suffering is not required.[176] Enacting these amendments will carry out the intent of the statute to criminally punish animal abusers for acts of animal abuse.

APPENDIX A

The following reflects Iowa's animal torture statute amended to incorporate clarification changes suggested by this Article to facilitate enforcement. Additions are indicated with underlining.

717B.3A ANIMAL TORTURE.

1. A person is guilty of animal torture, regardless of whether the person is the owner of the animal, if the person inflicts upon the animal: (1) severe physical pain (2) with *either* a depraved intent *or* a sadistic intent to cause *either* (a) prolonged suffering *and/or* (b) death.

a. "Depraved intent" means acting with a purpose that a reasonable person would find to be morally debased and/or heinous. Under this definition, it is not necessary that the defendant derived pleasure or sexual gratification from the act.

b. "Sadistic intent" means acting in such a manner that a reasonable person would conclude the defendant's purpose in committing the act was to derive pleasure and/or sexual gratification.

2. This section shall not apply to any of the following:

a. A person acting to carry out an order issued by a court.

b. A licensed veterinarian practicing veterinary medicine as provided in chapter 169.

c. A person carrying out a practice that is consistent with animal husbandry practices.

d. A person acting in order to carry out another provision of law which allows the conduct.

e. A person taking, hunting, trapping, or fishing for a wild animal as provided in chapter 481A.

f. A person acting to protect the person's property from a wild animal

176. *See* Appendix A.

as defined in section 481A.1.

g. A person acting to protect a person from injury or death caused by a wild animal as defined in section 481A.1.

h. A person reasonably acting to protect the person's property from damage caused by an unconfined animal.

i. A person reasonably acting just to protect a person from injury or death caused by an unconfined animal.

j. A local authority reasonably acting to destroy an animal, if at the time of the destruction, the owner of the animal is absent or unable to care for the animal, and the animal is permanently distressed by disease or injury to a degree that would result in severe and prolonged suffering.

k. A research facility, as defined in section 162.2, provided that the research facility performs functions within the scope of accepted practices and disciplines associated with the research facility.

3. Other than the exceptions specifically enumerated in paragraph 2 above, no exceptions or defenses exist under this section. This includes, but is not limited to, justification defenses.

4. *a*. The following shall apply to a person who commits animal torture:

1) For the first conviction, the person is guilty of an aggravated misdemeanor. The sentencing order shall provide that the person submit to psychological evaluation and treatment according to terms required by the court. The costs of the evaluation and treatment shall be paid by the person. In addition, the sentencing order shall provide that the person complete a community work requirement, which may include a work requirement performed at an animal shelter or pound, as defined in section 162.2, according to terms required by the court.

2) For a second or subsequent conviction, the person is guilty of a class "D" felony. The sentencing order shall provide that the person submit to psychological evaluation and treatment according to terms required by the court. The costs of the psychological evaluation and treatment shall be paid by the person.

b. The juvenile court shall have exclusive original jurisdiction in a proceeding concerning a child who is alleged to have committed animal torture, in the manner provided in section 232.8. The juvenile court shall not waive jurisdiction in a proceeding concerning an offense alleged to

have been committed by a child under the age of seventeen.