

**FILED**

**IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT  
WITHIN AND FOR SUBLETTE COUNTY, WYOMING**

State of Wyoming,  
Plaintiff,  
vs.  
Cody J. Roberts,  
Defendant.

Docket No. 2025-CR-0001334-L

## **Order Denying Motion to Dismiss**

This matter came before the Court for hearing on January 28, 2026, on *Defendant's First Amended Motion to Dismiss Indictment* (FSX No. 78041288). The court has considered the motion along with the State's *Response to Defendant's First Amended Motion to Dismiss Indictment Pursuant to Wyo. R. Crim. P. Rule 12* (FSX No. 78100833), the *Defendant's Reply to State's Response in Opposition to First Amended Motion to Dismiss Indictment Pursuant to Wyo. R. Crim. P. Rule 12* (FSX No. 78198744), and the arguments of counsel, and finds the motion should be denied.

## Background

Defendant was charged by indictment with a violation of Wyo. Stat. Ann. § 6-3-1005(a)(ii) (2024): “Knowingly, and with intent to cause death or undue suffering, ... tortures [or] torments ... an animal.” “‘Torture’, ‘torment’ or ‘cruelty’ means every act, omission or neglect whereby the willful and malicious infliction of pain or suffering is caused, permitted or allowed to continue when there is a reasonable

remedy or relief.” Wyo. Stat. Ann. § 6-1-104(a)(xiii) (2024). However, section 1005 does not prohibit “The hunting, capture, killing or destruction of any predatory animal, pest or other wildlife in any manner not otherwise prohibited by law.” Wyo. Stat. Ann. § 6-3-1008(a)(vii) (2024). A “predatory animal” means:

(B) Until the date gray wolves are removed from the list of experimental nonessential population, endangered species or threatened species in Wyoming as provided by W.S. 23-1-108, “predatory animal” includes wolves. After that date, “predatory animal” shall include any gray wolf within areas of the state where the state of Wyoming has jurisdiction for wildlife management, but not within an area of the state in which the gray wolf is:

(I) Designated as a trophy game animal under W.S 23-1-101(a)(xii)(B)(I) or (II).

Wyo. Stat. Ann. § 11-6-302(a)(ix) (2024).

Defendant’s motion explains the State claims he captured a wolf and brought it to the Green River Bar in Daniel, Wyoming. The State does not allege that the wolf was in an area of the state where it is designated as a trophy game animal. When Defendant brought the wolf into the bar it was on a lead, and was wearing a collar. The State claims that Defendant “permitted or allowed to continue” the “pain or suffering” of the wolf “when there is a reasonable remedy or relief.”

## **Standard of Review**

Under Rule 12(b), a court may “may entertain motions that require it to answer only pure questions of law,” including “whether the allegations in the indictment, if true, are sufficient to establish a violation of the charged offence.” *United States v. Pope*, 613 F.3d 1255, 1260 (10th Cir. 2010). Defendant’s motion asks the court to consider facts outside the indictment, which is permitted under limited circumstances:

[C]ourts may entertain even motions to dismiss that require resort to facts outside the indictment and bearing on the general issue in the “limited circumstances” where “[1] the operative facts are undisputed and [2] the government fails to object to the district court’s consideration of those undisputed facts,” and [3] the district court can determine from them that, “as a matter of law, the government is incapable of proving its case beyond a reasonable doubt.”

*Id.* (quoting *United States v. Hall*, 20 F.3d 1084, 1088 (10th Cir.1994)). However,

dismissals under this rubric are the “rare exception.” *Id.*

Instead, dismissals under the rubric we set forth in *Hall* can be had only when and “because undisputed evidence shows that, as a matter of law, the Defendant could not have committed the offense for which he was indicted.” *Todd*, 446 F.3d at 1068. The extra-indictment evidence thus must be undisputed in the sense that it is *agreed* to by the parties—neither side having expressed any objection to its consideration or any objection to its completeness and accuracy. Indeed, we have held even *latent* factual disputes over circumstances surrounding the *commission* of the alleged offense can sometimes prevent pretrial determination of a defense. *See Reed*, 114 F.3d at 1070 (rejecting the district court’s pretrial determination of an as-applied challenge based upon a mere proffer of facts, even when the opposing party didn’t object to that proffer). To warrant dismissal, it must be clear from the parties’ *agreed* representations about the facts surrounding the commission of the alleged offense that a trial of the general issue would serve no purpose.

*Id.* at 1261 (emphasis in original).

This case raises issues of statutory construction.

When we interpret statutes, our goal is to give effect to the intent of the legislature, and we attempt to determine the legislature’s intent based primarily on the plain and ordinary meaning of the words used in the statute. Where legislative intent is discernible a court should give effect to the most likely, most reasonable, interpretation of the statute, given its design and purpose.

We therefore construe each statutory provision *in pari materia*, giving effect to every word, clause, and sentence according to their arrangement and connection. To ascertain the meaning of a given law, we also consider all statutes relating to the same subject or having the same general purpose and strive to interpret them harmoniously. We presume that the legislature has acted in a thoughtful and rational manner with full knowledge of existing law, and that it intended new statutory provisions to be read in harmony with existing law and as part of an overall and uniform system of jurisprudence. When the words used convey a specific and obvious meaning, we need not go farther and engage in statutory construction.

*Wyoming Jet Ctr., LLC v. Jackson Hole Airport Bd.*, 2019 WY 6, ¶ 12, 432 P.3d 910, 915 (Wyo. 2019) (citations omitted) (quoting *PacifiCorp, Inc. v. Wyo. Dep’t of Revenue*, 2017 WY 106, ¶ 10, 401 P.3d 905, 908-09 (Wyo. 2017) (quoting *Nicodemus*

*v. Lampert*, 2014 WY 135, ¶ 13, 336 P.3d 671, 674 (Wyo. 2014))).

## Discussion

Defendant argues that Wyo. Stat. Ann. § 6-3-1005(a)(ii) (2024) is “a broad prohibition against animal cruelty” including “any act or acts which constitute torture or torment to an animal.” (Motion at 4). Wyo. Stat. Ann. § 6-3-1008(a) (2024) provides specific, enumerated exceptions, including paragraph (vii), “The *hunting, capture, killing or destruction* of any predatory animal, pest or other wildlife in *any manner* not otherwise prohibited by law” (Defendant’s emphasis).

Defendant argues that under the State’s theory, the exception in paragraph (vii) is meaningless:

Counsel for the Defendant believes that the State alleges that because the Defendant’s alleged conduct contravenes Wyo. Stat. Ann. § 6-3-1005’s prohibition on torturing or tormenting an animal, it is somehow outside **the blanket license** provided by Wyo. Stat. Ann. § 6-3-1008.

(Motion at 4) (emphasis added). But the plain language of section 1008 doesn’t provide a blanket license. Section 1008 contains specific, enumerated exceptions to section 1005. One specific, enumerated exception is for the “hunting, capture, killing or destruction” of predatory animals in any manner which is not otherwise prohibited by law. Wyo. Stat. Ann. § 6-3-1008(a)(vii) (2024). Defendant recognizes this when he argues that the State must be arguing that his conduct was unlawful in spite of the complete license to capture, hunt, or destroy predatory animals in any manner whatsoever. The charges at issue do not arise out of the hunting, capture, or killing of the wolf.

Defendant’s motion does not offer an interpretation of the specific, enumerated exception in Wyo. Stat. Ann. § 6-3-1008(a)(vii) (2024). Defendant’s motion argues that if it is ambiguous, the rule of lenity requires resolving ambiguity in Defendant’s favor. *See Adekale v. State*, 2015 WY 30, ¶¶ 25-28, 344 P.3d 761, 768 (Wyo. 2015). However, “If legislative intent is sufficiently clear, strict construction cannot defeat that intent, even in the case of criminal statutes.” *Id.*, ¶ 26. Under the plain language of Wyo. Stat. Ann. § 6-3-1008(a)(vii) (2024), the charges in this case cannot arise out of the capture of the wolf, no matter how it occurred, insofar as the State does not allege that the wolf was captured in a manner otherwise prohibited by law. But as the State’s response brief and the statement of facts in Defendant’s motion recognize, this case does not arise out of the capture of the wolf,

but out of Defendant's alleged conduct after capturing the wolf but before it was killed.

Defendant argues that Wyo. Stat. Ann. § 6-3-1008(a)(vii) (2024) uses the broadest possible language and should be interpreted broadly. It does not. To read the statutes as Defendant suggests would require the court to rewrite the statutory language to substitute broad language, such as "any acts," for the specific language used by the legislature, "hunting, capture, killing or destruction." Courts are "not at liberty to add words to a statute that the legislature chose to omit." *Herrick v. Jackson Hole Airport Bd.*, 2019 WY 118, ¶ 29, 452 P.3d 1276, 1284 (Wyo. 2019) (quoting *Int'l Ass'n of Fire Fighters Local Union No. 5058 v. Gillette/Wright/Campbell Cty. Fire Prot. Joint Powers Bd.*, 2018 WY 75, ¶ 33, 421 P.3d 1059, 1067 (Wyo. 2018) (citation omitted)). Courts cannot add to a statute an exception not made by the legislature:

[C]ourts are not free to legislate. The first rule of statutory construction is that legislative intent, not a court's perception of fairness, controls. It is not the court's prerogative to usurp the power of the legislature by deciding what should have been said. The courts must follow, and cannot extend, statutory definitions. For over a century, courts in Wyoming have recognized that it is their duty only to interpret and declare what the law is, not to be responsible for its defects. **And of specific importance to the instant case is the precept that exceptions not made by the legislature in a statute cannot be read into it.**

*Delcon Partners LLC v. Wyoming Dep't of Revenue*, 2019 WY 106, ¶ 10, 450 P.3d 682, 685 (Wyo. 2019) (emphasis added) (quoting *Seherr-Thoss v. Teton Cty. Bd. of Cty. Comm'r's*, 2014 WY 82, ¶ 20, 329 P.3d 936, 945 (Wyo. 2014) (quoting *Scott v. Scott*, 918 P.2d 198, 200 (Wyo. 1996))).

Defendant's reply brief argues the 2025 amendment to Wyo. Stat. Ann. § 6-3-1005 supports his view. In 2025, the legislature added a misdemeanor animal cruelty offense to section 1005:

(iii) Knowingly, and with intent to cause undue suffering, tortures, torments or mutilates living wildlife, including predatory animals and predacious birds, after reducing the living wildlife to possession. For purposes of this paragraph:

- (A) The immediate killing of living wildlife reduced to possession shall not be a violation of this paragraph;
- (B) Nothing in this paragraph shall be construed to require an owner of a trap or snare to check the trap or snare before the time required in title 23 of the Wyoming statutes and rules

promulgated by the game and fish commission. Wildlife discovered in a snare or trap shall be considered within the possession of the owner of the snare or trap upon discovery by the owner;

(C) A first offense of cruelty to animals under this paragraph and W.S. 23-3-103(d) is a misdemeanor punishable as provided in W.S. 6-3-1004(c). A second or subsequent offense under this paragraph or W.S. 23-3-103(d) is punishable as provided by subsections (b) and (c) of this section.

2025 Wyo. Sess. Laws ch. 93, § 1. It took effect July 1, 2025. 2025 Wyo. Sess. Laws ch. 93, § 2. Defendant argues that “[w]ere a person to participate in the conduct alleged by the State in the instant matter today, this conduct would undoubtedly be within this prohibition.” Although it could have, Defendant does not point to anything in the statute or session law which indicates the legislature intended this statute to apply retroactively to reduce the offense with which Defendant is charged from a felony to a misdemeanor.

It is, therefore, ORDERED that *Defendant's First Amended Motion to Dismiss Indictment* (FSX No. 78041288) is denied.

Dated: February 3, 2026

/s/ Richard L. Lavery

Richard L. Lavery  
District Court Judge

## **COPIES DISTRIBUTED**

02/03/2026  
Janet K. Montgomery  
Clerk of District Court  
Sublette County  
Distributed by: Tiffany Olson