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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 04, 2026 10:45 AM
v	No. 372066 Cheboygan Circuit Court
KRISTA MARIE WILEY-PERCY, Defendant-Appellant.	LC No. 2023-006723-FH

Before: M. J. KELLY, P.J., and O'BRIEN and LIEVENSE, JJ.

LIEVENSE, J. (*concurring*).

I concur with the majority opinion's analysis in Part II (ineffective assistance of counsel) and Part IV (sufficiency of the evidence). I also concur with the outcome in Part III (double jeopardy) that defendant's two convictions of animal cruelty for failing to provide adequate care for animals, one for 25 or more animals (Count 1), and one for 10-24 animals (Count 2), violate the Double Jeopardy Clauses of the Michigan and United States Constitutions. I write separately, however, because I disagree with the reasoning.

The majority states that it is the facts of this case that implicate the Double Jeopardy Clauses. I think it is the way the case was charged and, more importantly, the verdict form, that implicates double jeopardy.

The prosecution presented evidence that defendant provided inadequate care to 10-24 dogs and more than 25 livestock. And, since different types of animals are cared for differently, the jury theoretically could have convicted defendant on one charge and acquitted her on the other based on its view of the evidence.

The problem, however, is that the verdict form did not differentiate between the different types of animals. It permitted the jury to convict for "10-24 animals," and also "25 or more animals," without clarifying that the "10-24" dogs were not also included as part of the "25 or more" animals. If it had differentiated between the two groups of animals, the "unit of

prosecution" for each count would have been different and would not have implicated double jeopardy. *People v Wakefield*, 418 Mich 95, 111; 341 NW2d 68 (1983).

/s/ Andrew J. Lievense