



# Dude, seriously?

## DEER ASSAULT CASE PRESENTS UNUSUAL ISSUES

Duluth News-Tribune

**P**rosecution of a case involving alleged sexual contact with a dead deer may hinge on the legal definition of the word "animal."

Bryan James Hathaway, 20, of Superior, Wis., faces a misdemeanor charge of sexual gratification with an animal. He is accused of having sex with a dead deer he saw beside a road on Oct. 11.

A motion filed last week by his attorney, public defender Fredric Anderson, argued that since the deer was dead, it was not considered an animal and the charge should be dismissed.

"The statute does not prohibit one from having sex with a carcass," Anderson wrote.

Judge Michael Lucci heard the motion Tuesday.

"I'm a little surprised this issue hasn't been tackled before in another case," Lucci said.

The Webster's dictionary defines "animal" as "any of a kingdom of living beings," Anderson said.

If you include carcasses in that definition, he said, "you really go down a slippery slope with absurd results."

Anderson argued: When does a turkey cease to be an animal? When it is dead?

When it is wrapped in plastic packaging in the freezer? When it is served, fully cooked?

A judge should decide what the Legislature intended "animal" to mean in the statute, he said. "And the only clear point to draw the line in that definition, I believe, is the point of death."

Assistant District Attorney James Boughner said the court can use a dictionary to determine the meaning of the word, but it doesn't have to.

"The common and ordinary meaning of a word can be found in how people actually use the word," Boughner wrote in his response to the motion.

When a person's pet dog dies, he told Lucci, the person still refers to the dog as his or her dog, not a carcass.

"It stays a dog for some time," Boughner said.

He referred to the criminal complaint, in which Hathaway told police he saw the dead deer in the ditch and moved it into the woods. Hathaway called it a dead deer, Boughner said, not a carcass.

"It did not lose its essence as a deer, an animal, when it died," he said.

Anderson argued that the statute, which falls under the heading "crimes against sexual morality," was meant to protect animals. That

would be unnecessary in the case of a dead animal.

"If you look at the other crimes that are in this subsection, they all protect against something other than simply things we don't like or things we find disgusting," he said.

Other crimes in that subsection include incest, bigamy, public fornication and lewd and lascivious behavior.

Boughner said the focus of the statute was on punishing the human behavior, not protecting animals.

"It does not seem to draw a line between the living and the dead," he said.

Interpreting the statute to exclude dead animals would also exclude freshly killed animals, Boughner said. That, he said, could lead to people who commit such acts with animals to kill them.

Lucci said he would render a decision by Hathaway's next court appearance on Dec. 1.

The misdemeanor charge carries a maximum penalty of nine months in jail and a fine of up to \$10,000. If convicted, Hathaway could serve a prison term of up to two years because of a previous conviction. In April 2005, Hathaway pleaded no contest to one felony charge of mistreatment of an animal for the shooting death of Bambrick, a 26-year-old horse, to have sex with the animal.