

No. 1-10-1213

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 085007544
)	
ERIC TURNER,)	Honorable
)	Colleen Ann Hyland,
Defendant-Appellant.)	Judge Presiding.

JUSTICE JOSEPH GORDON delivered the judgment of the court.
Justices McBride and Howse concurred in the judgment.

ORDER

¶ 1 *HELD:* Complaints charging defendant with cruel treatment of animals sufficiently informed him of the precise offense alleged; defendant waived his right to a jury trial expressly and understandingly; and the condition of his conditional discharge, that he have no contact or possession of dogs or animals, was clear and reasonable.

¶ 2 Following a bench trial, defendant Eric Turner was found guilty of eight counts of cruel treatment of animals and sentenced to two years of conditional discharge and 90 days in jail. He was also ordered to perform 45 days of community service, undergo a mental health evaluation, and have no contact with, or possession of, dogs or animals. On appeal, defendant contends that

the complaints charging him with cruel treatment of animals failed to set forth the nature of the offense with sufficient particularity and, therefore, violated his right to due process and section 111-3(a)(3) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/111-3(a)(3) (West 2008)). He also contends that he did not validly waive his right to a jury trial, and that the condition that he have no contact with or possession of dogs or animals, was unconstitutional.

¶ 3 The events giving rise to defendant's prosecution occurred on August 30, 2008, when an investigator from the Cook County Sheriff's Animal Crimes Unit, followed up on complaints about the living conditions of a large number of dogs in the basement of 1036 West 187th Street in Homewood, Illinois. Accompanied by defendant, the investigator entered the basement and observed 30 caged dogs, some without food or water, and standing in feces and urine. Defendant told the investigator that some of the dogs belonged to him and some were his mother's, but that he was responsible for all of them.

¶ 4 On September 1, 2008, defendant was charged by complaint with 30 misdemeanor counts of cruel treatment of animals, with each count relating to a particular dog under his care. In each complaint, the State asserted:

"That: [defendant] of 15610 KIMBARK SOUTH HOLLAND, IL has, on or about 30 AUGUST 2008 at the location 1036 W 187TH ST HOMEWOOD, IL committed the offense(s) CRUEL TREATMENT in that he/she NO PERSON OR OWNER, MAY CRUELLY TREAT, STARVE OR OTHERWISE ABUSE AN ANIMAL. [dog's breed, age, color, and sex] In violation of 510 Illinois Compiled Statutes 70/3.01."

¶ 5 Before trial, defendant filed a motion to dismiss the charges for failure to comply with the requirement of section 111-3(a)(3) of the Code (725 ILCS 5/111-3(a) (West 2008)), that a charge state the nature of the offense with sufficient particularity. The State responded that the complaints complied with section 111-3(a)(3) because the statute defining the offense of cruel treatment to an animal, specifies with reasonable certainty the type of conduct alleged.

Following a hearing, the trial court denied defendant's motion to dismiss, and allowed the State to amend the complaints to remove the phrase "no person or owner may" and change the word "treat" to "treated."

¶ 6 A bench trial commenced on February 19, 2010. During direct examination of the State's second witness, the trial court interjected, "At this point we have not made a jury waiver a part of the record," followed by this colloquy:

"THE COURT: Do you have a jury waiver, and if you could give that to the Court. It has never been made a part of the record.

MR. JOHNSON [defense counsel]: Yes, your Honor.

(Document tendered.)

THE COURT: [Defendant], normally we address this prior to the beginning of the evidence in the trial.

As I was sitting here, I realized that this has not been addressed prior to the trial.

I was told by your attorney and the State that you wished to have a Bench trial, but we never indicated that that was, in fact, your desire.

So, I am just showing you the jury waiver that has been presented by your attorney.

Is that your signature on that jury waiver?

[DEFENDANT]: Yes, ma'am.

THE COURT: And do you understand that by signing this, you give up your right to a jury trial which would have been twelve citizens who would have sat and listened to the evidence, and made a decision as to whether or not the State could prove you guilty beyond a reasonable doubt?

Instead, you are asking the Court to make that decision.

Do you understand that?

[DEFENDANT]: Yes, ma'am.

THE COURT: All right. That jury waiver will be made a part of the Court file.

I will indicate that I noticed this, and I wish we had addressed it even prior to the beginning of the evidence, but it is proper to take it at this point before we go any further."

¶ 7 The jury waiver signed by defendant and dated February 19, 2010, is contained in the common law record. The trial resumed, and after the close of evidence, the trial court found defendant guilty of eight counts of cruel treatment of animals. Then, on April 9, 2010, the trial court sentenced defendant to two years of conditional discharge, 45 days of community service, and 90 days in jail, stayed until April 6, 2012. Defendant was also ordered to undergo a mental health evaluation and have no contact with, or possession of, dogs or animals.

¶ 8 In this court, defendant first contends that the complaints charging him with cruel treatment of animals failed to set forth the nature of the offense with sufficient particularity, in violation of his right to due process and section 111-3(a)(3) of the Code (725 ILCS 5/111-3(a)(3) (West 2008)). He argues that the complaints merely recited the broad language of the cruel treatment statute (510 ILCS 70/3.01 (West 2008)) and failed to state the specific acts constituting the offense. He also argues that the complaints are deficient because the disjunctive language, "(1) cruelly treated, (2) starved, or (3) otherwise abused," constitutes distinct bases for criminal liability and "only added to the uncertainty of which type of conduct the State planned on pursuing at trial." The State maintains that the complaints, sufficiently phrased in the language of the cruel treatment statute, adequately notified defendant of the precise charges against him and allowed him to prepare a proper defense.

¶ 9 Our review of a challenge to the sufficiency of a criminal complaint is *de novo*. *People v. Robinson*, 319 Ill. App. 3d 459, 462 (2001). A defendant has the fundamental, constitutional right to be informed of the "nature and cause" of the charges against him. *People v. Meyers*, 158

Ill. 2d 46, 51 (1994). The phrase "nature and cause" refers to the crime committed, not the manner in which it was committed. *People v. DiLorenzo*, 169 Ill. 2d 318, 321 (1996). In Illinois, this fundamental right is incorporated into section 111-3 of the Code, which is " 'designed to inform the accused of the nature of the offense with which he is charged so that he may prepare a defense and to assure that the charged offense may serve as a bar to subsequent prosecution arising out of the same conduct.' " *People v. Meyers*, 158 Ill. 2d 46, 51 (1994) (quoting *People v. Simmons*, 93 Ill. 2d 94, 99-100 (1982)).

¶ 10 Section 111-3(a) specifically requires that a charge state the name of the offense, the statutory provision allegedly violated, the nature and elements of the offense charged, the date and county of the offense, and the name of the accused. 725 ILCS 5/111-3(a) (West 2008). A complaint challenged before trial must strictly comply with the pleading requirements of section 111-3. *People v. Mimes*, 2011 IL App (1st) 082747, ¶ 33. To determine whether a complaint meets the pleading requirements of section 111-3, a court considers the plain and ordinary meaning of its language as read and interpreted by a reasonable person. *People v. Wilkenson*, 262 Ill. App. 3d 869, 873 (1994).

¶ 11 Generally, a complaint that charges an offense in the language of the statute is sufficient if those words so particularize the offense that by their use alone the accused is apprised with reasonable certainty of the precise offense with which he is charged. *People v. Flynn*, 352 Ill. App. 3d 1193, 1196 (2004). However, if the statute defines the offense in general terms, a charge phrased in the statutory language is insufficient and the facts that constitute the crime must be specifically alleged in the complaint. *People v. Lauer*, 273 Ill. App. 3d 469, 473 (1995). It is noteworthy that the legislature is not required to particularize all of the myriad conduct that may fall within a statute. *People v. Wisslead*, 108 Ill. 2d 389, 398 (1985), and cases cited therein.

¶ 12 Section 3.01 of the Humane Care for Animals Act (Act) (510 ILCS 70/3.01 (West 2008)), entitled "Cruel treatment," states in pertinent part, "No person or owner may beat, cruelly treat, torment, starve, overwork or otherwise abuse any animal." In conformity with the requirements of section 111-3, each of the 30 complaints here alleged that defendant committed the offense of cruel treatment, cited section 3.01 of the Act, stated the date and location of the offense, and defendant's name. *Meyers*, 158 Ill. 2d at 52. Further, with regard to the nature and elements of cruel treatment, the State tailored the wording of the complaints, selecting the phrase "cruelly treat, starve or otherwise abuse" instead of the words "beat," "torment," or "overwork." *People v. Swartwout*, 311 Ill. App. 3d 250, 258 (2000).

¶ 13 We disagree with defendant that more specificity is required because "cruelly treat" and "otherwise abuse" are not defined elsewhere in the Act and encompass a wide swath of distinctly actionable conduct. The cruel treatment statute does not attach any esoteric or surprise meanings to these terms, and we are unpersuaded by defendant's reference to their common meaning in Webster's dictionary to illustrate the plethora of conduct included therein (*People v. Oshana*, 2012 IL App (2d) 101144, ¶ 36), because the relevant inquiry is not whether the alleged defense could be described with more specificity, but whether there is sufficient particularity to enable defendant to prepare a proper defense (*Meyers*, 158 Ill. 2d at 54). A charging instrument adequately informs a defendant of the charge where it specifies the offense alleged and that defendant committed it in any of several intimately related ways, which is the case here. *People v. Lee*, 344 Ill. App. 3d 851, 854 (2003).

¶ 14 We acknowledge the cases cited by defendant to illustrate situations where a charging instrument is invalidated because it left room for wide speculation as to the type of conduct being alleged, but none of them provide a rationale to invalidate the complaints in the instant case. *Wisslead*, 108 Ill. 2d at 396. Considering the plain and ordinary meaning of the terms "cruelly

treat" and "otherwise abuse," it would be contrary to reason to conclude that defendant was not informed of the precise charge against him. *People v. Banks*, 75 Ill. 2d 383, 393 (1979).

¶ 15 Moreover, we reject defendant's argument that the complaints here are defective because they describe distinctly actionable means by which the offense may be committed. As stated, the use of the disjunctive "or" will not render a complaint defective where the terms joined by the disjunctive are so intimately related as to provide defendant with specific notice of the charge. *People v. Brown*, 259 Ill. App. 3d 579, 580 (1994). In other words, a charging instrument is insufficient only if the disjunctive language creates uncertainty as to the charges against defendant. *People v. Johnson*, 376 Ill. App. 3d 175, 181 (2007). Here, the key element is the cruel treatment of each dog, and the basic nature of this offense remains the same whether it resulted from starvation, abuse, or a combination thereof. See *Swartwout*, 311 Ill. App. 3d at 259. The disjunctive language did not leave defendant uncertain about the precise offense he stood accused of committing as he was charged with only one act of cruel treatment for each dog, not disparate and alternative acts. *People v. Phillips*, 215 Ill. 2d 554, 564 (2005).

¶ 16 Defendant next contends that he did not validly waive his right to a jury trial. He argues that his jury waiver was not made knowingly and voluntarily where the trial court did not question him about his understanding of a jury waiver until the trial already commenced, at which time the trial court merely confirmed his signature on a written jury waiver and asked if he understood the meaning of a jury trial. He also complains that the trial court did not ensure that he understood that his right to a jury trial could still be exercised and give him any time to consider whether to exercise that right. Defendant acknowledges that he did not question the validity of his jury waiver in the trial court, but asks this court to review the issue under the second prong of the plain error doctrine because the fundamental right to a jury trial is at stake. We must first determine, however, whether there was error, let alone plain error. *People v.*

Snowden, 2011 IL App (1st) 092117, ¶ 85. Our review is *de novo*. *People v. Bannister*, 232 Ill. 2d 52, 66 (2008).

¶ 17 Section 103-6 of the Code of Criminal Procedure of 1963 provides that a bench trial may be held if the right to a jury trial is "understandingly waived by defendant in open court." 725 ILCS 5/103-6 (West 2008). To that end, the trial court has a duty to ensure that a jury waiver is "made expressly and understandingly." *Bannister*, 232 Ill. 2d at 66. However, the trial court is not constitutionally required to advise defendant of his right to a jury trial, though it would be preferable, nor is the trial court required to explain the consequences of a jury waiver unless there is an indication that defendant did not understand his right to a jury trial. *People v. Steiger*, 208 Ill. App. 3d 979, 981 (1991). The validity of a jury waiver does not rest on any precise formula, but rather, depends upon the particular facts and circumstances of each case. *Bannister*, 232 Ill. 2d at 66.

¶ 18 In this case, defendant acknowledges that the trial court admonished him of his right to a jury trial in open court, but he maintains that the trial court's "attempt to accept a waiver of [his] fundamental constitutional right to a jury trial *ex post facto* required more than" simply asking if he understood "what a jury trial would have been and then accepting a written 'waiver.'" The authority cited by defendant does not support such a claim or vitiate his jury waiver in open court.

¶ 19 In *People v. Elders*, 349 Ill. App. 3d 573, 584 (2004), the reviewing court found that the discussion of a jury waiver outside defendant's presence did not constitute a knowing and understanding jury waiver by defendant himself. Unlike *Elders*, the record here clearly reflects an actual discussion of a jury waiver with defendant in open court, wherein the trial court informed defendant that "by signing this [waiver], you give up your right to a jury trial which would have been twelve citizens who would have sat and listened to the evidence, and made a

decision as to whether or not the State could prove you guilty beyond a reasonable doubt." Defendant indicated to the trial court that he understood and persisted in his jury waiver. The record thus shows that, notwithstanding the order of procedure, defendant expressly and understandingly waived his right to a jury trial (*People v. Duncan*, 297 Ill. App. 3d 446, 452 (1998)), and it therefore follows that defendant has not established error, let alone plain error (*People v. Rincon*, 387 Ill. App. 3d 708, 722 (2008)). Accordingly, we honor defendant's procedural default of this issue.

¶ 20 Lastly, defendant contends that the condition imposed by the trial court, that he have no contact with or possession of dogs or animals, is vague and an unreasonable infringement upon his fundamental, constitutional right to travel and free association. He argues that this condition fails to give him a reasonable understanding of what "contact" may entail, and makes no exception for incidental, involuntary, or necessary contact.

¶ 21 Defendant acknowledges that he did not seek clarification of this condition of his conditional discharge or argue that it was unconstitutional in the trial court. However, citing *People v. Wagener*, 196 Ill. 2d 269, 279 (2001), defendant maintains that "a claim that a sentence is unconstitutional may be raised at any time and is not subject to forfeiture." We observe that *Wagener* involved the constitutionality of a consecutive sentencing statute (730 ILCS 5/5-8-4(b) (West 1994)), where as here, defendant focuses on the condition imposed by the trial court, arguing the constitutional infringement of certain of his fundamental rights, rather than the constitutionality of the authorizing statute itself (730 ILCS 5/5-6-3 (West 2008)).

¶ 22 To the extent that defendant's argument is reviewable, we observe that a condition of conditional discharge that impinges on fundamental, constitutional rights is not automatically deemed invalid. *In re J.W.*, 204 Ill. 2d 50, 78 (2003). Reasonableness is the overriding concern in determining the propriety of a condition of conditional discharge. *In re J.W.*, 204 Ill. 2d at 78.

To be reasonable, a condition must not be overly broad when considered in light of the desired goal or the means to that end. *In re J.W.*, 204 Ill. 2d at 78.

¶ 23 Defendant acknowledges that it is generally reasonable to impose a condition limiting access or contact with animals and refers this court to *Morgan v. State*, 285 Ga. App. 254, 260 (2007), a Georgia case where the reviewing court upheld a probation condition that the defendant, who was convicted of eight counts of animal cruelty, "shall not own, possess, or care for any animal during the term of [his] sentence." The reviewing court rejected the defendant's argument that the condition was unreasonable because it would prevent him from operating his pet grooming business, noting that the condition did not exceed the length of the probation sentence and served the rehabilitative purpose of making clear that animal abuse results in the loss of any privilege to handle or keep them. *Morgan*, 285 Ga. App. at 260.

¶ 24 However, defendant maintains that any valid rehabilitative purpose is lost in this case due to the breadth and vague nature of "contact." As support, he refers this court to *State v. Lathrop*, 781 N.W.2d 288, 298-99 (2010), where the Iowa Supreme Court ruled that a no-contact condition of probation was overly broad and excessive because it prohibited the defendant, who was convicted of sexual abuse, from any and all contact with minors regardless of how unintended, incidental, or innocuous. Like the no-contact order in *Lathrop*, defendant argues that he would have to be careful every time he left his house because the condition at issue extends to all animals, not just dogs. He submits that without any tailoring of the condition, his constitutional right to travel and free association is greatly hindered. We disagree.

¶ 25 Although not controlling, the following discussion in *United States v. Gallo*, 20 F.3d 7, 12 (1994), is instructive:

"[T]hough a probationer is entitled to notice of what behavior will result in a violation, so that he may guide his actions accordingly, fair warning is not to be confused with the fullest, or most pertinacious, warning imaginable. *** Conditions of

probation may afford fair warning even if they are not precise to the point of pedantry. In short, conditions of probation can be written—and must be read—in a commonsense way."

¶ 26 In our view, a commonsense reading of the condition that defendant have no contact with or possession of dogs or animals, sufficiently apprised defendant of the proscribed, obvious conduct. In cases where "contact" was not defined in a criminal statute, the appellate court has cited the dictionary definitions of "contact" to include: "to make connection with [or] get in communication with" (*People v. Diestelhorst*, 344 Ill. App. 3d 1172, 1186 (2003) (*citing* Webster's Third New International Dictionary 490 (1986)); and "association, relationship," "connection, communication," and "to get in communication with" (*People v. Jamesson*, 329 Ill. App. 3d 446, 455 (2002) (*citing* Webster's Ninth New Collegiate Dictionary 282 (1990)). Those definitions, which we believe are applicable here, connote knowing, proactive conduct by defendant. In other words, a person of ordinary intelligence and experience would reasonably distinguish that he could not *knowingly* connect, associate or keep dogs or animals, as set out in the sentencing order. *Jamesson*, 329 Ill. App. 3d at 455. Further, the condition is reasonable as it is directly related to the offense and defendant's rehabilitation (*People v. Colclasure*, 250 Ill. App. 3d 864, 867 (1993)); and correspondingly, it is not constitutionally infirm (*In re J.W.*, 204 Ill.2d at 80).

¶ 27 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 28 Affirmed.