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2013 IL App (3d) 110877-U

Order filed June 24, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS, ) Appeal from the Circuit Court  
 ) of the 12th Judicial Circuit,  
Plaintiff-Appellee, ) Will County, Illinois,  
 )  
v. ) Appeal No. 3-11-0877  
 ) Circuit No. 08-CM-4821  
ROSE M. BERNARD, )  
 ) Honorable  
Defendant-Appellant. ) Brian E. Barrett,  
 ) Judge, Presiding.

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JUSTICE LYTTON delivered the judgment of the court.  
Justices Carter and McDade concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The State proved beyond a reasonable doubt that defendant intended to permanently deprive the owner of the use or benefit of its property.
- ¶ 2 Defendant, Rose M. Bernard, was convicted of theft (720 ILCS 5/16-1(a)(1)(A) (West 2008)), and she was sentenced to 12 months' court supervision. Defendant appeals, arguing the State failed to prove beyond a reasonable doubt her intent to permanently deprive an animal shelter of its dog. We affirm.

¶ 3

## FACTS

¶ 4 On November 25, 2008, defendant was charged with theft. 720 ILCS 5/16-1(a)(1)(A) (West 2008). The complaint alleged that on November 13, 2008, defendant knowingly exerted unauthorized control over property, in this instance a dog belonging to Cause 4 Paws Rescue (Cause), with the intent to deprive Cause permanently of the use and benefit of said property.

¶ 5 At defendant's bench trial, the evidence established that on October 25, 2008, a pit bull named Jade was brought to Cause, an animal rescue organization, after she had been hit by a car. Jade's owner was unable to afford the necessary treatment so ownership of Jade was transferred to Cause. Jade was treated for her injuries, which resulted in the amputation of one of her legs. After Jade recovered from her surgery, Linda Bober, the president of Cause, inquired about a temporary foster home for Jade. Rachel Bernard, defendant's daughter and a volunteer at Cause, offered to have defendant temporarily care for Jade. Defendant and Bober agreed she would foster Jade for approximately two weeks, while Bober found a permanent owner or foster home. On October 28, 2008, defendant began to care for Jade at her home. On November 4, 2008, Bober was contacted by Joanne and Mario Vitkauskas, defendant's next door neighbors, who began the process to adopt Jade.

¶ 6 Bober, the complainant, testified that around November 8, 2008, defendant expressed concern to Bober, through Rachel, that Jade was in pain and needed medication. Bober instructed defendant to take Jade to Forest South, a veterinary hospital affiliated with Cause, so that the bill would be sent directly to Cause. Thereafter, Bober became concerned when she was unable to get in contact with defendant regarding Jade. As a result, on November 13, 2008, Bober contacted Officer Ron Smiles of the Lockport police department and reported Jade stolen. Smiles went to

defendant's home on the same day, where he saw Jade. Smiles then contacted Bober and told her to come pick up Jade. Approximately 10 minutes later, at 6 p.m., Bober and Smiles went to defendant's home, but no one answered the door. Bober did not receive Jade back until March 31, 2009, when the Vitkauskases returned her. Thereafter, the Vitkauskases formally adopted Jade from Cause.

¶ 7 Smiles testified that on the afternoon of November 13, 2008, Bober reported Jade stolen. Bober told Smiles that she had heard defendant was not going to return Jade because Bober owed defendant money for veterinary expenses. On the same day, Smiles went to defendant's home, where he saw Jade. Smiles informed defendant that Bober had reported Jade stolen because she refused to return Jade. Defendant told Smiles that while caring for Jade, she had incurred some veterinary expenses and wanted to be reimbursed by Bober. Smiles told her that the expenses were a civil matter and that she needed to return Jade. Defendant acknowledged that Jade belonged to Bober and agreed to return Jade. Smiles advised defendant that he would return shortly with Bober to retrieve Jade. Approximately 10 to 15 minutes later, Smiles returned to defendant's home with Bober. Smiles knocked on defendant's door for several minutes, but did not get a response. Smiles could hear the dog inside, and it appeared defendant's vehicle was in the driveway. Smiles was unable to retrieve Jade.

¶ 8 Detective Richard Harang testified that on November 14, 2008, he and another detective went to defendant's house to inquire about Jade. Defendant informed him that she had returned Jade on November 13, 2008, to an employee of Cause named Jennifer Williams. While still at defendant's house, Harang called Bober and Williams, both of whom confirmed that they did not have Jade. Harang informed defendant of this, and she stared at him and said Cause had Jade. Defendant

showed the detectives documentation from Animal Welfare League (AWL) dated November 10, 2008, and said that she had taken Jade there. Harang went to AWL, where the employees confirmed that Jade had come in, that they had given her Ibuprofen, and that defendant had then left with the dog. Harang also spoke with Rachel on November 19, 2008, who stated that defendant had returned Jade to Williams at Cause. Rachel stated that she last saw Jade at defendant's house on November 13, 2008, when she was there between 6:45 and 7:15 p.m. On November 20, 2008, Harang spoke with the Vitkauskases, who told him they did not have Jade.

¶ 9 Joanne Vitkauskas testified that she first became interested in adopting Jade when she learned that defendant was fostering her. Defendant informed Joanne that Cause was Jade's owner and gave her Bober's e-mail address. On November 4, 2008, Joanne started an adoption application with Bober.

¶ 10 At 6 a.m. on November 13, 2008, defendant came to Joanne's house and asked if she would still be willing to adopt Jade if something was wrong with her other leg. Defendant informed Joanne that Jade's other leg could possibly be broken and that Cause was withholding this information because they did not want to pay for the medical costs. When Joanne returned home later that night, defendant, Rachel, Jade, and Joanne's husband, Mario, were at her house. Defendant told Joanne that Cause had legally abandoned Jade when they did not pick her up within the appropriate time frame; however, the police were looking for Jade. Defendant told Joanne that she could not afford to care for Jade anymore and asked Joanne to care for Jade. Joanne agreed and took possession of Jade that night. Joanne and her husband then drove Jade to Indiana to stay with her mother-in-law. Jade stayed in Indiana for approximately two months. Joanne admitted telling a detective on November 20, 2008, that defendant had returned Jade to Cause, because she told her that Jade legally

belonged to defendant. As defendant's court case progressed, Joanne realized that Jade did not legally belong to defendant. On March 31, 2009, Joanne returned Jade to Bober.

¶ 11 Rachel testified that on November 13, 2008, she went to defendant's house after she was informed that Bober had reported Jade stolen. Rachel was at defendant's house from 5:30 until 8 or 9 p.m. Rachel stated that no one came to the house or called during that time. Rachel stated that on November 10, 2008, defendant took Jade to a veterinarian to get pain medication. Rachel was in contact with Bober that day, but she did not ask about getting Jade back. Rachel admitted that on the night of November 13, 2008, she went with defendant to the Vitkauskases' house to inform them that defendant could no longer care for Jade, and that they should stay in contact with Bober to adopt Jade.

¶ 12 Defendant testified that she agreed to care for Jade on a temporary basis, but for a period of no more than a week. Defendant received Jade, along with some pain medication, antibiotics, and food. On November 4, 2008, defendant spoke with Bober about Jade's excessive bleeding and pain. Bober told her someone would pick up the dog later that day or the next, but no one came. Bober then told Rachel to take Jade to Forest South veterinary hospital. On November 8, 2008, Rachel took Jade to Forest South and brought her back to defendant's home the next day.

¶ 13 On November 10, 2008, defendant spoke with Bober and told her to pick up Jade. After waiting for four hours, defendant called the Department of Agriculture and reported Bober for animal abandonment. Later that evening, defendant brought Jade to AWL to have her evaluated for the pain she was having. Before treating Jade, AWL got permission from Bober. Defendant asked AWL to take Jade, but they refused. Defendant purchased the pain medication for Jade and took her home. On November 11, 2008, defendant took Jade to a veterinarian in Homer Glen, who stated that Jade

had a broken hip and right paw.

¶ 14 At approximately 5 p.m. on November 13, 2008, defendant spoke with Smiles at her home. Smiles informed defendant that Bober accused her of refusing to return Jade. Defendant informed Smiles that Bober refused to pick up Jade and that she had to pay for Jade's medical care. Defendant attempted to give Jade to Smiles, but he refused and said he would call when he and Bober were ready to pick up Jade. Smiles did not call or return that night. At approximately 6 or 7 p.m., defendant took Jade over to the Vitkauskases' house and informed them that Bober called the police. Defendant told the Vitkauskases that she did not want Jade at her house any longer and asked if they would call Bober and see if they could take Jade. The Vitkauskases agreed, and defendant left Jade at their house.

¶ 15 On the morning of November 14, 2008, defendant spoke with two detectives who were inquiring about Jade's location. Defendant told the detectives that Bober had Jade. Defendant thought Bober had Jade because the Vitkauskases told her that they had called Bober and defendant saw a woman, whom she thought to be Bober or Williams, walking up the Vitkauskas' driveway the night of November 13, 2008. When the detectives returned, they informed defendant that Bober and Williams did not have Jade. After they left, defendant spoke with the Vitkauskases and told them the police were looking for Jade. The Vitkauskases acted surprised that Bober did not have Jade, but did not tell defendant that they still had her. Defendant admitted going to Indiana a few months later to visit Jade.

¶ 16 The trial court found defendant guilty of theft. In making its finding, the trial court noted that it was defendant who took the action to permanently deprive Cause of Jade by taking Jade to the Vitkauskases' house and failing to inform police of this fact. The court understood defendant's

frustration in fostering Jade, but noted that Cause was Jade's rightful owner, even if the Vitkauskases intended to formally adopt Jade.

¶ 17 The court sentenced defendant to 12 months' court supervision. Defendant filed a motion for new trial, which the trial court denied. Defendant appeals.

¶ 18 ANALYSIS

¶ 19 Defendant argues she was not proven guilty beyond a reasonable doubt of theft, because the State failed to prove her intent to permanently deprive Cause of its use and benefit of Jade.

¶ 20 When a defendant challenges the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1 (2011); *People v. Collins*, 106 Ill. 2d 237 (1985). It is not this court's function to retry a defendant who challenges the sufficiency of the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213 (2009). Rather, in a bench trial, the trial court remains responsible for determining the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence, and this court will not substitute its judgment for that of the trial court on these matters. *Id.* A conviction will only be overturned where the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *Beauchamp*, 241 Ill. 2d 1.

¶ 21 To convict a person of theft, the State must prove beyond a reasonable doubt that defendant knowingly obtained or exerted unauthorized control over property of another with the intent to deprive the owner permanently of the use of benefit of the property. 720 ILCS 5/16-1(a)(1)(A) (West 2008). Evidence of intent to permanently deprive the owner of property may be inferred from

the surrounding circumstances. *People v. Day*, 2011 IL App (2d) 091358.

¶ 22 Based on the circumstances of the case before us, we conclude that there was sufficient evidence to convict defendant of theft. See *id.* Defendant claims that the evidence failed to show her intent to permanently deprive Cause of Jade because she gave Jade to the Vitkauskases with the understanding that they would notify Bober. Even if defendant initially thought the Vitkauskases would inform Bober that they took possession of Jade, defendant became aware that they did not when detectives came to her house the following day looking for Jade. The detectives also dispelled defendant's mistaken belief that Bober or Williams had taken custody of Jade when they called Bober and Williams from defendant's house. Despite finding out this information, defendant maintained that she had returned Jade to Cause and failed to inform police that the Vitkauskases had taken possession of her the night before.

¶ 23 Defendant further claims that she had no intention to keep Jade, and that it was the Vitkauskases who secreted her off to Indiana and left defendant to face criminal charges. Even if defendant did not intend to keep Jade for herself, she intended to permanently deprive Cause of her use and benefit. Defendant points to testimony that prior to November 13, 2008, she made numerous attempts to return Jade to Bober. Defendant also states that she attempted to return Jade to Smiles when he showed up at her door on November 13, 2008. However, defendant overlooks the fact that she actively concealed Jade from Cause when she took her to the Vitkauskases and then failed to inform the police of her whereabouts. Defendant claims it was the Vitkauskases who failed to inform the police of Jade's location, but defendant knew where Jade was and admitted visiting her in Indiana months later. Defendant's knowledge that Bober wanted Jade returned and her failure to reveal Jade's location in Indiana or at the Vitkauskas' house, viewed in the light most favorable to

the State, would permit a rational trier of fact to find that defendant intended to permanently deprive Cause of Jade. See *Beauchamp*, 241 Ill. 2d 1.

¶ 24

CONCLUSION

¶ 25 The judgment of the circuit court of Will County is affirmed.

¶ 26 Affirmed.