

No. 1-13-2595

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. 12 CR 3113
)	
KYLE VOISSEM,)	Honorable
)	James M. Obbish,
Defendant-Appellant.)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Liu concurred in the judgment.

O R D E R

¶ 1 *Held:* The trial court did not apply the wrong standard when it found defendant guilty of aggravated cruelty to an animal; the evidence was sufficient to prove beyond a reasonable doubt that defendant had the requisite specific intent to seriously injure his dog; defendant was not denied a fair trial based on the statements made by the trial court.

¶ 2 Following a bench trial, Kyle Voissem, the defendant, was convicted of aggravated cruelty to an animal pursuant to section 3.02 of the Humane Care for Animals Act (510 ILCS

70/3.02 (West 2010)) and sentenced to one year of probation. On appeal, defendant argues that the evidence at trial was insufficient to prove beyond a reasonable doubt that he had the requisite specific intent to seriously injure his dog. Specifically, he contends that the trial court erred because it applied a general intent standard to a specific intent crime. Defendant also contends he was denied a fair trial based on statements made by the trial court. We affirm.

¶ 3 At trial, Dr. An Hoang testified that she worked at the Anti-Cruelty Society in Chicago from August 2009 until May 2012. She was the primary veterinarian that examined defendant's dog, Byron, and attended to his wounds when he was brought in for care on October 18, 2011. Dr. Hoang observed irregular wounds on the first layer of his skin and Byron seemed in pain and sensitive, though he had a "positive disposition." The extent of Byron's wounds became clearer when Dr. Hoang shaved the area surrounding the wounds, and she observed extensive injuries to Byron's skin along his head, neck, thorax, and abdomen. Byron's injuries were consistent with a thermal injury or a mildly corrosive acid. The main injured area was below his neck and in front of his abdomen where his rib cage was located. Byron expressed discomfort if she touched his wounds. Dr. Hoang eventually diagnosed Byron with second-degree burns. In her medical opinion, the burns appeared to be the result of being splashed with excessively hot liquid. She treated Byron with antibiotics, pain medication, and a topical wound treatment. Following treatment, Byron was approved to go to the adoption floor, and he was adopted shortly thereafter.

¶ 4 Nicole Campos, a supervisor for the Field Services and Human Investigation Unit at the Anti-Cruelty Society in October 2011, testified that she received an email complaint of abuse concerning Byron on October 18, 2011. Campos dispatched her humane investigators, William Caprio and Simon Harries to immediately access the situation. The investigators returned with

two dogs, one was a small, grayish Schnauzer-type dog and the second, Byron, was "a Pitbull mix Mountain Cur Brindle larger dog." She noticed that Byron appeared to have "sores, scabbing and sores on the side of his body and his neck." Campos was present in the veterinary clinic when Dr. Hoang sedated Byron and cleaned and assessed his wounds. She took photos of Byron.

¶ 5 Defendant called Campos on October 19, 2011 at 1 p.m. to ask her how Byron was doing. She explained to defendant that Byron's wounds were severe, he was recovering in the medical unit, and she did not have the veterinary report yet. Defendant asked if his mother could pick up the other dog, and Campos explained that was not possible once a dog was surrendered. Campos then asked defendant why he would throw hot water on his dog. Defendant replied that he was angry with the dog, but he did not realize the water was that hot. Campos asked defendant why the dog did not receive medical care after he was burned, and defendant responded that he was treating the injuries at home and he did not think the injuries were that bad.

¶ 6 Campos explained that once she received the veterinary reports, she would complete her report and give it to the Animal Crimes Unit of the Chicago Police Department. Defendant asked how he would know when the police received her report, and she explained that, if they decided to follow through, defendant will be contacted and "they will show up and you will be arrested." The next day, defendant called Campos' office at 2 p.m. and left a message, and she later returned his call. Defendant wanted to know the status of Byron's case and she again explained that once her report was completed, she would turn it over to the Chicago Police Department. On October 23, 2011, defendant came into the Anti-Cruelty Society to speak with Ms. Campos, but

she was out in the field. Ms. Campos called defendant on the following day, at 9:15 a.m. and explained that her report had been turned over to the police, and therefore her role in the investigation was complete. On January 13, 2012, defendant called Campos and asked for his case number with the Chicago Police Department and she explained she was not affiliated with the Police Department.

¶ 7 Simon Harries testified that he was working with Investigator William Caprio. On October 18, 2011 at 1:45 p.m., they went to 1737 South Des Plaines regarding a report of animal cruelty. Defendant answered the door, and the men explained to him whom they worked for and the allegations. Defendant said he was the owner of the dog in question and they asked defendant if they could see the dog. Harries observed reddish bald spots, redness, swelling, and pus on Byron's back. He asked defendant what happened to the dog. Defendant said that he had been boiling water when Byron urinated on the floor, and he got angry and poured water on the dog. He stated that he did not know that the water was hot. During cross examination, the trial court asked Investigator Harries:

"Did he--do you recall him ever making a statement as to how the water ended up-- how it was that he threw it? In other words, did he use any other sort of means, any other implement or something like that or the amount of water or anything like that? Do you recall anything-- other discussion about that? If not, I don't want you to make something up because I'm asking that. I just want to make sure I have the entirety of that conversation."

Harries testified that he did not recall asking defendant that question. He only remembered defendant saying there was boiling water in a pot, and he threw it on the dog.

¶ 8 Joseph Hodges testified that he was a student at University of Illinois in Chicago and a gymnastics teammate of defendant. He stated that defendant had two dogs, and on October 17, 2011, he saw Byron wearing a cone around his head. He also noticed scabs on Byron's side which were reddish brown and blended in with his fur. He also noticed that the palm of defendant's left hand was red up to the tips of his fingers. He saw defendant at their practices in October 2011, but on one of the days around October 17, 2011 defendant was absent from practice. It was around the time that he noticed the redness to defendant's hands.

¶ 9 Following closing arguments, the trial court found defendant guilty of aggravated cruelty to a companion animal for throwing boiling water on Byron, and not guilty of cruelty to a companion animal for failure to seek medical treatment. After closing arguments, the court made the following "observations":

"Let's say this was a human being that had done something that made [defendant] angry. If he had somehow then poured, splashed, threw hot water on to another person, a child or something, would there be any argument that he intended to do what he did? [Defendant] got angry. He got angry over an animal doing what animals sometimes do.*** But to then take water that is deliberately for some other purpose I will grant being heated on a stove, the purpose of heating water on a stove is to bring it to a temperature that you can cook with. The maximum temperature you can get it is 212 degrees because that's where it boils. I hope my recollection of chemistry is still accurate. But why do we put water on the stove? We put it on the stove to heat it. *** But if you're reaching into a pot of water that's being heated on the stove to cook something to the point where it's burning your hand which you immediately know that its also going to

burn the hand, and quite frankly I don't believe the dog received -- this amount of injury from anybody's ability to take a handful of water, throw it on the dog. *** So there's only one way of achieving that and that's by using some sort of an instrument like a ladle or taking a whole pot of water and throwing it on him. Even if one handful of boiling water were taken, I submit my hand is substantially bigger than [defendant's], I couldn't cause a tenth of these injuries. It would have been-- water dissipates as it leaves the course and dissipates into tiny droplets. All you have to do is get-- take a handful of water and throw it at anyone and it doesn't become a solid sort of coating object. Water immediately dissipates into millions of tiny droplets. That's the nature of water and the nature of liquids in general."

¶ 10 The court sentenced defendant to one year of probation. Defendant filed a motion for a new trial. At sentencing, the trial court denied the motion, and stated "I guess in essence, although there was a finding of cruelty to animals here, with respect to I don't think the injury was necessarily the intended result, at least the extent of his injury. But it was certainly reasonably foreseeable that doing the act that Mr. Voissem did in a moment of anger, did in my mind come out to an act of cruelty to that animal. That's the basis for the motion being denied."

¶ 11 On appeal, defendant first argues that the trial court incorrectly applied a general intent standard in this case, when the statute requires a specific intent standard.

¶ 12 When a defendant challenges the sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

The trier of fact has the responsibility to assess witnesses' credibility, weigh their testimony, resolve inconsistencies and conflicts in the evidence, and draw reasonable inferences from the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). We will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 13 Section 3.02 the Aggravated Cruelty section of the Humane Care for Animals Act (the Act), provides that "[n]o person may intentionally commit an act that causes a companion animal to suffer serious injury or death." 510 ILCS 70/3.02 (West 2010). To prove this crime, the State must prove a specific intent to injure or kill the animal. *People v. Land*, 2011 IL App (1st) 101048, ¶ 88. "A person intends, or acts intentionally or with intent, to accomplish a result or engage in conduct described by the statute defining the offense, when his conscious objective or purpose is to accomplish that result or engage in that conduct." In contrast, a general intent exists when a prohibited result may reasonably be expected to follow from the defendant's voluntary act, and a general intent crime does not have any particular mental state as an essential element. *People v. Robinson*, 379 Ill. App. 3d 679, 684 (2008). Where a defendant denies intent, as here where defendant claimed he had no intent to harm Byron, intent may be proven with circumstantial evidence. *People v. Primbas*, 404 Ill. App. 3d 297, 302 (2010) citing *People v. Phillips*, 392 Ill. App. 3d 243, 259 (2009).

¶ 14 Defendant first cites *People v. Primbas*, 404 Ill. App. 3d 297 (2010), *People v. Land*, 2011 IL App (1st) 101048 and *People v. Larson*, 379 Ill. App. 3d 642, 650 (2011) to argue that the court misunderstood the law and applied the wrong standard in this case. Defendant specifically points to two of the court's statements which he believes demonstrates that the court

applied a general intent instead of a specific intent standard. First, defendant contends that the trial court's comparison of Byron's injury to that of a child's burn injury illustrates the court "understood this offense to be a general intent rather than a specific intent crime." However, this court has held that in considering comments made by a trial judge, the reviewing court should not focus on a few words or statements of the trial court, but should look at the comments made in the light of the evidence, the context in which they were made, and the circumstances surrounding the trial. See *People v. Williams*, 209 Ill. App. 3d 709, 719 (1991). Moreover, we must presume, unless the record demonstrates otherwise, that a trial judge knows and follows the law. *Primbas*, 404 Ill. App. 3d at 302. Taking the record as a whole, we find that the court was merely rejecting defendant's argument by analogizing what defendant did to Byron in terms of how it would be viewed if it was done to a child. Moreover, we refuse to take a single comment that the court made after closing arguments out of context to infer that the court understood the offense to be a general intent crime.

¶ 15 Second, he argues that the trial court's statement that "I don't think the injury was necessarily the intended result" but was "certainly reasonably foreseeable" also demonstrates that the court applied the wrong standard in this case. However, we note this comment was made at the sentencing stage after the court already found defendant guilty based on the evidence before it. Thus, we reject defendant's contention that the court used the incorrect standard in this case by simply making a passing remark during sentencing.

¶ 16 Nonetheless, even if the trial court did apply the incorrect standard, we may affirm despite the application of an incorrect standard because the record contains ample evidence to support defendant's conviction and we review the trial court's judgment not its reasoning. See

Primbas, 404 Ill. App. 3d at 302. In this case, Dr. Hoang, who treated Byron's second degree burns, testified that in her medical opinion, his injuries appeared to be the result of being splashed with excessively hot liquid. During the investigative phase, defendant made an admission to Investigator Harries that he was boiling water when Byron urinated on the floor, and he got angry and threw water on the dog. Additionally, he admitted to Campos that he threw boiling water on Byron. Furthermore, although defendant maintains that he did not believe that water was *that* hot when he threw it on the dog; the court rejected defendant's argument that he lacked specific intent to injure, stating that "why do we put water on the stove? We put it on the stove to heat it." Based on this evidence, the court made a reasonable inference that defendant, who intended to use the water to cook, intended to injure Byron when he threw the boiling water on the dog. See *Sutherland*, 223 Ill. 2d at 242-43. Based on the evidence, we find that a trier of fact could have reasonably found that defendant possessed the requisite intent to cause his dog to suffer serious injury. See *Primbas*, 404 Ill. App. 3d at 302.

¶ 17 Next, defendant argues that the trial court erred by engaging in improper speculation and in considering matters outside the record in rejecting defendant's defense and finding him guilty. He admits that defense counsel failed to object to those statements at trial and also failed to raise the issue in his motion for a new trial. However, defendant contends that plain error occurred in this case.

¶ 18 Initially, we note that to preserve an issue for appeal, both a trial objection and a written posttrial motion are required. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). In this case, defendant did not object to the trial court's inquiry at the time it was made and he did not include this issue in his motion for a new trial. As such, we find that this issue has been forfeited. See

People v. Jones, 235 Ill. App. 3d 342, 350 (1992). Defendant acknowledges his failure to raise this issue in the trial court, but argues that the trial court's action amounted to plain error. See Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967). The plain-error doctrine allows a reviewing court to consider an unpreserved error in two instances: (1) where a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error; or (2) where a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007); see also *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005). The first step in determining whether plain error exists is determining whether an error actually occurred. *People v. Thomas*, 2014 IL App (2d) 121203, ¶17; *People v. Downs*, 2014 IL App (2d) 121156, ¶ 21. Accordingly, we turn to whether the trial court's allegedly improper comments constitute error.

¶ 19 We do not find that error occurred in this case. Defendant contends that the trial court denied him a fair trial when the court "conducted its own inquiry of the State's witness" and asked Harries if he asked defendant how the water got from the pot on to the dog. Additionally, he contends that the State denied him due process when it noted defendant's hand size, commented on the temperature at which water comes to a boil, and made inferences regarding how the boiling water got from the pot onto the dog. We reject defendant's claims because the alleged errors of the court do not amount to error under the plain error doctrine. In this case, defendant pulls various statements made by the trial court judge in an attempt to show that the court denied him a fair trial; however, in context, the judge's statements did violate defendant's

due process rights. See *Williams*, 209 Ill. App. 3d at 719. First, the trial court's questions to Harries during his testimony were merely clarifying questions regarding whether or not defendant explicitly told the investigator how the water got from the pot onto the dog, and did not amount to the court overstepping its authority. After concluding his questioning, the trial judge stated "I just want to make sure I have the entirety of that conversation." This court has held, "[i]t is well settled that a trial judge has discretion to question a witness 'to elicit the truth or to bring enlightenment on material issues which seem obscure,' as long as he does so in a fair and impartial manner." *People v. Harris*, 384 Ill. App. 3d 551, 561 (2008). Thus, we do not find that the court erred by merely asking Harries clarifying questions.

¶ 20 Second, as stated above, the comments regarding defendant's hand size, temperature at which water comes to a boil, and inferences regarding how the boiling water got from the pot onto the dog were all made after closing arguments. We do not find that the court erred by making the aforementioned statements during its pronouncement of defendant's guilt. This court has held that "triers of fact are *** free to draw reasonable inferences from common experience." *People v. Turner*, 375 Ill. App. 3d 1101, 1114 (2007). A review of the record shows that there was nothing unreasonable about the court's inferences, and that the inferences logically followed the evidence before it. See *Id.* Thus, we do not find that error occurred in this case, and therefore reject defendant's plain error argument.

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 22 Affirmed.