2015 IL App (2d) 131177-U
No. 2-13-1177
Order filed September 8, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MARIA E. STRONG, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Stephenson County. No. 12-CM-959 Honorable James M. Hauser, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Schostok and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State proved defendant guilty beyond a reasonable doubt of violating the Humane Care for Animals Act, specifically that she was an "owner" of the dog at issue: by allowing the dog to stay at her residence for several months, defendant "kept or harbored" the dog; (2) given that evidence of "ownership," defendant could show no plain error in the trial court's informing the jury that she had previously been found to have owned a dog.

¶ 2 Following a jury trial, defendant, Maria E. Strong, was found guilty of violating the owner's-duties provision (510 ILCS 70/3 (West 2012)) of the Humane Care for Animals Act (Act) (510 ILCS 70/1 *et seq*. (West 2012)). She was sentenced to 40 days in jail and two years of conditional discharge. She was also ordered to pay $2,908 in restitution. On appeal,

defendant argues: (1) the evidence was insufficient to prove beyond a reasonable doubt that she was an "owner" under the Act; and (2) the trial court abused its discretion in informing the jury that, in 2010, a court found that defendant had owned a dog. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On July 11, 2013, defendant was charged with violating the owner's-duties provision of the Act, in that she failed to provide a "sufficient quantity of good quality, wholesome food and water." 510 ILCS 70/3(a) (West 2012).

¶ 5 The following relevant testimony was presented at defendant's jury trial. Tianna Jennusa testified that, in 2012, she owned a single-family home located at 1320 South Oak in Freeport (the property). She lived at the property until April 2012. After she moved out, she entered into a verbal agreement to rent the property to defendant for $450 per month. There were no other parties to the agreement. Defendant moved into the property with her children. Sometime in September 2012, the police told Jennusa that she had to evict defendant because defendant was a nuisance. Jennusa gave defendant a notice of eviction in early September. Jennusa had received about three or four rent payments prior to defendant's eviction. She received the first rent payment directly from defendant. She picked up the other rent payments, at defendant's direction, from defendant's boyfriend, "Doug." As far as Jennusa knew, the rent was defendant's money, and Doug was simply providing it to Jennusa because defendant was not home.

¶ 6 Ronald Hutmacher testified that he had lived across the street from the property for 7½ years. He lived there with his fiancée, Joyce Horton. On October 13, 2012, one of the children in the neighborhood, Marcus, came to his house and told him that the people who had lived at the

property had moved out and left a dog there. Hutmacher went to the property and saw a dog tied up to a doghouse by a two-foot-long chain. Hutmacher testified: "[The dog] was almost dead. He was that skinny. Bones were sticking out, couldn't bark, couldn't wag his tail, couldn't hardly even come out of his dog house." Hutmacher and Marcus brought food and water to the dog, and the dog responded "[l]ike it hasn't had it in months." Hutmacher returned the next morning with more food and water for the dog. He then called the police.

¶ 7 Hutmacher further testified that defendant had moved into the property in April or May of 2012. He assumed that she was with her boyfriend and children. Hutmacher testified that, between the time that defendant had moved in and October 2012, he had seen two dogs at the property, a puppy and a larger dog—the dog at issue. He had seen the larger dog out front a couple of times but otherwise he would see it locked up in the backyard. There was a fenced area where the dog was kept. He could see it in the backyard every time he looked down his driveway. On one occasion, he saw defendant sitting with the dog on the front porch. In October 2012, he saw defendant moving out of the property late at night. Marcus told him about the dog about a week later.

¶ 8 Horton testified that she first saw the dog shortly after defendant had moved into the property with her children in April or May 2012. She saw the dog on a daily basis. On one occasion, she saw the dog in front of the house with defendant, a man, two children, and a puppy. Defendant moved out of the property in October, about four days before Hutmacher brought food and water over for the dog. She testified that, although there had been a "chicken wire fence" in the yard, it was knocked down and the dog was on a chain.

¶ 9 Linda Ware testified that she lived next to the property. Defendant moved into the property at the end of April or beginning of May. There were four or five children and four or

five adults. About a month after defendant moved in, Ware saw two pit bulls in the backyard—a larger one and a smaller one. She saw the larger dog in the backyard all the time. She saw a man bring food or water out on maybe two occasions. She never saw defendant with the dog.

¶ 10 Animal-control officer William Niesman testified that he went to the property on the morning of October 14, 2012. The house appeared vacant, and there were about 15 trash bags in front of the house. He found a pit bull in the backyard, chained to a steel post near a plastic dog house. Niesman brought the dog to an animal hospital, where it was treated by veterinarian Stephen McGinty. McGinty testified to the dog's poor condition, which was consistent with about two to three months of improper nutrition and care.

¶ 11 Police officer Jeff Mastroianni testified that, on November 2, 2012, he spoke with defendant about the dog. Defendant told him that, about two weeks prior to moving out of the property, her boyfriend Derrick Wheeler brought the dog home. Defendant further told him that the dog was very thin and that Wheeler thought that the dog would get better if he fed it. She told him that, when they moved from the property, they left the dog there, but Wheeler would go back to feed it and give it water. She told him that, after about four days, the dog was gone. Mastroianni told defendant that he wanted to talk to Wheeler, and she told him that she would have Wheeler call him. Mastroianni never heard from Wheeler. Mastrioanni testified that defendant never told him that the dog was not hers.

¶ 12 Wheeler testified for the defense that he had been dating defendant for 11 years and that they had two children. Wheeler testified that the dog belonged to him. He explained that he saw the dog tied to the bumper of a pickup truck, that the dog "looked half dead," and that he got the dog "through a friend of a friend" for free. His intentions were to breed it and make money. According to Wheeler, he had had the dog for 10 days before it was taken away. During that

time, he fed it and provided water. He kept a large bag of dog food in the garage, but the dog was kept outside. When he moved from the property, he returned at least twice a day to give the dog food and water. Defendant never gave the dog food or water. Defendant was scared of dogs, and dogs were not allowed in the house. Defendant never took the dog anywhere. Wheeler denied that defendant owned a dog in 2010.

¶ 13 Wheeler further testified that both he and defendant paid the rent and shared household chores. Defendant was the only person on the lease. He admitted that he never contacted the police to tell them that he was the dog's owner. In November 2009, Wheeler was convicted of the manufacture or delivery of 10 to 30 grams of cannabis, a Class 3 felony, and, in April 2003, he was convicted of armed robbery with a firearm, a Class 1 felony. In 2010, his brother kept a pit bull in the home where Wheeler and defendant lived. The dog froze to death outside the home.

¶ 14 When the parties concluded presenting testimony, the court advised the jury, over defendant's objection, as follows:

> "Ladies and gentlemen, the following will be considered as any of the other evidence that you have heard in this case, and that is the fact that in March of 2010 a Court found that [defendant] was an owner of a dog."

¶ 15 The jury found defendant guilty of violating an owner's duty under the Act. Defendant filed a motion for a new trial, which the trial court denied. Following a sentencing hearing, the trial court sentenced defendant to 40 days in jail and two years of conditional discharge. Defendant was also ordered to pay $2,908 in restitution.

¶ 16 Defendant timely appealed.

¶ 17 II. ANALYSIS

¶ 18 Defendant first argues that the evidence was insufficient to prove her guilty beyond a reasonable doubt. On a challenge to the sufficiency of the evidence, " 'the relevant question is 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.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This standard applies regardless of whether the evidence is direct or circumstantial, and circumstantial evidence meeting this standard is sufficient to sustain a criminal conviction. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). A reviewing court 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. *Collins*, 106 Ill. 2d at 261.

¶ 19 Section 3 of the Act provides as follows:

> "Each owner shall provide for each of his or her animals:
>
> (a) sufficient quantity of good quality, wholesome food and water;
>
> (b) adequate shelter and protection from the weather;
>
> (c) veterinary care when needed to prevent suffering; and
>
> (d) humane care and treatment." 510 ILCS 70/3 (West 2012).

The Act defines "owner" as "any person who (a) has a right of property in any animal, (b) keeps or harbors an animal, (c) has an animal in his care, or (d) acts as custodian of an animal." 510 ILCS 70/2.06 (West 2012). A person convicted of violating section 3 of the Act is guilty of a Class B misdemeanor. 510 ILCS 70/3 (West 2012).

¶ 20 Defendant argues that the State failed to prove beyond a reasonable doubt that she was the owner of the dog. We disagree. In *Steinberg v. Petta*, 114 Ill. 2d 496, 500 (1986), the supreme court considered the meaning of "owner" under section 16 of the Animal Control Act

(Ill. Rev. Stat. 1983, ch. 8, ¶ 366), which imposed liability for injuries caused by a dog or other animal and which provided a definition of owner similar to the one used in the Act. The Animal Control Act defined owner as one "who keeps or harbors a dog ***, or who has it in his care, or acts as its custodian." Ill. Rev. Stat. 1983, ch. 8, ¶ 352.16. Applying the rules of statutory interpretation, the supreme court found that the word "harboring" should be given its plain and ordinary meaning. To that end, the court stated:

> "The verb '[h]arbor' means '[t]o afford lodging to, to shelter, or to give a refuge to.' [Citation.] Black's Law Dictionary defines '[k]eeper of dog' as: 'A harborer of a dog. [Citation.] Any person, other than owner, harboring or having in his possession any dog. [Citation.] One who, either with or without owner's permission, undertakes to manage, control, or care for it as dog owners in general are accustomed to do.' [Citations.]
>
> Harboring or keeping an animal therefore involves some measure of care, custody, or control, and it is in those senses that the terms 'harbor' and 'keep' have been construed under this and similar legislation." *Steinberg*, 114 Ill. 2d at 501.

Here, the circumstantial evidence overwhelmingly established that defendant kept or harbored the dog for purposes of the Act. The dog was found at the property that defendant had leased and where she resided. Jennusa testified that she had entered into a verbal agreement with only defendant to lease the property and that defendant either had made rent payments to her or had made arrangements for Jennusa to pick up the rent. Several neighbors confirmed that defendant lived at the property. Neighbors also testified that they had seen the dog in the backyard of the property every day for several months, from the time defendant moved in until the time she moved out. Neighbors further testified that, on at least one occasion, they had seen defendant in the front of the property with the dog. Though claiming sole ownership, Wheeler admitted that

he brought the dog to the property and that it was kept in the backyard. Under these facts, it is clear that defendant had afforded the dog lodging, shelter, or refuge.

¶ 21 Nevertheless, relying on *Steinberg* and *Goennenwein v. Rasof*, 296 Ill. App. 3d 650 (1998), defendant argues that the fact that she might have been the person responsible for paying on the lease did not mean that she "had property rights" in the dog. She further argues that, because she "was not the only lawful resident of the house[,] *** it cannot be automatically assumed that she had control over the dog." Defendant's argument is without merit as both cases are readily distinguishable.

¶ 22 At issue in *Steinberg* was whether an absentee landlord harbored a tenant's dog within the meaning of the Animal Control Act, such that he would be liable to a person who was bitten by the dog. In finding that the absentee landlord was not liable, the court emphasized that the landlord "simply allowed the tenants to have a pet on the premises, and by no fair inference can he be deemed to have harbored or kept the animal." *Steinberg*, 114 Ill. 2d at 502. Here, unlike in *Steinberg*, defendant was actually present on the property. Indeed, defendant had leased and had resided on the property for several months.

¶ 23 At issue in *Goennenwein* was whether a property owner harbored her son's dog within the meaning of the Animal Control Act, such that she would be liable to a person who was bitten by the dog. *Goennenwein*, 296 Ill. App. 3d at 651. The facts established that the son and the dog did not reside at the property but were merely visiting at the time of the attack. In finding that the property owner was not liable, the court held: "[W]here the owner of the animal is present and in control of it, the property owner cannot be considered an 'owner' under the Act merely because the property owner has permitted the animal to be on the premises." *Id*. at 654. Here, unlike in *Gonnenwein*, where the defendant merely allowed the dog to be on the premises with

its owner temporarily, defendant kept the dog at her residence for several months. Even though others resided there too, defendant clearly kept or harbored the dog. She thus was an "owner" under the Act.

¶ 24 Defendant next argues that the trial court erred in telling the jury that defendant had previously been found by a court to have owned a dog. Defendant concedes that she forfeited this issue by failing to raise it in her posttrial motion. See *People v. Herron*, 215 Ill. 2d 167, 175 (2005). However, defendant argues that we should reverse under the plain-error doctrine because the evidence was closely balanced.

¶ 25 A reviewing court may consider unpreserved error when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence. *Id*. at 186-87. Under the first prong of the plain-error test, the defendant must show that the evidence was so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Thus, the defendant must show that he or she suffered prejudice from the error. *People v. White*, 2011 IL 109689, ¶ 133. In determining whether the closely-balanced prong has been met, we must make a commonsense assessment of the evidence within the context of the circumstances of the case. *Id*. ¶ 139.

¶ 26 "As a matter of convention," a court of review applying the plain-error rule first decides whether there was error at all. *People v. Rinehart*, 2012 IL 111719, ¶ 15. However, this convention is not mandatory. Our supreme court has urged judicial restraint and held that a defendant forfeits plain-error review where he or she fails to present an argument on how either of the two prongs of the plain-error doctrine is satisfied. *White*, 2011 IL 109689, ¶ 153. Further, the court in *White* noted that, where the only basis provided for plain-error review is a claim that

the evidence was closely balanced, an assessment of the impact of an alleged error can be readily made after reading the record. When it is clear that the alleged error would not have affected the outcome of the case, a reviewing court need not engage in the "meaningless endeavor" of determining whether error occurred. *Id*. ¶ 148.

¶ 27 Here, defendant argues that plain error occurred only because the evidence was closely balanced. She does not argue the second prong of the plain-error test. We dispose of defendant's claim by holding that, even if error occurred, for the reasons stated the evidence overwhelmingly established that defendant was an "owner" under the Act. Thus the evidence was not closely balanced such that any error severely threatened to tip the scales of justice against defendant.

¶ 28 III. CONCLUSION

¶ 29 For the reasons stated, we affirm the judgment of the circuit court of Stephenson County. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 30 Affirmed.