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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-348

Filed: 3 March 2020

Cabarrus County, Nos. 16 CRS 54344, 54463, 54464, 54465, 54466

STATE OF NORTH CAROLINA

v.

PATRICIA GAIL YATES

Appeal by defendant from judgments entered 27 April 2018 by Judge Tanya T. Wallace in Cabarrus County Superior Court. Heard in the Court of Appeals 22 January 2020.

Joshua H. Stein, by Special Deputy Attorney General Brenda Menard, for the State.

Daniel J. Dolan for defendant.

ARROWOOD, Judge.

Patricia Gail Yates (“defendant”) appeals from judgments entered upon her convictions for twelve counts of misdemeanor cruelty to animals. For the following reasons, we find no error in part, vacate in part, and remand.

I. Background

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This case involves a large-scale animal rescue operation on defendant's property conducted by the Cabarrus County Sheriff's Office and the Humane Society of the United States ("the Humane Society"). As a result of this rescue operation, defendant was initially charged with twelve counts of misdemeanor cruelty to animals in Cabarrus County District Court on 4 and 11 October 2016. Defendant was tried before the Honorable Nathaniel M. Knust, found guilty on all counts, and sentenced on 14 June 2017.

Defendant appealed to Cabarrus County Superior Court for a *de novo* trial by jury. Her trial was held before the Honorable Tanya T. Wallace from 23 to 27 April 2017. The evidence at trial tended to show the following.

Defendant used to raise show dogs and later ran an animal shelter on her property in Kannapolis, North Carolina. On the property were a home, an outdoor kennel with an enclosed yard, and a cinder block outbuilding containing an indoor kennel. The North Carolina Department of Agriculture revoked defendant's shelter certification in 2015, but she continued to house numerous dogs and cats on the premises. Documents and paperwork from defendant's home office were introduced into evidence suggesting that she bred the dogs and sold their litters online. Defendant used to have a few helpers to maintain her shelter facilities and to care for the animals. By 2016, at age 70, defendant was the sole caretaker of 105 dogs, 33 cats, and 3 goats.

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On 8 August 2016, the Animal Control Division of the Cabarrus County Sheriff's Office received a complaint about defendant's property from the local chapter of the Humane Society. Deputy Brian Eggers was assigned to investigate the case. He testified that he went to the property to investigate the complaint on the next day but was unable to contact defendant. Upon stepping out of his patrol vehicle, Deputy Eggers was immediately struck by a pungent odor of urine and ammonia emanating from the premises. On 10 August 2018, he returned and met with defendant. She agreed to show him around the property.

Defendant first showed Deputy Eggers around the interior of the cinder block outbuilding. The interior of the outbuilding was dark, damp, approximately 90-95 degrees, and had an intensified odor of ammonia. Fans circulated air around the interior of the structure, but there was no exterior ventilation. Deputy Eggers testified that the interior of the outbuilding contained numerous unlined, unpadded wire crates filled with dogs, stacked several crates high. He further testified that the crates were visibly wet. He ascertained that they had not been cleaned in a while because he observed numerous piles of mold-covered dog feces in various crates.

Defendant next showed Deputy Eggers a basement area in her home and her outdoor kennel. Both areas were also visibly unsanitary, smelled, and housed numerous dogs and cats. Deputy Eggers discussed the conditions on the property with defendant and suggested the possibility of surrendering her animals to the

County. She said that she might consider surrendering five or six of her older dogs. Deputy Eggers returned two days later and found the property in the same condition. At this point, he contacted his supervisor Lieutenant David Taylor to move forward with obtaining search and arrest warrants and organizing an animal rescue operation.

The Cabarrus County Sheriff's Office and the Humane Society worked in coordination to plan all aspects of the animal rescue operation, such as arranging for on-site veterinary care and securing a suitable warehouse to temporarily hold such a large number of animals while the Humane Society planned more permanent arrangements for them. The Humane Society agreed to assume all costs related to care of the animals after they were rescued.

On 26 September 2016, Deputy Eggers and other officers executed the warrants and conducted a protective sweep of defendant's property. Areas of the premises that Deputy Eggers viewed on previous occasions were in a substantially similar condition. Inside defendant's home, Deputy Eggers observed numerous cats and dogs. He found more cats and several litters of puppies in a secluded basement room that defendant had not shown him on prior occasions. After law enforcement officers completed their sweep of the property, Humane Society staff entered and commenced their animal rescue operation.

The Humane Society's Director of Animal Crimes, Jessica Lauginiger ("Ms. Lauginiger"), testified extensively concerning the Humane Society's activities during the operation and the conditions in which the twelve dogs were found. Humane Society staff photographed each animal and its living conditions. They assigned each animal a unique label corresponding to the area of the property in which it was found. The jury was shown photographs relevant to each of the twelve dogs for which defendant was charged, as well as a video recording of the Humane Society's walkthrough of the property. Ms. Lauginiger gave testimony narrating this visual evidence. She testified that, while all twelve dogs had food and water dishes in their crates, "many were empty, but they were mostly dirty, had a film on them." Many water dishes contained water that was "cloudy." Ms. Lauginiger did not believe this water was "fresh or drinkable."

The Humane Society rescued a total of 105 dogs, 33 cats, and 3 goats from defendant's property. Defendant finally agreed to surrender the animals to the County. The animals were assessed by local veterinarians on site to determine the extent and immediacy of their medical needs before being sent to either the temporary shelter or Cabarrus Animal Hospital. All twelve dogs for which defendant was charged were sent to Cabarrus Animal Hospital for treatment at the expense of the Humane Society, totaling \$7,210.89.

Dr. Michael Robinson, D.V.M., worked at Cabarrus Animal Hospital and provided on-site veterinary care during the rescue operation. Dr. Robinson testified regarding the medical condition of the twelve dogs with the assistance of his treatment notes and pictures of each dog. He indicated that each dog was generally in poor “body condition” for various reasons. Dr. Robinson testified that, when making an initial assessment of each dog, he immediately saw or felt bones underneath their skin that cannot be detected in a healthy canine. He indicated that this skeletal body condition, including pronounced pelvic bones and visible ribs, was indicative of malnourishment. He also noted that each dog’s coat had been stained from prolonged contact with moisture and animal waste.

Dr. Robinson further testified that each dog had oral health issues that could only have reached their current extent through extreme neglect over a period of many years. All twelve dogs exhibited some degree of periodontal disease, where a bacterial infection of the teeth and gums eats away the bones surrounding the oral cavity. The effects of periodontal disease on the dogs ranged from missing teeth and minor loss of jawbone density to complete absence of teeth and jawbones and the presence of “oronasal fistulas,” decaying holes connecting the roof of a dog’s mouth with its nasal passages. Dr. Robinson stated that the extent of periodontal disease in the twelve dogs would make it extremely painful and physically difficult for each to ingest food

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and water. Veterinary dentist Dr. Brooke Reynolds, D.V.M., also testified with the aid of each dog's X-rays to illustrate the extent of periodontal disease to the jury.

At the close of the State's evidence, defendant moved to dismiss all charges against her. The trial court denied the motion. Defendant testified on her own behalf, after which she renewed her motion. The trial court again denied her motion. The jury found defendant guilty on all twelve counts of misdemeanor cruelty to animals.

The trial court consolidated defendant's convictions in two judgments imposing consecutive sentences of 45 days' imprisonment, suspended for 60 months of supervised probation. As a condition of her probation, defendant was ordered to pay \$7,210.89 in restitution to the Humane Society, the total amount it paid Cabarrus Animal Hospital for treatment of the twelve dogs. Defendant timely noted her appeal.

II. Discussion

On appeal, defendant argues that the trial court erred by: (a) denying her motion to dismiss the charges against her; (b) placing her on an extended period of probation without making a finding of necessity; and (c) ordering restitution to the Humane Society. We find no merit in defendant's first and third contentions. We agree with her second argument, and therefore vacate defendant's judgments and remand for resentencing.

A. Motion to Dismiss

Defendant argues that the trial court erred in denying her motion to dismiss the charges against her because they were not supported by substantial evidence. We disagree.

1. Standard of Review

“This Court reviews the trial court’s denial of a motion to dismiss *de novo*.” *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citation omitted). “ ‘Upon defendant’s motion for dismissal, the question for the Court is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of defendant’s being the perpetrator of such offense. If so, the motion is properly denied.’ ” *State v. Fritsch*, 351 N.C. 373, 378, 526 S.E.2d 451, 455 (quoting *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993)), *cert. denied*, 531 U.S. 890, 148 L. Ed. 2d 150 (2000). “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *State v. Smith*, 300 N.C. 71, 78-79, 265 S.E.2d 164, 169 (1980). “In making its determination, the trial court must consider all evidence admitted, whether competent or incompetent, in the light most favorable to the State, giving the State the benefit of every reasonable inference and resolving any contradictions in its favor.” *State v. Rose*, 339 N.C. 172, 192, 451 S.E.2d 211, 223 (1994) (citation omitted), *cert. denied*, 515 U.S. 1135, 132 L. Ed. 2d 818 (1995). “The trial court is not required to determine that the evidence excludes every reasonable hypothesis of

innocence before denying a defendant's motion to dismiss." *State v. Barfield*, 127 N.C. App. 399, 401, 489 S.E.2d 905, 907 (1997) (citation omitted).

2. Substantial Evidence

In the instant case, defendant was charged with misdemeanor cruelty to animals by depriving twelve dogs of necessary sustenance. To survive defendant's motion to dismiss, the State was required to put forth substantial evidence that defendant intentionally deprived each dog of necessary sustenance or intentionally "cause[d] or procure[d]" each dog to be deprived of necessary sustenance. N.C. Gen. Stat. § 14-360(a) (2019). "Intentionally" is defined as "knowingly and without justifiable excuse[.]" N.C. Gen. Stat. § 14-360(c). "Necessary sustenance" is not defined in N.C. Gen. Stat. § 14-360.

a. Intent

"Knowledge or intent is a mental attitude seldom provable by direct evidence. It must ordinarily be proved by circumstances from which it may be inferred." *State v. Coble*, 163 N.C. App. 335, 338, 593 S.E.2d 109, 111 (2004) (internal quotation marks and citation omitted). Here, the jury heard ample evidence from which it could infer that defendant subjected the dogs to the conditions giving rise to her charges knowingly and without justifiable excuse. Defendant testified that she owned and occupied the premises from which the dogs were rescued, and stated that she was responsible for their care and saw each dog every day. Deputy Eggers testified that

he made her aware that she could surrender her animals to the county, and she only indicated a willingness to surrender five or six of her older dogs. Furthermore, Deputy Eggers testified that the conditions on the property had not improved between his initial visit and the date he executed the search warrant over a month later. Thus, defendant was on notice that her treatment of the dogs was unacceptable and did not change her conduct. Therefore, the State presented substantial evidence that defendant's treatment of the twelve dogs was intentional.

b. Deprivation of Necessary Sustenance

Defendant argues that the State only presented evidence of other forms of animal cruelty, such as "torment," and did not present any evidence tending to show deprivation of necessary sustenance. Defendant contends that "necessary sustenance" entails only the provision of food and water. *See Coble*, 163 N.C. App. at 338, 593 S.E.2d at 112 (focusing "necessary sustenance" inquiry on defendant's failure to provide dogs with food and water). The State argues that veterinary care is within the meaning of necessary sustenance. Alternatively, the State argues that it presented substantial evidence of defendant's failure to provide adequate food and water to the dogs. Because we agree, we decline to address whether "necessary sustenance" in N.C. Gen. Stat. § 14-360(a) encompasses adequate veterinary care.

Viewed in a light most favorable to the State, there was ample evidence from which a reasonable juror could find that the dogs were not adequately fed and

watered. This evidence came in the form of testimony generally applicable to all the animals on the property and their overall living conditions, as well as testimony and photographs specific to each dog and its individual enclosure.

Dr. Robinson testified that each dog was generally underweight and displayed skeletal features not apparent in healthy canines. Furthermore, the State presented ample evidence from which the jury could infer that any food or water provided to the dogs would be unhealthy and unfit for consumption due to the environment in which it was furnished. Each witness at the scene was overpowered by the smell of ammonia. Several witnesses testified that each dog's cage was covered in a "grime" consisting of decomposing feces, hair, dirt, and urine. This filth also clung to each dog's coat, causing discoloration. Witnesses also testified that the dogs' crates were stacked such that the urine and excrement of dogs in the upper crates would fall into the crates below. Deputy Eggers stated that every crate was visibly wet. The crates did not appear to have been cleaned in a long time because there was a buildup of moldy feces in many of them.

The jury was also presented with evidence that the dogs' food and water bowls were unsanitary. In her testimony concerning the dogs' food and water dishes, Ms. Lauginiger stated that "a number of them were empty, and the ones with water in them did not appear to be wholesome water or drinkable water." She stated that many of the dishes "were mostly dirty, [and] had a film on them."

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Aside from eyewitness testimony, the jury had its own opportunity to assess whether the dogs' environment was sanitary enough to safely consume necessary sustenance. The jury was shown photographs of each dog, its enclosure, and its food and water dishes. Furthermore, the jury was shown photos and a video recording of the Humane Society's walkthrough of the premises.

There was a considerable amount of testimony from Doctors Robinson and Reynolds that easily preventable, detectible, and curable infections caused each dog's oral health to deteriorate to a point where eating and drinking would be physically difficult and cause extreme pain. We need not decide whether such negligent medical care constitutes a deprivation of necessary sustenance. Viewed in a light most favorable to the State, there was ample evidence from which a reasonable juror could find that the dogs were not adequately fed and watered, and that any necessary sustenance provided to them was unfit for consumption due to the shockingly unsanitary environment in which it was furnished. The trial court did not err in denying defendant's motion to dismiss.

B. Probation

Defendant next argues that the trial court erred in sentencing her by ordering 60 months' probation without making a specific finding that a probationary term of this length was necessary. The State has conceded error, and we agree.

“When this Court is confronted with statutory errors regarding sentencing issues, such errors are questions of law, and as such, are reviewed *de novo*.” *State v. Allen*, 249 N.C. App. 376, 379, 790 S.E.2d 588, 591 (2016) (internal quotations marks and citation omitted). Defendant was convicted of a misdemeanor and sentenced to community punishment. In such circumstances, a defendant cannot be subjected to a term of probation longer than 18 months unless the trial court makes a specific finding that a longer term of probation is necessary. N.C. Gen. Stat. § 15A-1343.2(d)(1) (2019).

In the judgments suspending defendant’s sentences, the trial court placed defendant on 60 months’ supervised probation and failed to indicate that this longer period of probation was necessary. This error requires remand to the trial court for resentencing. *State v. Sale*, 232 N.C. App. 662, 664, 754 S.E.2d 474, 476 (2014) (citations omitted). At resentencing, the trial court may place defendant on a term of probation of 18 months or fewer without making any additional findings, or may place defendant on a term of probation greater than 18 months and less than five years by making specific findings in its judgments that such a term is necessary. N.C. Gen. Stat. § 15A-1343.2(d); *Sale*, 232 N.C. App. at 664, 754 S.E.2d at 476.

C. Restitution

Defendant’s final argument is that the trial court erred by ordering her to pay \$7,210.89 in restitution to the Humane Society. Defendant maintains that the

Humane Society is not a qualified recipient of restitution for cruelty to animals under the present circumstances. We disagree.

We review questions of law concerning errors in sentencing *de novo*. *Allen*, 249 N.C. App. at 379, 790 S.E.2d at 591.

As a condition of probation, a defendant may be required to make restitution . . . to an aggrieved party or parties who shall be named by the court for the damage or loss caused by the defendant arising out of the offense or offenses committed by the defendant. When restitution . . . is a condition imposed, the court shall take into consideration the factors set out in G.S. 15A-1340.35 and G.S. 15A-1340.36. . . . As used herein “aggrieved party” includes individuals, firms, corporations, associations, other organizations, and government agencies

N.C. Gen. Stat. § 15A-1343(d) (2019).

Defendant first contends that the State has waived any argument that the Humane Society qualifies as an “aggrieved party” eligible for restitution under N.C. Gen. Stat. § 15A-1343(d). The State made no such waiver. The proposed restitution worksheet does contain a clerical error listing the Humane Society as a recipient of restitution under the Crime Victims’ Rights Act, N.C. Gen. Stat. §§ 15A-830 through -849 (2019), which we discuss *infra*. However, during the trial court’s discussion of restitution as a condition of probation, the State made the following argument regarding the Humane Society’s eligibility for restitution:

The Humane Society of the United States footed the bill for the Cabarrus County Animal Hospital.
. . . .

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... They paid for everything originally and Humane Society [sic] reimbursed them. ...

....

... They wouldn't be the victim. They would be the party -- well, I guess they would. They're out the money.

Counsel for the State argued that the Humane Society was eligible as a recipient of restitution because it voluntarily assumed the cost of repairing the damage caused by defendant's animal cruelty offenses. In the context of the court's discussion, we do not interpret counsel's minor slip of the tongue to waive an argument that the Humane Society was an "aggrieved party" under N.C. Gen. Stat. § 15A-1343(d).

We hold that the Humane Society is an eligible recipient of restitution under the present circumstances. As an "association" or "organization," the Humane Society is an entity that could qualify as an "aggrieved party" in certain situations. *Id.* Furthermore, the veterinary bills for the dogs' medical care "ar[ose] out of the offense or offenses committed by the defendant." *Id.* Thus, the plain meaning of N.C. Gen. Stat. § 15A-1343(d) allows for a trial court to order a defendant to pay restitution as reimbursement to an organization that paid the veterinary expenses of an animal cruelty victim.

Moreover, the referenced factors for a trial court to consider in ordering restitution include "[a]ny measure of restitution specifically provided by law for the

offense committed by the defendant.” N.C. Gen. Stat. § 15A-1340.35(a)(3) (2019). Thus, trial courts are instructed to look beyond our general restitution statutes. While it does not expressly concern restitution, our legislature has enacted another statute directly addressing compensation for the costs of caring for animal cruelty victims. *See* N.C. Gen. Stat. § 19A-70 (2019). This provision provides, in part:

In every arrest under any [cruelty to animals offense] . . . if an animal shelter takes custody of an animal, the operator of the shelter may file a petition with the court requesting that the defendant be ordered to deposit funds in an amount sufficient to secure payment of all the reasonable expenses expected to be incurred . . . in caring for and providing for the animal pending the disposition of the litigation . . . , including medical care

N.C. Gen. Stat. § 19A-70(a). Section 19A-70 creates a system in which an animal shelter may petition the trial court to order a defendant to deposit funds that can be drawn upon to care for alleged animal cruelty victims during the pendency of the defendant’s trial. However, the procedures established by N.C. Gen. Stat. § 19A-70 do not address post-conviction reimbursement of an animal shelter for costs already incurred in caring for animal cruelty victims.

Nonetheless, in N.C. Gen. Stat. § 19A-70 our legislature has evidenced its intent for veterinary care of alleged animal cruelty victims to be compensable during the pendency of litigation. The plain meaning of N.C. Gen. Stat. § 15A-1343(d) does not prohibit organizations such as the Humane Society from receiving restitution under the present circumstances. We do not believe that our legislature would limit

the possibility of reimbursement for veterinary expenses only to the stages of animal cruelty prosecutions before a defendant is found guilty. Therefore, we hold that the trial court did not err in ordering defendant to pay the Humane Society \$7,210.89 in restitution as a condition of her probation.

III. Conclusion

For the foregoing reasons, we hold that the trial court did not err in denying defendant's motion to dismiss or ordering payment of restitution to the Humane Society. However, the trial court erred in entering judgments placing defendant on probation for longer than 18 months without making specific findings that such a length of probation was necessary. We vacate defendant's judgments and remand for resentencing consistent with this opinion.

For purposes of resentencing, the trial court should also fix a clerical error in the restitution worksheet incorporated in defendant's judgments by reference. The worksheet lists the Humane Society as a victim entitled to restitution under the Crime Victims' Rights Act rather than as an aggrieved party. Under the Act, a "victim" must be a natural person. N.C. Gen. Stat. § 15A-830(a)(7). When entering judgment on remand, the trial court should correct the restitution worksheet by reclassifying the Humane Society as an aggrieved party. *See State v. Blount*, 209 N.C. App. 340, 348, 703 S.E.2d 921, 927 (2011) (remanding on other grounds for restitution hearing and instructing trial court to fix classification of victim on

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restitution worksheet) (citing *State v. Davis*, 123 N.C. App. 240, 242-43, 472 S.E.2d 392, 393 (1996) (“[A] court of record has the inherent power to make its records speak the truth and, to that end, to amend its records to correct clerical mistakes or supply defects or omissions therein.”)).

NO ERROR IN PART; VACATED IN PART AND REMANDED

Judges COLLINS and HAMPSON concur.

Report per Rule 30(e).