

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-395

NOVEMBER TERM, 2019

State of Vermont v. Jessica P. Taylor*	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 1534-5-18 Cncr
		Trial Judge: Martin A. Maley

In the above-entitled cause, the Clerk will enter:

Defendant appeals her conviction for three counts of cruelty to animals. We affirm.

In May 2018, defendant was charged with three misdemeanor counts of animal cruelty based on allegations that she deprived her three pit bulls of adequate food or necessary medical attention in violation of 13 V.S.A. § 352(4).

Jury selection took place on September 10, 2018. The State’s Attorney informed the jury that the case involved charges of animal cruelty and asked whether anyone felt they could not be a fair and impartial juror based on that information alone. Five prospective jurors indicated that they might have difficulty being impartial. Defense counsel then questioned the panel. She stated that she had previously owned dogs and was not sure that she could sit on a case involving allegations of deprivation of food and medical care. She asked the jurors if their prior experiences with pets would make it hard for them to listen to the allegations and judge the case fairly. Three prospective jurors indicated that they would have a hard time being impartial, while eight others stated they could be fair. At that point, juror J.W. interjected that he had increasingly strong feelings about the case, stating, “you know, I’m certainly not skinny and with all due respect, the defendant is not malnourished. I think if someone can feed themselves, they can feed their damned dog when it’s dying, okay.” Defendant responded, “They’re all accusations. It’s—it’s not.” Defense counsel asked her to be quiet. The court then gave a lengthy instruction regarding the purpose of questioning during jury selection and reminded the jurors that defendant was presumed innocent.

Defense counsel continued questioning the panel. Jurors J.W. and J.F. expressed frustration with the nature of the questions. Defense counsel explained that none of the allegations had been proven and that she was trying to make sure the nature of the allegation alone would not prevent jurors from being impartial. J.W. and J.F. appeared to accept this explanation. Defense counsel then questioned five jurors who indicated they could judge the case fairly. Two others expressed doubts regarding whether they could be fair.

The court removed all of the prospective jurors who indicated that they might have difficulty being impartial from the panel, including J.W. Defense counsel used a peremptory challenge to strike J.F. The court then called six additional jurors. Five of them stated that they could be fair. Juror J.S. stated that she was a “big animal activist and vegan” and hearing about the case made her

heart rate jump, but she thought she could be fair and impartial. Defense counsel questioned J.S. about her animal activism and she stated that she ran a YouTube channel where she “talk[s] about facts and stuff like that.” One of the original jurors, E.S., then said that she would do her best to be impartial but that it would be hard to listen to the evidence. J.S. was stricken for cause and defense counsel exercised a peremptory challenge for E.S.

Two days after jury selection, defense counsel moved to strike the entire jury panel and draw a new panel from a fresh jury pool, arguing that the entire jury pool had been tainted by juror J.W.’s comments, J.F.’s expression of frustration with the process, and J.S.’s statement that she was an animal rights activist. She also argued that a fourth juror was crying during the questioning. The State did not object to defendant’s request. The court denied the motion, explaining that none of the jurors’ statements involved information not admitted into evidence but bearing on a fact at issue in the case. The court noted that defense counsel’s questions had elicited many of the comments and that the jurors who were frustrated and made emotional outbursts were excused.

At the beginning of the trial, the court spoke about the jury selection process to the jury and noted that some of the prospective jurors had made statements that were unusual or “without a filter.” It instructed the jury that none of the statements made at jury selection was evidence. The court asked if anyone on the panel had changed their minds about whether they could judge the case fairly. None of the jurors indicated assent.

During trial, the State presented evidence that defendant was the owner of three pit bulls, Deja, Legacy, and China, aged ten to thirteen years old. In February 2018, she contacted the Humane Society of Chittenden County and asked to relinquish the dogs. Humane Society employees testified that when defendant brought the dogs to the Humane Society, they were in poor condition. Deja and Legacy were emaciated. Each weighed forty-nine pounds, which was approximately fifteen to twenty pounds less than normal. Deja had a lot of hair loss, an abnormal gait, masses on her skin, enlarged mammary glands, and an ear infection. Legacy’s bones were prominent with no muscle on them, and she had several chronic skin lesions on her feet, legs, and neck. China weighed fifty-nine pounds, but her pelvic and spine bones were still visible and she had skin masses, hair loss, chronic skin disease, and an ear infection. The dogs ate well after defendant relinquished them and they quickly gained weight. Their blood was tested and showed no chronic disease or condition that would explain their weight loss. After the dogs were evaluated, an investigator for the Humane Society went to defendant’s home to check on her remaining animals, a dog and a cat, which were found to be in good enough condition to stay in the home. At that time, defendant told the investigator that she relinquished the dogs because she could no longer afford their care.

Defendant’s sister testified that she lived with defendant and participated in caring for the dogs. She said that she gave each of the dogs thirty-two ounces of dog food four times a day, but despite this diet the dogs quickly lost weight in January. On cross-examination, defendant’s sister agreed that her testimony was that she had fed each dog 130 ounces of dry food per day, almost ten times the recommended amount, plus treats and table scraps.

Defendant testified that she fed the dogs twice a day using a thirty-two-ounce cup from McDonald’s. Her sister would give them a third meal, plus treats and table scraps. She testified that the dogs always ate their food but began to lose weight anyway in January 2017. She tried to find a veterinarian to examine Deja cheaply, without success. She therefore relinquished the dogs to the Humane Society.

The jury verdict form provided to the jury broke each count (one for each dog) into two sub-parts—one addressing deprivation of adequate food, and one addressing deprivation of necessary medical attention. A unanimous verdict with respect to either of the alternative bases for each count

was sufficient to support a guilty verdict. The jury found that defendant had deprived each of the dogs of adequate food and necessary medical attention. The court sentenced defendant to zero to twelve months' incarceration, all suspended, to run concurrent in each count with a one-year term of probation plus forty hours of community service. Defendant appealed.

Defendant first argues that the court violated her right to a fair and impartial jury by denying her motion to strike the jury panel. "A defendant is entitled to a fair trial free of the suspicious taint of extraneous influences." State v. Wool, 162 Vt. 342, 353 (1994). A defendant alleging that the jury was tainted must show that an irregularity occurred and that it had the capacity to affect the verdict. State v. Schwanda, 146 Vt. 230, 232 (1985). "Determining whether a verdict was affected by extraneous influences is a fact-driven exercise that turns on the particular facts and circumstances of each case." State v. Gorbea, 169 Vt. 57, 60 (1999) (quotation omitted). Because the trial court is in the best position to assess whether the jury has been affected by extraneous influences, we "accord the trial court's ruling every reasonable presumption in its favor" and will affirm unless the trial court abused or withheld its discretion. Id.

Here, the trial court found that no irregularity occurred. We cannot say this was an abuse of discretion. The prospective jurors' comments did not introduce any extraneous information about defendant or the facts or law of the case to the jury panel. Cf. State v. Johnson, 2013 VT 116, ¶ 17, 195 Vt. 498 (holding potential juror's statement during voir dire about defendant's other case constituted irregularity because it introduced extraneous information about defendant to jury panel). The comments were about the prospective jurors' own feelings and experiences and were not relevant to an issue in the case.

Defendant next argues that the court erred in refusing her request to instruct the jury that the word "deprive" means "to withhold or prevent from having." "In dealing with statutory language, a court has a duty to avoid confusing the issues by 'over definition,' particularly when the word in question is one of plain meaning and may well be understood by its context." State v. Audette, 128 Vt. 374, 378 (1970). Accordingly, "a court may decline to enlarge upon or redefine a phrase or a term whose meaning may be taken to be plain and of common understanding." Id. at 379. The word deprive has a plain and common meaning, of which defense counsel reminded the jury during her closing statement. The court therefore acted within its discretion in declining to elaborate on the meaning of the term.

Defendant also asserts that the court erred by denying her request to instruct the jury that it had to find that she voluntarily, willfully, or deliberately deprived the dogs of food or medical attention to find her guilty of violating § 352(4). In State v. Gadreault, we held that § 352(4) is a strict liability offense that does not require a culpable mental state, but the "deprivation of food, water, and shelter [must] be the result of a voluntary act or omission." 171 Vt. 534, 536-37 (2000). We explained:

That the omission was involuntary, therefore, is a defense available to a person who takes a trip, leaving adequate food and water for [the] pet, and is unable to return to replenish the provisions because of a storm or other unanticipated or uncontrollable event. Such a defense would also be available to a person who should own an animal that unexpectedly requires medical attention when [the person] is not present to provide it.

Id. at 537. Gadreault makes clear that the absence of any will to commit the act or omission that constitutes deprivation is a defense to the strict liability offense, not an element that the State has to prove. Id.; cf. State v. Griffin, 2017 ME 79, ¶ 19, 159 A.3d 1240 (explaining involuntary conduct is defense that negates actus reus of strict liability crime); State v. Deer, 287 P.3d 539, 542 (Wash.

2012) (holding defendant’s claim that she was asleep was properly treated as affirmative defense to strict liability crime of child rape).

We conclude that, at least with respect to the charge that defendant deprived each dog of adequate food, the court did not abuse its discretion by declining to instruct the jury on voluntariness because defendant did not provide evidence to support this defense. “A court’s obligation to charge on a defendant’s theory is limited to situations in which there is evidence supporting the theory.” State v. Nunez, 162 Vt. 615, 617 (1994) (mem.). Defendant did not assert below that the dogs were deprived of food due to events beyond her control, and there was no evidence to support such a defense. To the contrary: defendant and her sister testified that defendant always fed, and perhaps even overfed, the dogs, and provided them with necessary medical care when their conditions mysteriously began to deteriorate by bringing them to the Humane Society. There is no basis in the record to support a claim that defendant’s failure to adequately feed the dogs was involuntary, due to poverty or any other reason.¹

Finally, we reject defendant’s argument that her conviction must be reversed because the State did not prove that she voluntarily, willfully, or deliberately deprived the dogs of food. The record shows that the State presented sufficient evidence to prove beyond a reasonable doubt that defendant deprived the animals of adequate food.² The State’s witnesses testified that when defendant brought the dogs to the Humane Society, they were emaciated and suffering from a variety of chronic skin infections and other medical issues. The dogs were tested by a veterinarian and did not appear to be suffering from any illnesses that would explain the weight loss. They quickly gained weight while in the care of the Humane Society. This evidence was sufficient to support the jury’s determination that defendant violated § 352(4) by depriving them of adequate food.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice

¹ We have doubt about whether the evidence could support defendant’s argument that she failed to provide adequate medical care to the dogs for reasons beyond her control—namely, an inability to afford veterinary care. Defendant stated at trial that she could afford a basic veterinary examination, knew of free or reduced-price veterinary services, and knew that she could take the animals to the Humane Society if necessary. But we need not reach this question. The jury verdict form reflects that the jurors unanimously concluded, with respect to each dog, that defendant had deprived the dog of adequate food. These findings are sufficient to support defendant’s conviction on each count.

² Again, we need not rule on the sufficiency of the evidence relating to the dogs’ medical care because we conclude that the evidence was sufficient to support the jury’s findings that defendant deprived each dog of adequate food.