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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14 MC1 195782
	)	
LLOYD JOHNSON,	)	The Honorable
	)	Clarence Burch,
Defendant-Appellant.	)	Judge, presiding.
	)	

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PRESIDING JUSTICE HYMAN delivered the judgment of the court.  
Justices Pierce and Mason concurred in the judgment.

**ORDER**

¶ 1 *Held:* The evidence is insufficient to convict Johnson of animal cruelty, thus the judgment is reversed.

¶ 2 While responding to a domestic disturbance, a Chicago police officer noticed several pit bull dogs, including a male brindle with a cut on his nose, and that the apartment smelled like feces and urine. A few days later, after obtaining a search warrant, officers returned and arrested defendant Lloyd Johnson. After a bench trial, Johnson was convicted under 510 ILCS 70/3.01 of

one count of cruel treatment to animals. (Johnson also was convicted of six counts of possession of unsterilized dogs by a felon, which he does not challenge.)

¶ 3 Johnson argues that the State failed to prove him guilty of animal cruelty beyond a reasonable doubt, where no evidence indicated that he was criminally liable for the bite marks on the face of the brindle, or that he otherwise abused the dogs in any way. We agree with Johnson that the State did not present sufficient evidence to uphold his conviction, and reverse. Johnson also challenges the constitutionality of the statute, arguing that it is vague, and violates due process by failing to provide a mental state. In light of our ruling, we decline to decide the statute's constitutionality.

¶ 4 **BACKGROUND**

¶ 5 Officer Carlos Sanchez testified that he responded to a domestic disturbance call at the apartment of Dolene Jackson. When he arrived, there were six pit bulls in the apartment, the apartment smelled like feces and urine, and he noticed a brindle pit bull with fresh bite marks about his nose. He was not sure how the dog got injured. Sanchez submitted an information report about what he observed.

¶ 6 A few days later, police obtained a search warrant, targeted to the owner of the dogs. The predicate for the warrant was the condition of the brindle pit bull. Sanchez executed the warrant with the animal crimes unit. The police initially went into the apartment after exploding a flash grenade, a type of grenade designed to stun. Sanchez, who entered later, saw feces in the dining room area but was unsure if it was fresh. He also saw two empty cages stacked up in a bedroom. He did not come across food or water for the dogs.

¶ 7 Sergeant Mark Gurge, a six year veteran of the animal crime team, testified that he monitored the search but did not do the actual searching. He saw a cage, tow chain, and feces.

Gurge believed the conduct of the animal crime personnel likely caused the dogs to leave feces in the front room and dining room. He also saw solid, dry feces in the bedroom cage and on the back porch. He did not see food or water for the dogs. Gurge explained the basis of the search warrant to Johnson, and Johnson acknowledged that the dogs were his. After Gurge told Johnson that he needed to relinquish the dogs, Johnson signed with an "X". Gurge denied telling Johnson that if he did not relinquish the dogs he would be charged with felonies.

¶ 8 Officer Renee Lozano, an animal control officer, testified he was present while police executed the search warrant on April 11<sup>th</sup>, and he entered the residence last. He saw six dogs spread out in the apartment, and noticed a cut on the brindle dog. He also saw dogs in cages and feces in one cage, but wasn't sure if it was new or old.

¶ 9 Peter Yamaji, a licensed veterinarian since 1987, testified that he worked on the six dogs the day they were brought to the pound. In addition to the bite on his nose, the brindle had bite wounds on the front half of his body, including his head, forelimbs, and neck. The injuries were definitely from another dog or dogs, but he did not opine about whether they were caused by dog fighting. When asked whether the chains could be used for dog fighting, he stated it was possible.

¶ 10 Lloyd Johnson testified that Dolean Jackson is a close friend, and they met at a shelter. She has his power of attorney and helps him with his finances. For the last two years he has gone to her house between two and four times-a-week to help Jackson train her dogs, clean up after them, and, occasionally, take Jackson's daughter to school. He sometimes walked her dogs, and said that "from time to time" the dogs were kept in cages.

¶ 11 According to Johnson, Jackson's daughter called police after Johnson and Jackson argued over Johnson's finances. When Officer Sanchez arrived, the dogs pinned Sanchez against a wall.

Jackson took the dogs to the back room. Sanchez told Johnson he was going to jail. When one of the pit bulls snapped, Sanchez called backup. Johnson was arrested; the next day the charges were dismissed.

¶ 12 Johnson had driven to Jackson's apartment around 5:15 a.m. on the day the police arrived with the search warrant. The police pulled Johnson over and handcuffed him before he entered the apartment. Fifteen minutes later the officers, without warning, threw a grenade into the apartment. An officer approached Johnson about signing over ownership of the dogs. Johnson responded that he couldn't sign over something that didn't belong to him, insisting the dogs belonged to Jackson. The officer came back later and said if he did not sign, he would be charged with 19 felonies. Because he was scared of going back to the penitentiary, he put an "X" on the document.

¶ 13 Johnson testified that when he was five, his father taught him how to train animals. He said he fed the dogs "better than human beings," and had lived with his sister since he was released from the penitentiary.

¶ 14 Dolean Jackson testified that she has lived with her daughter and owned the six pit bulls. She got two from "Vanessa," although she could not remember her last name, and doesn't have any documents regarding the transfer. The other four pit bulls are offspring of those two. Jackson maintained that the dogs were not kept in cages unless someone was visiting, and that the cages were clean. When addressing the photograph of two dogs in one cage, she stated she did not put them there.

¶ 15 At the time the search warrant was served, a "large boom" and smoke woke her. She was told to put her hands up and step outside. Police handcuffed Jackson to a chair and her daughter was told to lie down on a couch. The brindle pit bull sleeps under her bed, and had hit his nose

on the bed frame causing injury. She did not take him to the veterinarian, but put ointment on his nose. Jackson never saw Johnson do anything cruel to the dogs. She testified that Johnson, who is illiterate, treats the dogs better than he would treat a human. She said that she assists Johnson with his medicine and finances.

¶ 16 Jackson's daughter testified she never saw Johnson treat the animals cruelly, hurt them, not feed them if they should have been fed while he was there, and never saw her mom do any of those things either. Johnson bathes the dogs and takes them for walks.

¶ 17 Dana Dixon, a veterinary technician at the veterinary clinic five blocks from Jackson's apartment, knew Jackson because she brought her dogs there "all the time" for shots, medicated baths, nail trims and the like. Dixon makes house calls and had gone to Jackson's apartment. Dixon identified each dog by name, and said she never saw evidence of cruelty. She was aware that the males were not neutered and females not spayed. She knew chains are sometimes used to build up body structure and muscles as a health benefit, and had not heard of their being used for dog fighting.

¶ 18 Yolanda Anderson, who lives directly across the street from Jackson, testified that she knows Johnson as the "dog man" because he would come over when Jackson went to work. Johnson tends around the building and helps with the dogs, including walking them. Another neighbor, Evelyn Chew, said she never saw any wrong being done to the dogs. She has seen Johnson bathe the dogs, brush their teeth, and pick up their waste.

¶ 19 The trial court found Johnson guilty of one count of cruelty to animals for the brindle pit bull, and six counts of possession of unsterilized dogs by a felon. As to all other charges of animal cruelty, Johnson was found not guilty. When discussing if the dogs would be returned to Jackson, the court indicated concern with the dog with "scars, contusions or abrasions on it."

Further, the court noted that the other dogs appeared to be “in excellent condition” and the dogs likely were well cared for. Johnson was sentenced to two years of probation, to be terminated on June 30, 2016, and no contact with the dogs, including at Jackson’s apartment. All dogs were returned to Jackson except for brindle dog, as the judge found there was some evidence of joint ownership.

¶ 20

#### ANALYSIS

¶ 21

We must decide 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. *People v. Campbell*, 146 Ill. 2d 363, 374 (1992). As a reviewing court, we will not substitute our judgment for that of the trier of fact on questions concerning the weight of the evidence or the credibility of the witnesses. *Id.* at 375. And, we will not reverse a criminal conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant’s guilt. *Id.*

¶ 22

Johnson argues that the State presented insufficient evidence to convict him of animal cruelty under 510 ILCS 70/3.01 (West 2012). The animal cruelty statute provides that “[n]o person or owner may beat, cruelly treat, torment, starve, overwork, or otherwise abuse any animal.” *Id.* Both parties incorrectly imply that Johnson had to have sufficient ownership or possession over the dogs to be convicted under this statute. But the statute prohibits any “person,” not just the “owner” from mistreating animals. Regardless of who owns the dogs, the State had to prove Johnson abused the brindle pit bull beyond a reasonable doubt.

¶ 23

According to Johnson, the trial court based his conviction on the evidence related to the bite marks; thus, no other evidence the State presented is relevant. He further argues that no

evidence was introduced suggesting he was with that dog or present when the dog was allegedly bitten. The State argues, based on a totality of the circumstances, that Johnson was proven guilty.

¶ 24 The record establishes that the cut on the brindle pit bull's nose was the sole determining factor in convicting Johnson of animal cruelty. The trial court found "no evidence" of cruelty to the other dogs and stated they were in "excellent condition." The evidence regarding absence of food and water, and the presence of feces, cages, and the tether and chains was presented generally. No distinction was drawn between the brindle pit bull and the other dogs. There was no testimony regarding which dogs defecated on the floor, which dogs were restrained with the tether and chains, or which dogs were not being given adequate food and water.

¶ 25 In sentencing Johnson, the trial court stated he was guilty of one count of animal cruelty for the dog "with the cut on his nose that was described by the veterinarian." The State argues that "the court was silent" as to the specific reasons behind its ruling. We disagree; the trial court expressly stated the injury as the identifying factor. The only distinguishing testimony between alleged cruelty to all of the pit bulls and the brindle pit bull was the marks found about his nose. Thus, this logically demonstrates that the conviction had to be based only on the cut marks on the brindle pit bull, and not on the other general evidence.

¶ 26 The testimony that did address the cut was circumstantial at best, and did not establish that Johnson committed animal cruelty. Veterinarian Yamaji believed the marks on the brindle pit bull to be a result of bites from another dog, and this was particularly persuasive to the trial court. Officers Sanchez and Lozano testified to seeing cuts or marks on the brindle pit bull, although neither was able to provide any other evidence as to how the marks got there. Officer Sanchez testified directly that he did not know how the marks got there.

¶ 27 But that evidence did not establish how the marks on the brindle pit bull were caused. The State relied solely on Yamaji’s testimony to prove dog fighting was the cause of the dog’s injury; and although Yamaji said that the marks were caused by another dog, he never indicated that these injuries must have occurred during a dog fight. Jackson testified that the dog had bumped his head on her bed frame. Johnson corroborated that testimony when he indicated Jackson had informed him of this injury after it happened.

¶ 28 The evidence regarding the cuts about the nose is insufficient to support a finding of Johnson’s guilt. The State must prove beyond a reasonable doubt every element of the crime of which the defendant is accused. *People v. Carpenter*, 228 Ill. 2d 250, 264 (2008). Even if the Court was persuaded by Yamaji’s testimony that the injury was caused by another dog, that still does not prove animal cruelty beyond a reasonable doubt. Given that there were six pit bulls living in a single apartment, it is not only probable, but likely the cut was caused by another dog. But not all dog-on-dog contact constitutes animal cruelty or abuse by a person, and it was improper for the trial court to assume, without evidence, that the brindle pit bull was bitten because of conduct or treatment, let alone wrongful conduct or treatment, by Johnson. *See People v. Jones*, 174 Ill. 2d 427, 430 (1996) (trial court’s findings must be based on evidence and not “guess, speculation, or conjecture”).

¶ 29 Nor was there any evidence from which the trial court could have inferred from “the totality of the circumstances” that Johnson had anything to do with the cuts. If the evidence regarding the dogs’ living conditions—the absence of food and water, and the presence of feces, cages, and chains—formed the basis of Johnson’s conviction for animal cruelty, the evidence, taken as a whole, does not establish guilt beyond a reasonable doubt.

¶ 30 The police officers' failure to see food or water for the dogs on both occasions does not indicate that the dogs were being mistreated. There was no testimony that either Officer Sanchez or Sergeant Gurge looked for food, merely that they did not see any. This testimony on its own certainly does not establish animal abuse under 510 ILCS 70/3.01, especially when they were only there for a short time on two occasions. The veterinarian did not testify that any of the dogs were malnourished, and the trial court noted that the dogs appeared healthy

¶ 31 The State relies heavily on dog feces that were found around the apartment and in the animal cages to show that the dogs were neglected. But, there was conflicting testimony regarding how and when the feces got there. Officer Sanchez testified there was feces in the dining room area, but he wasn't sure if it was fresh. Sergeant Gurge also testified to seeing feces in a bedroom and on the back porch, and that it was solid and dry. And, he later admitted that the fecal matter in the dining room and front room was fresh, and likely due to the pit bulls' reaction to the flash grenade.

¶ 32 The only testimony indicating there were two dogs in one cage came from Officer Lozano. There is no testimony indicating how the dogs got in the cage. Officer Sanchez saw two cages stacked up in a bedroom with no dogs inside. Both Jackson and Johnson testified that the dogs are kept in cages on occasion, but only when guests were expected. Jackson further testified that she never put two dogs in one cage and had no idea of how the dogs got in the cage. Given that the only person who saw two dogs in one cage was Officer Lozano, the last person to enter the apartment; it is possible another officer could have temporarily put the dogs there.

¶ 33 The State argued that the chains that were found in the apartment were used to build up the dog's strength for dog fighting, but, the mere presence of chains did not prove that. Officer Gurge testified that he never saw chains on the dogs and doesn't know if they were used. Dana

Dixon testified that it is common to see leashes and collars like that on animals, and they are often used for health benefits, like building up body structure and muscles. She indicated that she has never heard of such chains being used for dog fighting, and has two pit bulls herself. When asked whether the chains could be used for dog fighting, Yamaji testified that it was possible, but he was not sure. Jackson's daughter testified that she saw the chains on the dogs from time to time, and on cross examination Jackson testified that Johnson used the chains to walk the dogs. Even though the testimony demonstrates that the chains were used to walk the dogs, that alone falls short of showing abuse.

¶ 34 The evidence does not support the trial court's adjudication, and the judgment is reversed. *People v. Smith*, 185 Ill. 2d 532, 542 (1999) (court will reverse conviction where evidence is so unreasonable, improbable, or unsatisfactory as to justify reasonable doubt of defendant's guilt). The State cannot retry Johnson. *People v. Lopez*, 229 Ill. 2d 322, 367 (2008) (double jeopardy clause prohibits retrial if prosecution failed to present sufficient evidence to sustain conviction). So, we need not address Johnson's constitutional challenges to the animal cruelty statute. *In re E. H.*, 224 Ill. 2d 172, 178 (2006) (cases should be decided on nonconstitutional grounds whenever possible, and courts should decide constitutional issues only as "last resort").

¶ 35 Reversed.