COURT OF APPEALS
DECISION
DATED AND FILED

August 28, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2629-CR **Cir. Ct. No. 01-CM-156**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

VIRGINIA R. RAY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Iowa County: EDWARD E. LEINEWEBER, Judge. *Affirmed.*

¶1 DYKMAN, J.[1] A jury found Virginia Ray guilty of three counts of violating a harassment restraining order prohibiting her or her cats from entering her neighbors' (the Dombecks) property. Two counts stem from incidents in

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

which one of Ray's cats was found on the Dombecks' property. The third count stems from an incident in which Ray entered onto the Dombecks' property. Ray raises the following issues on appeal: (1) Did the trial court err by prohibiting her from using "defense of property" as an affirmative defense for the violation where she entered the Dombecks' property? (2) Did the trial court erroneously exercise its discretion in ruling that testimony from an animal behaviorist would have been irrelevant? (3) Whether the evidence was sufficient to conclude that Ray was in violation of "having her [cats] enter on the Dombeck property." We conclude that the trial court correctly prohibited Ray from asserting defense of property, did not erroneously exercise its discretion by prohibiting expert testimony from an animal behaviorist, and that the evidence presented at trial was sufficient to conclude that Ray was in violation of having her cats enter on the Dombecks' property on both occasions. We therefore affirm.

BACKGROUND

¶2 Virginia Ray lives next door to Helen and Ken Dombeck. Due to problems with Ray's cats coming onto their property, the Dombecks obtained an injunction against Ray. The injunction ordered that "Ms. Ray is prohibited from entering on [the] Dombeck property at 310 W. Washington, Dodgeville, WI" and "Ms. Ray is prohibited from having her animals enter on the Dombeck property." Notwithstanding the injunction, Ray's cats continued to appear on the Dombecks' property. In fact, Ms. Dombeck testified that in the ten weeks following the granting of the injunction she photographed cats on her land on twenty-five occasions. On March 12, 2001, Ms. Dombeck took these pictures and a copy of the injunction to the police in an effort to find a solution to the problem and was given a live animal trap. On the night of March 15, Ms. Dombeck set the trap on her deck and caught a cat, later determined to be Ray's cat "Magic." This incident

became count one of the complaint charging Ray with violating the restraining order.

¶3 After Magic was trapped, Ms. Dombeck testified that problems with the cats improved significantly for the next five weeks. However, on May 2 another of Ray's cats, "Dreamer," was caught on the Dombecks' property. This incident became count two of the complaint charging Ray with violating the restraining order. On May 8, 2001, Mr. Dombeck photographed Ray when she came onto their property in an effort to retrieve a cat. This incident became count three of the complaint charging Ray with violating the restraining order.

¶4 Before the trial began, Ray filed a motion in limine asserting that she was privileged to go onto the Dombecks' property on May 8, 2001, because she was acting in defense of her property as permitted by WIS. STAT. § 939.49(1). Ray contended that on that day, she believed that Mr. Dombeck was unlawfully interfering with her cat and that entering on the Dombecks' property was necessary to prevent death or severe injury to her cat. Ray argued that her belief was reasonable because Mr. Dombeck had previously shot and killed one of her cats. The court denied the motion, stating that the statute did not apply to trespass, and only dealt with situations where physical force was used against another person. The trial court also granted the State's motion in limine precluding any testimony from an animal behaviorist.

DISCUSSION

¶5 Ray's first argument is that the trial court erred by ruling that defense of property, WIS. STAT. § 939.49(1), was not a defense available to her. In reviewing this decision, we must interpret and apply § 939.49(1) to the facts of the case. The interpretation and application of statutes present questions of law

that we review de novo. ***State v. Hughes***, 218 Wis. 2d 538, 543, 582 N.W.2d 49 (Ct. App. 1998). When we interpret a statute, our purpose is to ascertain the intent of the legislature and give it effect. ***State ex rel. Frederick v. McCaughtry***, 173 Wis. 2d 222, 225, 496 N.W.2d 177 (Ct. App. 1992). Our first step is to examine the language of the statute and, absent ambiguity, give the language its ordinary meaning. ***Id.*** at 225-26. "Statutory language is ambiguous if reasonable people could disagree as to its meaning." ***Id.*** at 226. "Ambiguity can be found in the words of the statutory provision itself, or by the words of the provision as they interact with and relate to other provisions in the statute and to other statutes." ***State v. Sweat***, 208 Wis. 2d 409, 416, 561 N.W.2d 695 (1997). If the language is ambiguous, we examine the scope, history, context, subject matter, and purpose of the statute in order to determine the legislative intent. ***Frederick***, 173 Wis. 2d at 226.

¶6 WISCONSIN STATUTE § 939.49(1) reads in part: "A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with the person's property." Ray contends that trespassing falls within the meaning of "force" as it is used in this statute, arguing that the legislature would have used the term "physical force" had it intended the statute to apply only to cases where the threat or use of physical force occurred.

¶7 We can look to the dictionary for clarification. ***State v. Curiel***, 227 Wis. 2d 389, 404, 597 N.W.2d 697 (1999). Black's Law Dictionary defines "force" as "[p]ower, violence, or pressure directed against a person or thing." BLACK'S LAW DICTIONARY 656 (7th ed. 1999). Trespass does not fall under this definition of force; it does not amount to power, violence or pressure directed against someone.

¶8 We also look at the statute in its entirety. It is an elementary rule of statutory construction that we must give effect, if possible, to every word, clause and sentence contained in a statute. ***Prechel v. Monroe***, 40 Wis. 2d 231, 239, 161 N.W.2d 373 (1968). The statute states, "force against another"; this implies an act threatened or done to another person. Even if we concluded that trespass is included within the meaning of "force" in the statute, trespass is not done to "another," it is done to their property. Given every word in the statute, we conclude that defense of property is not an affirmative defense to trespass.

¶9 Ray argues next that the trial court erred in concluding that testimony from an animal behaviorist would have been irrelevant and was therefore inadmissible. A trial court possesses wide discretion in determining whether to admit or exclude evidence, and we will reverse such determinations only upon an erroneous exercise of that discretion. ***State v. Evans***, 187 Wis. 2d 66, 77, 522 N.W.2d 554 (Ct. App. 1994). Ray points out that the testimony was held to be inadmissible without an offer of proof. However, she never asked to make an offer of proof. Even if she had, the trial court has the power to refuse an offer of proof in matters that are clearly immaterial or irrelevant. ***State ex rel. Schlehlein v. Duris***, 54 Wis. 2d 34, 39, 194 N.W.2d 613 (1972).

¶10 Ray claims that the animal behaviorist would have testified that the injunction prevented her from being able to train her cats to not go on the Dombecks' property because the only way to do so was to allow them on the property. The behaviorist would have also testified that the reason the cats went onto the Dombecks' property was because they smelled the food in the traps.

¶11 Testimony as to both subjects is irrelevant. Relevant evidence is defined in WIS. STAT. § 904.01 as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." The facts that needed to be proved beyond a reasonable doubt were that: (1) An injunction was issued against Ray under WIS. STAT. § 813.125; (2) Ray committed an act that violated the terms of the injunction; and (3) Ray knew the injunction had been issued and knew her acts violated its terms. *See* WIS JI—CRIM 2040. The ability to train her cats has nothing to do with the injunction and is irrelevant. While testimony regarding whether her cats could smell the food may be relevant to whether Ray was guilty of "having her [cats] enter on the Dombecks' property," the trial court did not erroneously exercise its discretion by precluding it. Courts have long distinguished between matters of common knowledge and those needing expert testimony, and have held that expert testimony should be provided concerning matters involving special knowledge, skill or experience on subjects which are "not within the realm of the ordinary experience of mankind." ***Pollock v. Pollock*****,** 273 Wis. 233, 246, 77 N. W. 2d 485 (1956). Knowing that cats can smell food does not require any special knowledge or training. This is common knowledge, and therefore expert testimony regarding it was unnecessary.

¶12 Finally, Ray contends that the evidence was insufficient to conclude that she was guilty of violating the restraining order by "having her [cats] enter onto the Dombeck property." One who seeks to set aside a jury's verdict on grounds of insufficiency of evidence faces a heavy burden. We will sustain a jury verdict if there is any credible evidence to support the verdict. ***Meurer v. ITT Gen. Controls***, 90 Wis. 2d 438, 450, 280 N.W.2d 156 (1979); *see also* WIS. STAT. § 805.14. This court views the evidence in the light most favorable to a jury's

verdict and must sustain the verdict if there is any credible evidence in the record to support it, regardless of whether there is evidence to support a different verdict. ***Meurer***, 90 Wis. 2d at 450-51.

¶13 The restraining order stated that Ray was "prohibited from having her [cats] enter onto the Dombeck property." The use of the word "having" in the injunction implies that in order to violate the injunction, Ray would have to intend to have her cats enter onto the Dombecks' property. However, as defined in WIS. STAT. § 939.23(4), criminal intent is satisfied when "the actor … is aware that his or her conduct is practically certain to cause that result." The jury heard evidence that the cats were on the Dombecks' property on almost a daily basis. This evidence is enough for a reasonable juror to conclude that Ray knew letting her cats outside resulted in them entering onto the Dombecks' property. Therefore the act of letting the cats outside was tantamount to "having" them enter onto the Dombeck property.

¶14 In sum, we conclude that defense of property is not an affirmative defense to trespass, that the trial court did not erroneously exercise its discretion by prohibiting Ray from presenting expert testimony from an animal behaviorist, and that the evidence presented at trial was sufficient to support the jury's verdict. We therefore affirm.

By the Court.—Judgment Affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.