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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0644**

State of Minnesota,
Respondent,

vs.

Su Vang,
Appellant.

**Filed March 23, 2020
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-CR-17-10914

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Connolly, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

In this direct appeal from the judgment of conviction for animal cruelty, appellant argues: (1) that the evidence was insufficient to prove beyond a reasonable doubt that he

“engaged in” cockfighting “on or about” the date of the charged offense, and (2) the prosecutor committed misconduct by instructing the jury regarding the meaning of “on or about.” We affirm.

FACTS

In June 2016, Minneapolis animal control responded to a complaint of roosters crowing in the morning at the South Minneapolis residence of appellant Su Vang. Vang showed the animal control officer several unlicensed “Thai-type” chickens in his backyard. Thai fighting roosters are a type of rooster often used for cockfighting. The animal control officer noticed a paddle on the ground—the type of which is commonly used to interfere with fighting roosters. The animal control officer told Vang that he had to apply for a permit or receive citations for the unlicensed animals. Vang failed to apply for any permits and the animal control officer subsequently issued him two citations. A Minneapolis police officer researched Vang’s Facebook page and saw that Vang posted a picture of a man and a rooster with the caption, “My pops champ 5-0.”

The next month, the animal control officer and a plain-clothed police officer from the Minneapolis Police Department returned to Vang’s residence for a follow-up visit. Although the officers did not go into the residence, they observed makeshift coops in Vang’s backyard, the walls and the floors of which were thickly speckled with feces. The animals within the coops appeared to be mistreated and lacked access to fresh air. The police officer noticed that one of the roosters had wounds on its body and duct tape on its spurs—the small claw just above a chicken’s foot. According to the animal control officer, duct tape on the spurs of a rooster is used in cockfighting to protect a rooster when

the animal is involved in a spar or a practice match. The animal control officer asked Vang if there were any more animals in the house. Just as Vang denied that there were any more animals, a rooster crowed from behind the boarded windows of the residence's basement.

A search warrant was obtained and executed. In the basement of the home, the officers found many "filthy" coops and several live roosters. The floor of the basement was littered with feces and splotches of blood. In one room of the basement, the officers found an older rooster in a cage, with missing feathers and open wounds, attempting to fight with a young rooster circling the outside of the cage. The animal control officer knew that this was a method of training roosters to be more aggressive before a fight though Vang claimed the roosters were merely "exercising." Officers also found a rolled-up carpet covering a circle of wire fencing that was splattered with blood. Animal control officers knew this type of wire-carpet structure was used as a cockfighting ring.

In the basement of Vang's home, the officers found several additional indications of cockfighting. The findings included: (1) duct-taped spurs; (2) spurs filed to a sharp point; (3) missing patches of feathers on roosters; (4) highly muscular roosters; (5) types of cages typically used in cockfighting; (6) scales to weigh the roosters; (7) poultry wound spray; and (8) steroids used in cockfighting. The officers seized seven roosters, nine hens, thirteen chicks, three pigeons, and a dog. All animals received immediate medical attention.

The state charged Vang with one count of felony cruelty to animals in violation of Minn. Stat. § 343.31, subd. 1(a)(1) (2014). The statute provides that an individual is guilty of a felony if the individual "promotes, engages in, or is employed in the activity of

cockfighting . . . or violent pitting of one pet or companion animal . . . against another of the same or a different kind.” Minn. Stat. § 343.31, subd. 1(a)(1).

A jury trial was held over five days in November 2018. The district court instructed the jury that to be guilty of cruelty to animals in violation of Minn. Stat. § 343.31, subd. 1(a)(1), an individual must have: (1) “intentionally promoted, engaged in, or was employed in the activity of cockfighting or violent pitting of one pet or companion animal against another of the same or different kind,” and (2) the “act took place on or about July 21, 2016 in Hennepin County, Minnesota.”

In the state’s closing argument, the prosecutor directed the jury’s attention to the second element of the charged offense—the defendant’s act took place on or about July 21, 2016. The prosecutor reminded the jury that some of the wounds on the roosters were estimated to be no more than two days old. He went on to say, “[s]o there’s a time frame here and there’s evidence and information you can consider. That’s what ‘or about’ means.” The jury found Vang guilty. The district court sentenced Vang to 85 days, stayed imposition of the sentence, and placed him on probation for three years.

This appeal follows.

D E C I S I O N

I. The evidence was sufficient to convict Vang on one count of animal cruelty under Minn. Stat. § 343.31, subd. 1(a)(1).

Vang argues that the evidence was insufficient to prove that he “engaged in” cockfighting on or about July 21, 2016.

In a criminal case, the state must prove every element of a crime beyond a reasonable doubt. *State v. Hage*, 595 N.W.2d 200, 204 (Minn. 1999). Vang contends that the charging statute only permits a conviction when an individual is “engaging in” cockfighting that is actively taking place on the date at issue, and not merely training or possessing animals that will, admittedly, be used or have been used for cockfighting. Accordingly, before determining if the state presented sufficient evidence to convict Vang under this statute, this court must first, as a matter of first impression, interpret the term “engaging in” under Minn. Stat. § 343.31, subd. 1(a)(1).

A. *“Engaging in” under Minn. Stat. § 343.31, subd. 1(a)(1), is unambiguous.*

“Because the meaning of a criminal statute is intertwined with the issue of whether the State proved beyond a reasonable doubt that the defendant violated the statute, it is often necessary to interpret a criminal statute when evaluating an insufficiency-of-the-evidence claim.” *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017); *see also State v. Tomlin*, 622 N.W.2d 546, 548 (Minn. 2001) (addressing a sufficiency-of-the-evidence challenge and stating, “it is necessary to first determine what evidence is required” for a statutory criminal conviction, which “is an issue of statutory interpretation”).

The first step of statutory interpretation is to determine if the statute is ambiguous. *Vasko*, 889 N.W.2d at 556. If the language of a statute is unambiguous, the plain meaning of the language controls. *State v. Boecker*, 893 N.W.2d 348, 351 (Minn. 2017). However, if a statute has more than one reasonable interpretation, then it is ambiguous and we apply the canons of statutory construction to determine its meaning. *State v. Hayes*, 826 N.W.2d 799, 804 (Minn. 2013). The purpose of statutory interpretation is to ascertain and to give

effect to the intent of the legislature. *State v. Koenig*, 666 N.W.2d 366, 372 (Minn. 2003). “We review issues of statutory interpretation de novo.” *Vasko*, 889 N.W.2d at 556.

The charging statute provides that a person is guilty of felony cruelty to animals when the individual “promotes, engages in, or is employed in the activity of cockfighting, dogfighting, or violent pitting of one pet or companion animal . . . against another of the same or a different kind.” Minn. Stat. § 343.31, subd. 1(a)(1). Accordingly, the statute defines cockfighting as the violent pitting of one pet or companion animal, of which a rooster is included, against another. Only the term “engages in” is at issue here. As the term “engages in” is not defined by the statute, we look to the dictionary to determine the common and ordinary meaning of this term. *State v. Thonesavanh*, 904 N.W.2d 432, 436 (Minn. 2017).

In its intransitive verb form, the term “to engage” means “[t]o involve oneself or become occupied; participate.” *The American Heritage Dictionary* 591 (5th ed. 2011); see also *Black’s Law Dictionary* 608 (9th ed. 2009) (defining “engage” as “[t]o employ or involve oneself; to take part in; to embark on”). Accordingly, the term “engages in” means to participate or to be involved in or occupied with something. Therefore, we hold that “engages in” is an unambiguous term and we need not progress to other canons of statutory construction to determine its meaning. See *Thonesavanh*, 904 N.W.2d at 436 (applying intrinsic canons of construction only after ambiguity is found).

Vang contends that the term “engages in” requires the activity to be actively occurring. Under Vang’s theory, the only way an individual is guilty of engaging in the activity of cockfighting would be to get caught tossing a rooster into a ring. However, the

ordinary definition of “engages in” does not employ such a temporal limitation. Furthermore, the statute criminalizes the “engag[ing] in . . . the activity of cockfighting” and is not restricted to merely “engag[ing] in . . . a cockfight.” Minn. Stat. § 343.31, subd. 1(a)(1).

We are similarly not persuaded by Vang’s argument that the criminalization of other components of cockfighting within the same statute limits the meaning of “engages in” to actively participating in a cockfight. Minn. Stat. § 343.31, subd. 1(a) (2014), criminalizes many components of animal fighting, including receiving money for admission to an animal fight under Minn. Stat. § 343.31, subd. 1(a)(2); permitting a person to enter or use a space for animal fighting under Minn. Stat. § 343.31, subd. 1(a)(3); and training an animal to fight under Minn. Stat. § 343.31, subd. 1(a)(4). And yet, criminalizing engaging in the activity of cockfighting does not render these other criminal acts superfluous. Furthermore, the criminalization of these other components of cockfighting does not indicate that Minn. Stat. § 343.31, subd. 1(a)(1), should be limited.

As the term “engages in” under Minn. Stat. § 343.31, subd. 1(a)(1), unambiguously means to participate or to be involved in or occupied with the activity of cockfighting, the statute is not limited to criminalizing actually getting caught in an active cockfight to sustain a conviction of guilty of engaging in the activity of cockfighting.

B. The evidence is sufficient to sustain a conviction under Minn. Stat. § 343.31, subd. 1(a)(1).

Vang argues that the evidence presented to the jury was insufficient to sustain a conviction for violating Minn. Stat. § 343.31, subd. 1(a)(1). In light of the determination

that “engages in” unambiguously means to participate in or to be involved in or occupied with the general activity of cockfighting, we now must assess the sufficiency of the state’s evidence.

When reviewing sufficiency of the evidence, we conduct “a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). “A reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.” *State v. Brandes*, 781 N.W.2d 603, 606 (Minn. App. 2010).

The jury was presented with testimony from the animal control officer, the police officer, and a veterinarian, as well as various photos of the animals and the conditions in which the animals were kept. The circumstances proved are as follows.

The animal control officer responded to a complaint of roosters crowing in June 2016 at Vang’s residence. She witnessed various “Thai-type” chickens in his backyard and observed some items she believed were related to cockfighting, including a paddle that can be used to break up fights. Based on these observations, the animal control officer reported to her supervisor that she suspected cockfighting was occurring. On his Facebook page, Vang posted a picture of a man holding a rooster with the caption, “My pops champ 5-0.”

The animal control officer returned to Vang's home the next month with a police officer and observed a rooster in the backyard with duct tape wrapped around the spur of the rooster's leg—commonly seen in cockfighting when a rooster is involved in a spar or practice match. There were also open wounds on the rooster's back. When the animal control officer asked Vang if there were any roosters in the house, Vang responded “no” just as a rooster clearly crowed from the basement.

A warrant was executed on July 21, 2016, and the animal control officer, the police officer, and a veterinarian, among others, entered the home. The basement was filled with several “Thai-fighting” roosters—a type known to be “more aggressive than roosters of egg-laying varieties or meat varieties” and were “torn up and missing a lot of feathers and their skin was quite reddened.” The floor was splattered with feces and blood. The stench was overwhelming for the officers. In one room of the basement, officers found an older rooster, with missing feathers and open wounds, in a cage attempting to fight with a young rooster circling the outside of the cage. In one corner of the room with the training birds, officers found a rolled-up carpet covering a wire fence, which was covered in blood.

The veterinarian who traveled to the search and who examined the birds noted that the spurs of various roosters had been sharpened and duct taped unrelated to any animal husbandry reason, various roosters were missing feathers or had feathers glued onto their skin without any medical reason, and various roosters had healing puncture wounds approximately one to two days old on some birds and five to seven days old on other birds. Based on the veterinarian's overall sense of the scene, the veterinarian testified that “this particular area . . . had been used for cockfighting.”

From the search of the basement, officers found several indications of cockfighting as well. The findings included: (1) roosters with duct-taped spurs; (2) spurs filed to a sharp point and razorblades that could be attached to spurs; (3) missing patches of feathers on roosters; (4) highly muscular roosters; (5) types of cages typically used in cockfighting; (6) scales to weigh the roosters; (7) poultry wound spray; and (8) a steroid used in cockfighting.

After identifying the circumstances proved, we must determine if, when viewed in a light most favorable to the conviction, the evidence was sufficient to reasonably permit the jurors to reach the verdict that they did. *Webb*, 440 N.W.2d at 430.

The evidence that Vang was engaged in the activity of cockfighting, or the violent pitting of one pet or companion animal against another, is overwhelming. Not only were the roosters the aggressive “Thai-fighting” type, but also the condition of the roosters, the modification of their spurs, and the augmentation of their feathers all suggest that they were being used to fight against other roosters. Furthermore, when investigators entered the basement, a space littered with blood stains and feces, they found many objects associated with cockfighting, including a small scale used to weigh the roosters, roosters’ spurs sharpened into points, bottles of poultry wound spray and Neosporin used to tend to injuries, razorblades used to shave feathers and as attachable weapons, and syringes of injectable steroids used in cockfighting. The carpet-covered movable ring is additional evidence that Vang engaged in the activity of cockfighting. Finally, investigators witnessed an aggressive rooster circling a metal cage and violently lunging and pecking at an agitated and injured rooster trapped inside. This “training exercise” alone is sufficient to find that Vang engaged in the activity of cockfighting on July 21, 2016.

Regarding the date that Vang engaged in the activity of cockfighting, the evidence is circumstantial though substantial. Many animals had fresh wounds with some no more than one to two days old. The age of the wounds suggests that the animals were involved in some form of violent activity within one to two days from the day of the warrant's execution. Furthermore, the training exercise that the officers actually witnessed occurred on July 21, 2016.

We hold that the record is filled with ample direct and circumstantial evidence to support the jury's finding that Vang engaged in the activity of cockfighting, or the violent pitting of one pet or companion animal against another of the same or different kind, on or about July 21, 2016, in Hennepin County, Minnesota.

II. The prosecutor did not commit misconduct by instructing the jury on the meaning of “on or about” the date of the offense.

Vang argues that the prosecutor committed misconduct through usurping the district court's role by instructing the jury about the meaning of “on or about” the date of the offense in his closing argument.

Unobjected-to prosecutorial misconduct is reviewed under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). The defendant bears the burden of establishing plain error. *Id.* An error is plain if it is “clear or obvious.” *State v. Sanchez-Sanchez*, 879 N.W.2d 324, 330 (Minn. 2016). The burden then shifts to the state to prove that there is no reasonable likelihood that the absence of the misconduct would have had a significant effect on the jury's verdict. *Ramey*, 721 N.W.2d at 302.

“[I]t is solely the responsibility of the court to instruct juries on the law necessary to render a verdict.” *State v. Cao*, 788 N.W.2d 710, 716 (Minn. 2010). But “the rule imposes obligations and limitations on the courts, not restrictions on prosecutors.” *Id.* Parties may reference the law at trial but such references “run the risk of misstatements” that may justify a curative instruction. *Id.*

The district court instructed the jury that for Vang to be guilty under this statute, it must find that the “act took place on or about July 21, 2016 in Hennepin County, Minnesota.” Although the district court did not explain to the jury what “on or about” meant, the district court informed the jury that “[i]f an attorney’s argument contains any statement of the law that differs from the law I give you, disregard the statement.” See *State v. Martin*, 614 N.W.2d 214, 227 (Minn. 2000) (“We presume that jurors follow the trial court’s instructions.”).

In the state’s closing argument, the prosecutor directed the jury’s attention to the second element of the charged offense. The prosecutor reminded the jury of several events that occurred in this case, including the dates of the initial inspection and the second inspection. Additionally, the prosecutor stated that some roosters had wounds no more than two days old. The prosecutor concluded by saying, “[s]o there’s a time frame here and there’s evidence and information you can consider. That’s what ‘or about’ means.” Vang did not object or request a curative instruction based on the prosecutor’s statements. See *State v. Washington*, 521 N.W.2d 35, 40 (Minn. 1994) (stating that failing to object or seek a curative instruction weighs against reversal).

On appeal, Vang argues that the prosecutor's statements constituted misconduct because the district court alone has the responsibility to instruct the jury. The Minnesota Supreme Court considered a similar argument in *Cao*, concluding that a prosecutor's alleged misstatement of law during a closing argument did not constitute plain error because the statement, when read in context, "was not tantamount to a jury instruction" and instead was "a springboard for a discussion on the strength of the . . . evidence in the case." 788 N.W.2d at 715.

As in *Cao*, the prosecutor's relatively brief statements about the meaning of "on or about," in the context of the prosecutor's 20-page closing statement, likely is not tantamount to a jury instruction as it was used to draw the jury's attention to the strong circumstantial evidence supporting the jury's eventual finding that cockfighting took place on or around July 21, 2016. See *State v. Starkey*, 516 N.W.2d 918, 927 (Minn. 1994) (noting that a prosecutor has a "right to present to the jury all legitimate arguments on the evidence, to analyze and explain the evidence, and to present all proper inferences" that can be drawn from the evidence).

Although Vang is correct that it is the district court's responsibility to instruct the jury on the law, we conclude that the prosecutor's statements regarding the meaning of "on or about" do not constitute a jury instruction or misstate the law when considered in context of the closing argument as a whole. Therefore, the prosecutor's statement does not constitute an error that is plain.

Furthermore, there is no reasonable likelihood that the prosecutor's statement had a significant impact on the jury's verdict. See *Ramey*, 721 N.W.2d at 302 (describing the

substantial rights prong of the plain-error test). The jury was shown ample evidence to support a finding that Vang engaged in cockfighting on or about July 21, 2016, including the investigating officer's testimony that he witnessed the violent pitting of one rooster aggressively circling another agitated rooster trapped in a cage. In light of the evidence presented, it is unlikely that the alleged misconduct impacted the jury's verdict. Accordingly, we affirm.

Affirmed.