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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

No. 113

CURTIS BASILE,

Appellant.

20 Eagle Street
Albany, New York 12207
June 02, 2015

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: 113?

2 Counselor? You want any rebuttal time,
3 counselor?

4 MR. SCHATZ: Two minutes, please, Your
5 Honor.

6 CHIEF JUDGE LIPPMAN: Two minutes, sure.
7 Go ahead.

8 MR. SCHATZ: Thank you very much. May it
9 please the court. Ben Schatz, Cahill Gordon, on
10 behalf of Mr. Basile.

11 CHIEF JUDGE LIPPMAN: Counselor, what is
12 this statute all about? Not a strict liability
13 statute?

14 MR. SCHATZ: Not a strict liability - - -

15 CHIEF JUDGE LIPPMAN: What is - - -

16 MR. SCHATZ: - - - statute, Your Honor.

17 CHIEF JUDGE LIPPMAN: What is it? What - -
18 -

19 MR. SCHATZ: It's a statute - - -

20 CHIEF JUDGE LIPPMAN: What does it require
21 to - - -

22 MR. SCHATZ: It require - - - it requires
23 proof that the defendant knew that in this case, for
24 instance, that the dog - - -

25 CHIEF JUDGE LIPPMAN: Do you agree its

1 knowledge is the test?

2 MR. SCHATZ: Knowledge is the proper
3 standard, and we're basing - - -

4 JUDGE ABDUS-SALAAM: Where is that the
5 statute itself where it says knowledge is the test?

6 MR. SCHATZ: Well, the problem we have is
7 that the statute is ancient, essentially; it's 150
8 years old, and so the - - - the legislature, in 1867,
9 when the statute was passed - - -

10 JUDGE ABDUS-SALAAM: But hasn't the
11 legislature recently amended the AML, the Agriculture
12 and Markets Law, to include some sort of mens rea in
13 - - - in provisions that follow this one?

14 MR. SCHATZ: Absolutely, and that's
15 precisely why we think that if - - -

16 JUDGE ABDUS-SALAAM: But it didn't amend
17 this particular statute?

18 MR. SCHATZ: No, it didn't, and I don't
19 think we can make anything of that sort of
20 legislative inaction. There are a number of cases
21 from this court that - - -

22 JUDGE FAHEY: Don't they aggravate - - -
23 they amended it for aggravated cruelty, right?

24 MR. SCHATZ: It - - - every - - - every
25 other modern animal cruelty statute - - -

1 JUDGE FAHEY: No, that wasn't my question.
2 They amended it to include an element of intent for
3 aggravated cruelty, correct?

4 MR. SCHATZ: Yes, Your Honor.

5 JUDGE FAHEY: Okay. So you don't think it
6 matters that they didn't do it here but they did it
7 there?

8 MR. SCHATZ: No, certainly not. I think -
9 - - I think that the fact that the modern
10 legislature, when it is - - - when it is writing
11 statutes that prohibit actions against animals,
12 includes a mens rea in every single one of those
13 statutes, that's exactly what the court should look
14 to in trying to construe what the legislature
15 intended to do with respect to Section 35 - - -

16 JUDGE PIGOTT: 353 says neglect, if the
17 person neglects to care for the - - -

18 MR. SCHATZ: That's right. There are a
19 number of - - -

20 JUDGE PIGOTT: No intent. I mean, you can
21 just be neglectful.

22 MR. SCHATZ: No, and I think, Your Honor,
23 there are a number of - - - there are a number of
24 words in Section 353 that connote some sort of mens
25 rea and the - - - the very early cases, even

1 following the passage of Section 353, even suggest
2 that something needs to be in place with respect to
3 mens rea, whether - - -

4 JUDGE STEIN: So what's the purpose of
5 Section 43, then?

6 MR. SCHATZ: Section 43 is - - - is not
7 dispositive. Section 40 - - -

8 JUDGE STEIN: Well, assuming that it's not
9 dispositive, what would - - - what purpose would it
10 serve? Wouldn't it be totally, you know, extraneous
11 if - - - if we don't apply it here where there is no
12 stated mens rea?

13 MR. SCHATZ: No, it - - - it would not be
14 extraneous at all, because there are a number of
15 provisions in the AML that were passed at or around
16 the time that Section 43 was passed that - - - that
17 were the types of statutes that - - -

18 JUDGE STEIN: So when we look at a statute
19 as a whole, we have to look at when each provision
20 was enacted in relation to each other - - - every
21 other provision? We don't assume that if the
22 legislature wanted to change something, it would do
23 that?

24 MR. SCHATZ: No, Your Honor, and I think
25 especially when you're dealing with something like

1 strict liability, where 15.15(2) of the penal law
2 says that you presume against strict liability - - -

3 JUDGE STEIN: How could that be relevant
4 here?

5 MR. SCHATZ: Section 15.15(2) applies
6 within the penal law and without of - - - without the
7 penal law.

8 JUDGE STEIN: Well, sure, but we have a
9 specific provision right in the very law we're - - -
10 we're - - - we're looking at, which is the Ag. and
11 Markets Law. Why - - - why - - - if we have the two
12 conflicting provisions, why would we look to the
13 penal law and not to - - - to the statute we're - - -
14 we're interpreting?

15 MR. SCHATZ: Well, there's - - - there's a
16 significant amount of ambiguity surrounding Section
17 43. Section - - - half of the statutes in the
18 Agriculture and Markets Law contain an express mens
19 rea requirement, so it can't be the case - - -

20 JUDGE STEIN: Well, then it wouldn't
21 obviously apply to those, but what it's saying is
22 where there is no express mens rea, then none is
23 intended.

24 MR. SCHATZ: But that isn't what - - -

25 JUDGE STEIN: That's how I read it.

1 MR. SCHATZ: That is not - - -
2 respectfully, that is not what Section 43 says.
3 Section 43 was in place in 1909, when Section 353 was
4 part of the penal law. Section 353 wasn't
5 transferred into the Agriculture and Markets Law
6 until a number of years later, as part of this large-
7 scale reorganization of the penal law. And when it
8 was transferred, it was transferred with a dozen
9 other provisions under the AML, each of which
10 contained an express mens rea requirement. And I
11 don't think we can take Section 43 to mean that all
12 of those statutes were suddenly stripped of their
13 mens rea - - -

14 JUDGE PIGOTT: You passed over, I think, my
15 question, because as I look at 353, it says,
16 "deprives any animal of necessary sustenance, food or
17 neglects or refuses to furnish it". So if you
18 neglect to furnish food to an animal, it doesn't take
19 an intent. I mean, you just aren't paying attention.
20 And - - -

21 MR. SCHATZ: But - - -

22 JUDGE PIGOTT: And that's a violation of
23 353.

24 MR. SCHATZ: I - - - I think, Your Honor,
25 it - - - I think you're exactly right. I there's a -

1 - - there is language in Section 353 that is
2 suggestive of mens rea. The trial court - - -

3 JUDGE PIGOTT: No, that's - - - I'm saying
4 neglect. I'm saying - - -

5 MR. SCHATZ: Sure.

6 JUDGE PIGOTT: - - - you're guilty if you
7 neglect your animal. And the fact that it was in the
8 - - - that it's an old statute - - - and frankly,
9 there was more animals back in those days and they
10 were more important to people than they - - - they
11 seem to be now.

12 MR. SCHATZ: Right, and, and, and I think -
13 - - I think that's precisely the idea, that the jury
14 was not permitted to consider whether or not the
15 defendant - - - whether the standard is knowledge,
16 whether it's criminal negligence, whether it's an
17 intent standard, was not permitted to consider the
18 defendant's mental state.

19 JUDGE RIVERA: Under your analysis,
20 throughout this provision, there are all different
21 kinds of mens rea.

22 MR. SCHATZ: In the Agriculture and Markets
23 Law, yes.

24 JUDGE RIVERA: Well, no, I'm talking about
25 this provision - - -

1 MR. SCHATZ: Oh, I'm sorry, yes.

2 JUDGE RIVERA: - - - specifically.

3 MR. SCHATZ: Yes, Your Honor, and I think
4 that's a product of a fact that a pre-modern
5 legislature didn't use the types of mens rea
6 standards that we have in Section 15.05 now, and
7 that's - - - that's the problem we're dealing with.
8 And short of clear intent - - - evidence of clear
9 intent by the legislature to - - - to impose strict
10 liability, the court is required to construe the
11 statute as one of mental culpability.

12 JUDGE ABDUS-SALAAM: Assuming we agree that
13 - - - I'm not saying we do, but assuming we agree
14 that there are indications that there are different
15 types of mens rea throughout the statute, which one
16 would we settle on?

17 MR. SCHATZ: I think the best, I think the
18 best way to answer that is to look at what the
19 legislature's doing with respect to animal welfare
20 statutes. And every single one of the statutes that
21 the legislature has passed in the last two decades or
22 so, it requires, at a minimum, knowledge, before a
23 conviction can obtain.

24 JUDGE READ: So let's say we agree with you
25 about that. On this record, why, why isn't that

1 pretty apparent? Even assuming that knowledge and
2 knowingly is the standard, why isn't it pretty clear
3 from the evidence here that it was knowing?

4 MR. SCHATZ: I think there's an abundance
5 of evidence that - - - from which a jury, properly
6 charged, could have determined that the defendant
7 didn't have knowledge that - - - on the People's
8 theory that the dog was deprived of necessary
9 sustenance. The People's own expert, the - - - a
10 veterinarian - - -

11 JUDGE STEIN: So you have to know what?
12 You have to know - - -

13 MR. SCHATZ: You have to know that you're
14 not feeding the dog enough food. You have to know
15 that the dog is actually deprived of necessary
16 sustenance. And the veterinarian got up, a man with
17 thirty years of experience, and said even I had to
18 put my hands on the dog to know that the dog was in
19 the state it was in.

20 JUDGE STEIN: What about water? What about
21 hydration?

22 MR. SCHATZ: The dog was not dehydrated.

23 JUDGE STEIN: The dog wasn't dehydrated?

24 MR. SCHATZ: No.

25 JUDGE STEIN: I thought that's what the

1 veterinarian said.

2 MR. SCHATZ: No, the veterinarian testified
3 that everything was fine with the dog other than
4 malnourishment. The dog was on the verge of
5 dehydration; that was the testimony. But it wasn't -
6 - -

7 JUDGE STEIN: Well, okay. So that shows
8 that there's some dehydration, right?

9 MR. SCHATZ: I suppose - - - I suppose
10 that's right. I think, ultimately, though, the
11 question is whether or not the jury could have taken
12 the evidence and decided whether or not the defendant
13 knew that he was taking adequate care of the dog, and
14 in addition to the veterinarian's testimony, the fact
15 that the defendant was feeding the dog every day, was
16 essentially doing the best he could, the fact that
17 the dog was described as a - - - a dog of reasonable
18 strength, a friendly dog, a nonapprehensive dog, the
19 fact that the defendant testified that - - -

20 JUDGE ABDUS-SALAAM: Can I just - - -
21 counsel?

22 MR. SCHATZ: Yes, Your Honor.

23 JUDGE ABDUS-SALAAM: You were saying that
24 the defendant fed the dog every day?

25 MR. SCHATZ: Yes, Your Honor.

1 JUDGE ABDUS-SALAAM: I - - - maybe I
2 misunderstood the record, but I thought the defendant
3 couldn't eat every day, and that's why he didn't feed
4 the dog - - - or he couldn't eat three meals a day,
5 didn't have the money - - -

6 MR. SCHATZ: That's right. The defendant
7 test - - -

8 JUDGE ABDUS-SALAAM: So he was feeding the
9 dog sporadically whenever he ate, correct?

10 MR. SCHATZ: The, the testimony was that
11 the defendant said, at times I couldn't even afford
12 to feed myself once a day.

13 JUDGE ABDUS-SALAAM: Right.

14 MR. SCHATZ: But at page 194 of the
15 appendix, he said I fed him every day, even if it was
16 just a little bit, because at times I could only eat
17 once a day. That was on - - - that's on recross at
18 page 194. I think - - - I think the idea is that the
19 defendant was doing absolutely the best he could to
20 feed the dog. There - - - there was testimony that
21 he was feeding the dog every day. And - - - and
22 there are a number of other facts from which - - -

23 JUDGE STEIN: That doesn't preclude
24 knowledge that he was insufficiently feeding.

25 MR. SCHATZ: Absolutely does not preclude

1 knowledge; it - it - it - the issue is whether or not
2 a jury had enough evidence - - -

3 JUDGE STEIN: Does it go to knowledge that
4 he was insufficiently - - -

5 MR. SCHATZ: I'm - I'm sorry?

6 JUDGE STEIN: Does it even go to the
7 question of knowledge? The fact that - - - you know,
8 that - that he was giving him some food every day,
9 does that - - - is that relevant to the question of
10 whether he knew - - -

11 MR. SCHATZ: I think it is, Your Honor.

12 JUDGE STEIN: - - - he wasn't feeding him
13 enough?

14 MR. SCHATZ: I think it is, Your Honor,
15 because I think what it says is he - he knew he was
16 feeding the dog. It's unclear whether or not he knew
17 the dog was deprived of sustenance. He testified
18 that he knew something was wrong with the dog, but he
19 thought that the dog had worms. He thought it had an
20 intestinal problem, and he tried to get veterinary
21 help for that. So a jury could have concluded that
22 he had - - - he had knowledge that something was
23 wrong with the dog, but he was feeding it every day,
24 and maybe he didn't know that the dog was deprived of
25 sustenance. So I think - - -

1 CHIEF JUDGE LIPPMAN: Okay, counselor.
2 Thanks, counselor.

3 MR. SCHATZ: Thank you.

4 CHIEF JUDGE LIPPMAN: You'll have your
5 rebuttal.

6 MR. SCHATZ: Thank you.

7 MS. CAFERRI: May it please the court.
8 Nicoletta Caferra for Richard Brown, the Queens
9 County District Attorney.

10 CHIEF JUDGE LIPPMAN: Counsel, what's the
11 test? Is it knowledge?

12 MS. CAFERRI: The test is not knowledge.
13 There is no mens rea whatsoever in Section 353 of the
14 AML.

15 CHIEF JUDGE LIPPMAN: Strict liability?

16 MS. CAFERRI: Strict liability. Not only
17 does 353 not have a mens rea, but Section 43
18 precludes the consideration of a mens rea unless
19 otherwise specified. So taking those two statutes
20 together, it is clear that the trial court correctly
21 charged the - - - the jury here without the insertion
22 of an additional mens rea that is simply not present
23 in the statute.

24 And as far as knowledge, that actually
25 would not have helped the defendant in this

1 particular case, because it was evidently apparent to
2 the untrained observer; in fact, an anonymous caller
3 called the ASPCA about the poor condition of the dog.

4 JUDGE FAHEY: Yeah, I have to say that I -
5 - -

6 JUDGE READ: Well, what are you saying?
7 Harmless error? Are you saying harmless error, then?

8 MS. CAFERRI: I'm saying harmless error
9 goes to a different portion of it, but there is no
10 mens rea regardless. Even if we were to - - - and so
11 it actually doesn't help this particular defendant
12 because it would be harmless error.

13 JUDGE RIVERA: But the provision that says
14 "or refuses", what's the mens - - - there were a
15 couple of - - -

16 MS. CAFERRI: "Refuses" is refuses.
17 "Neglects" is neglects. We do not add knowledge,
18 intent, or any of the other penal law mens rea. What
19 is apparent in the statute are - - - the words of the
20 statute are very plain, very clear, very easy to
21 interpret. And to the extent that there is any
22 unclarity (sic) about it, which there is not, Section
23 43 makes clear that there is no additional proof
24 required. And all of the actions that are delineated
25 by - - -

1 JUDGE RIVERA: Why do you need the
2 "refuses"? You've got "deprives"; what do - - - what
3 do you need "refuse" for? What - - - what is that
4 adding to this?

5 MS. CAFERRI: It's - - - it's - - -

6 JUDGE RIVERA: It's not some particular - -
7 -

8 MS. CAFERRI: - - - adding spec - - - more
9 specific additional behavior or conduct that is - - -

10 JUDGE RIVERA: But consciousness - - -

11 MS. CAFERRI: - - - made illegal.

12 JUDGE RIVERA: Isn't it mental
13 consciousness of what I'm doing or not doing and its
14 impact?

15 MS. CAFERRI: It certainly is, but it does
16 not require the instruction to the jury of an
17 additional mens rea on top of it. The words
18 "refuses, neglects, deprives, torture, injure, maim,
19 mutilate", all of those are very, very clear words
20 that any reasonable - - -

21 JUDGE PIGOTT: Well, neglect is an
22 interesting one because, it seems to me, usually,
23 when you're talking about someone being negligent,
24 that there are - - - you know, there's comparative
25 negligence. So I mean, he - - - maybe - - - maybe he

1 was, as - - - as counsel's saying, not treating the
2 dog as well as he could, but shouldn't the jury be
3 able to deci - - - you know, to decide what he's
4 doing with what little he has, and shouldn't that be
5 a charge in terms of what - - -

6 MS. CAFERRI: The charge was it - - - it
7 had all of those words in it, and to the extent the
8 jury needed to decide what to do, it was quite clear
9 that the gravamen here was he didn't feed the dog.
10 So the point - - -

11 JUDGE PIGOTT: Well, what words - - - what
12 - what - what - what words - what words did they put
13 in? Did the judge say, and by the way, if he is
14 unable to feed himself, that's a defense to this,
15 because this dog obviously is not as important as a
16 human being, and he - - - you wanted to preclude him
17 from putting in the fact that he didn't have any
18 money, and the judge says you can put that in. I
19 mean, does the jury get to say - - - you know, we're
20 sorry the dog is sick, but you know, this young man
21 was even sicker, and so you can't blame him.

22 MS. CAFERRI: It was up to the defendant to
23 either obtain the food, by using the resources - - -

24 JUDGE PIGOTT: No, you're - - -

25 MS. CAFERRI: - - - available - - -

1 JUDGE PIGOTT: - - - missing my point. I'm
2 saying, did the judge give the jury - - - you said,
3 you know, charge all of that. I mean, did he - - -
4 did the judge give the jury the type of instruction
5 that would allow them to mitigate what is - what is
6 charged with neglect?

7 MS. CAFERRI: No, there is no mitigation.
8 It is the actions, the conduct of any of those that
9 were charged that were deprived - - -

10 JUDGE FAHEY: So there is no - so there is
11 no defense that I can't feed myself so I can't feed
12 my dog.

13 MS. CAFERRI: That is not a defense.

14 JUDGE FAHEY: Correct. Okay.

15 MS. CAFERRI: That is in fact - - - that is
16 not a defense. And given the extremely poor
17 condition of this dog, while counsel says that it
18 wasn't apparent, it was apparent.

19 JUDGE FAHEY: Well, that's not - - - you
20 know, we can take the record for what it is, but the
21 way I read it - - - it was Dr. Reisman, he put him on
22 five out of five. I think the word he used was
23 emaciated and that he was a step away from death.

24 MS. CAFERRI: A step away from death, which
25 regardless of the long hair, it didn't matter; it was

1 obvious anyway. It was also obvious to the ASPCA
2 officer, when he came into the backyard, he said
3 usually with a longhaired dog, it's harder to tell,
4 but with this dog, I could tell; it was so apparent:
5 ribs, pelvis, skull, backbone - - - apparent. And as
6 far as the vet was concerned, he said in order to
7 score him on the Tufts scale, that is when he had to
8 put his hands on. It wasn't because he couldn't see
9 it, but to make a determination regarding just how
10 bad he was, one step away - - -

11 JUDGE RIVERA: Getting back to the language
12 - - - I know it's not necessarily applicable to this
13 defendant, but it is not true that the whole
14 provision lacks a mens rea - - - or - or a culpable
15 mental state. I mean, it does "or who willfully".

16 MS. CAFERRI: The statute has - - -

17 JUDGE RIVERA: You do have it somewhat. I
18 understand that that's not the provision - - -

19 MS. CAFERRI: That wasn't the provision - -
20 -

21 JUDGE RIVERA: - - - for that - - - for
22 this section. But it is not true that somehow the
23 entire provision - - -

24 MS. CAFERRI: I'll - - -

25 JUDGE RIVERA: - - - is about strict

1 liability.

2 MS. CAFERRI: The very end of the statute
3 that says will - - - "or willfully" does any of these
4 other things, that's really a catch-all phrase, and
5 so in the earlier parts of the statute, all of that
6 conduct is so specific, and the catch-all has the
7 "willfully" in there to - - - where "willfully"
8 fosters any act of cruelty or furthers an act of
9 cruelty. But even so, there's - - -

10 JUDGE READ: But you're saying that only -
11 that only applies to something that's not
12 specifically - - -

13 MS. CAFERRI: Yes.

14 JUDGE READ: - - - identified earlier?

15 MS. CAFERRI: Yes. And this is - - - this
16 was so specific and so clear, the condition of the
17 dog was poor; he was virtually clinically dehydrated
18 as well; filthy. So all of the sustenance or all of
19 the basic necessities, apart from the sustenance,
20 also were not provided to this dog. Shelter; he was
21 on a four-foot line, not even able to get to the
22 purported cinderblock - - -

23 JUDGE STEIN: Well, what statute - - -

24 MS. CAFERRI: - - - so - - -

25 JUDGE STEIN: - - - what part of the

1 statute does the lack of shelter - - -

2 MS. CAFERRI: That - - - that is actua - -
3 - that evidence was not put in for the part of the
4 statute. It's only the depravation or the starvation
5 of the dog. All of that other evidence - - -

6 JUDGE STEIN: The whole statute was read to
7 the jury, right?

8 MS. CAFERRI: Right. All of the other
9 evidence, however, was to indicate the unbelievable
10 woeful condition that the dog was in; it was
11 additional evidence, the filth. All of those things
12 that were also wrong with the dog, apart from the
13 starvation, nearly to death, showed that the
14 defendant was not even giving him what he could for
15 free: exercise, water, shelter, grooming. All of
16 those - - -

17 JUDGE ABDUS-SALAAM: Counsel, your
18 adversary, I think, points out in the papers that
19 were we to agree with you, that we'd be setting a
20 higher bar for - - - a legal bar here for animals
21 than we would be for children. For example, if this
22 defendant happened to have a car, and he left the dog
23 and a child in the car, then because the statute
24 involving the child would involve some mens rea, but
25 this one wouldn't, he could be convicted of - - - you

1 know, of - of starving this dog or having - - -
2 somehow harming the dog from heat or something else,
3 whereas he might not be convicted for the same thing
4 involving the child.

5 MS. CAFERRI: There's scores of statutes
6 that protect children, and certainly if the defendant
7 did to a child what he did to this dog, it wouldn't
8 be a misdemeanor, it would be a felony. But the
9 comparison that - - -

10 JUDGE ABDUS-SALAAM: But he could at least
11 argue that, well, I didn't know that if I left this
12 child in this condition in the car - - - there may be
13 some possibility - - -

14 MS. CAFERRI: No, actually, the - - - the
15 provision in the AML about leaving a dog in the car
16 actually does have a knowledge requirement to it,
17 same as the child's endangerment.

18 But the child endangerment statute is
19 completely different from the statute that we're
20 talking about. That, in both its conduct and result,
21 is so broad and sweeping that there must be some mens
22 rea attached to it, certainly because something that
23 is likely to - - - conduct, not specified conduct,
24 but conduct that's likely to be injurious to the
25 physical, mental, moral welfare of a child must have

1 some - - - some mens rea attached to it, as opposed
2 to this particular statute, combined with 43, so
3 they're very specific acts which are prohibited,
4 which anyone would know are subject to regulation and
5 are prohibited by law.

6 And so it is not the same thing as the
7 child endangerment statute, and a child, certainly,
8 that was tied up in the back yard, tied to a four-
9 foot line, not given water, food, shelter, and was
10 there to be eaten by fleas and flies, would be - - -
11 you know, that would be a very gross felony.

12 CHIEF JUDGE LIPPMAN: Okay, counselor.
13 Thank you.

14 MS. CAFERRI: Thank you so much.

15 CHIEF JUDGE LIPPMAN: Counselor, rebuttal?

16 MR. SCHATZ: Thank you. I'd like to start
17 with the point that - - - that Ms. Caferra started
18 with, which is that there is no mens rea in Section
19 353, that there is no mens rea present in the
20 statute.

21 I'll direct the court to a decision of the
22 United States Supreme Court that came out yesterday,
23 the *Elonis* case. It says, "The fact that the statute
24 does not specify any required mental state, however,
25 does not mean that none exists." That's the entire

1 idea here. We presume against strict liability,
2 notwithstanding the fact that there's an absence of
3 mens rea in the statute. And so here, the court's
4 job is to examine whether or not there's a clear
5 legislative intent to impose strict liability.
6 Unless the court finds there is a clear legislative
7 intent, its job is to construe the statute as one of
8 mental culpability.

9 JUDGE RIVERA: Well, what does it mean to
10 have "willfully" at the end of this, but not anything
11 like that term elsewhere in the provision?

12 MR. SCHATZ: I think that's - - - I think
13 that's instructive in favor of our position, that the
14 statute is strongly suggestive of mens rea, even
15 though it doesn't include terminology that we would
16 commonly associate with - - - with - - - with Section
17 - - - the mens rea elements in Section 15.05. So the
18 fact that the statute does include some mens rea is
19 completely inconsistent with the idea that the
20 statute is a strict liability statute, which is the
21 position the People are taking in this case.

22 And I think once you're in the realm of
23 mens rea, you - - - there - - - there - - - there's
24 reversible error. I think the - - - the - - - the
25 People pounded the table in their closing argument

1 that whether or not what the defendant did was
2 intentional, knowing, anything like that, you have to
3 convict if you find the dog was malnourished.

4 In this case, it was essentially stipulated
5 that the dog was malnourished. It was - - - the dog
6 was in terrible condition. It's a trazic - - -
7 tragic situation, but the - - - but the - - - the
8 question for the jury was - - - should have been
9 whether or not the defendant had a mens rea with
10 respect to the dog's condition. That's the bedrock
11 presumption of our criminal law, is that you have to
12 have an act and you have to have a mens rea. And the
13 United States Supreme Court has affirmed that as - -
14 - as recently as yesterday, and that's what we're
15 asking the court to do here.

16 CHIEF JUDGE LIPPMAN: Okay, counsel.

17 MR. SCHATZ: Thank you.

18 CHIEF JUDGE LIPPMAN: Thank you both.

19 (Court is adjourned)

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Curtis Basile, No. 113 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Sharona Shapiro

Signature: _____

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Date: June 9, 2015