IN THE COURT OF APPEALS OF IOWA

No. 4-381 / 93-1559

FILED
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CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

LENNIE D. and JEAN C. THOMPSON,

Appellants.

Appeal from the Iowa District Court for Jasper County, John P. Crouch, District Associate Judge.

Defendants appeal their convictions of cruelty to animals resulting in serious injury, cruelty to animals without injury, and improper disposal of dead animals, in violation of Iowa Code sections 717.2 and 167.18 (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Andi S. Lipman, Assistant State Appellate Defender, for appellants.

Bonnie J. Campbell, Attorney General, Mary Tabor, Assistant Attorney General, James Wilson, County Attorney, and Richard J. Scieszinski, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Habhab and Huitink, JJ.

HUITINK, J.

Lennie and Jean Thompson appeal their convictions of cruelty to animals resulting in serious injury, cruelty to animals without injury, and improper disposal of animals. We affirm.

Thompsons brought a beagle to Dr. Eric Jayne, a veterinarian, for treatment of a wound to the animal's rectum. The Thompsons indicated the dog had sustained the wound the previous day. Jayne performed three hours of surgery to treat the wound, which appeared to be at least ten days old.

Jayne suspected animal abuse and contacted Judy Salier, the director of the Newton Animal Rescue League. Salier obtained a search warrant for the Thompsons' home and kennels. Upon execution of the search warrant, forty-one dogs were observed. Jayne personally inspected at least twenty-five dogs, found them to be dehydrated and malnourished, and ordered five seized. Barrels of water in the kennels were frozen and appeared to have marks where dogs had attempted to lick the ice. Jayne and Salier noted an absence of adequate food and bedding. They also noted a great deal of accumulated feces. At least four dog carcasses, in varying stages of decomposition, were found in a barrel. Several dogs found nearer to the Thompsons' trailer appeared to be in better condition than those in the kennels. Dogs found inside the trailer were in generally good condition. Salier videotaped the execution of the search warrant.

Jayne treated the five seized animals. His assistant, Stacy Carpe, took photographs of each of the dogs during treatment.

The court overruled Thompsons' motions for directed verdict and judgment of acquittal. Thompsons were convicted of one count of cruelty to animals resulting in serious injury, five counts of cruelty to animals without injury, and four counts of improper disposal of dead animals.

On appeal Thompsons contend there was insufficient evidence to support their convictions on the charge of cruelty to animals resulting in serious injury. They argue the State failed to establish they intentionally caused the injury or they intentionally denied the dog necessary medical care.

Our scope of review is for errors at law. Iowa R. App. P. 4. A verdict will be upheld where there is substantial evidence to support the charge. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. Id.

The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). Direct and circumstantial evidence are equally probative so

long as the evidence raises "a fair inference of guilt and [does] more than create speculation, suspicion, or conjecture." State v. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981). We consider all the evidence at trial, not just the evidence that supports the verdict. Bass, 349 N.W.2d at 500.

Dr. Jayne testified the injury was at least ten days old. His determination was based on the extent of the infection and the amount of necrotic tissue surrounding the wound. He testified the dog would have died within two to five days without treatment. Stacy Carpe testified Thompsons informed her they knew of the injury but failed to get medical treatment for the dog due to a lack of money. Jean Thompson denied making any admissions about their knowledge of the injury.

From this evidence, the trial court could reasonably infer from the Thompsons' conduct that they intentionally deprived their dog of necessary medical care. We find sufficient evidence to support the trial court's verdict and affirm on this issue.

Thompsons also contend there was insufficient evidence to support their convictions for four counts of improper disposal of dead animals. Thompsons argue they were unable to comply with the twenty-four-hour disposal requirement of Iowa Code section 167.18 due to the frozen ground conditions.

Evidence established there were four dogs in various stages of decomposition found in a barrel at Thompsons' kennel. Allen Teepe, a state livestock investigator, testified the twenty-four-hour disposal requirement is not strictly enforced and that in the winter he recommends the method of storage used by the Thompsons. However, Teepe testified if an animal was greatly decomposed he would assume it had been around in warmer weather.

Selectivity in prosecution is not a defense under section 167.18. See State v. Walker, 236 N.W.2d 292, 295 (Iowa 1976). Our function is limited to reviewing the evidence to determine if it is sufficient to support the conviction. We find that it is. The reasonableness of the county attorney's decision to prosecute is not a matter with which we are concerned since that is a political rather than a legal issue.

Finally, Thompsons contend the trial court erred in admitting the videotape of the search and the photographs of the dogs into evidence. They claim there was lack of foundation to support admission of the videotape and photographs.

The determination whether sufficient foundation has been laid is within the sound discretion of the trial court. State v. Farnum, 397 N.W.2d 744, 745 (Iowa 1986). Proper foundations for videotape and photographs are established when (1) a witness who observed what is depicted testifies and (2) the witness states the

photographs and videotapes fairly represent what they show. Iowa R. Evid. 901(a); Farnum, 397 N.W.2d at 745.

Both Dr. Jayne and Judy Salier testified as to the accurate depiction of the kennels and surrounding area contained in the videotape. These witnesses also testified in detail as to the conditions of the five dogs depicted in the photographs. Proper foundations for the videotape and the photographs were established. Accordingly, we find the trial court did not abuse its discretion in admitting these items into evidence.

We determine any other issues the parties may have raised are either covered by this opinion or are without merit. The district court is affirmed in its entirety. The parties shall be responsible for their respective costs.

AFFIRMED.