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FILED
Dec 15 2010, 10:40 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

RICK HILL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 01A02-1002-CR-181
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ADAMS SUPERIOR COURT
The Honorable Patrick R. Miller, Judge
Cause No. 01D01-0908-FD-72

December 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Rick Hill appeals his convictions for twelve counts of class A misdemeanor cruelty to an animal and one count of class D felony improper disposal of an animal that has died.

We affirm.

ISSUES

1. Whether sufficient evidence supports Hill's convictions.

2. Whether the trial court erred in issuing an order in limine that barred Hill from arguing a theory of jury nullification in his opening and closing remarks.

3. Whether Hill's twelve convictions for cruelty to an animal constituted a single offense under the continuing crime doctrine.

FACTS

At all times relevant herein, Hill owned thirty-seven[1] Arabian horses, which he stabled in his Adams County facility. In July of 2009, Kim Myers observed "underweight" horses with "just skin hanging on their bones" and "protruding" ribs and backbones on Hill's property. (Tr. 272, 277, 275). There was no available feed and "a big stock tank with green water in it." (Tr. 273). Myers contacted Hill's neighbor, Eric Stockman, in hopes of reaching Hill.

[1] The record reveals that a foal was born and another horse was euthanized during the pendency of this action.

When Myers reached Eric, she learned that Hill was out of town; and that Eric was charged with the care of Hill's herd. Since mid-May of 2009, Eric and Hill had developed "an understanding" that Eric would care for the horses "if [Eric] could tell [that Hill] was gone." (Tr. 281). Hill's trips ranged in duration from "a few days" to "two weeks." (Tr. 281). On multiple occasions when Hill was away, Eric bought hay "to fill in . . . [because Hill] didn't have adequate supply." (Tr. 282).

Eric enlisted the aid of his father, Don Stockman. Don became concerned about the condition of Hill's horses and the facility in general, because "there was [sic] too many horses and too little feed"; "a lot of [the horses] were skin and bones, thin, real thin"; and the water supply was "[d]irty, filthy, and a lot of the containers had green moss in the[m]." (Tr. 292, 292, 293). Don reported the conditions to the Adams County Sheriff's Department.

In July and August of 2009, Officer Shane Rekeweg of the Adams County Sheriff's Department received complaints from Myers and Don regarding the condition of Hill's horses. He subsequently sought and obtained a search warrant for Hill's premises. On August 10, 2009, Rekeweg and two veterinarians[2] executed the search warrant. They photographed the horses, numbered them sequentially, and assessed their physical condition; they also photographed the general condition of the facility.

Their search revealed the decaying carcass of a horse or cow in Hill's barn. (Tr. 390). The carcass showed no signs of having been previously buried or burned.

[2] Shelly Chavis and Jennifer Price of the State Veterinarian's office were among the experts who assisted Rekeweg.

Rekeweg and the veterinary experts observed that although Hill had provided some feed and water for his horses, the hay was situated such that it was inaccessible to the horses; the water container(s) "had algae growing in [them] or [contained] mosquito larvae," (tr. 316); and the grazing pasture "was mostly weeds," which "[m]ost horses won't eat." (Tr. 315). Thirteen of the horses (numbers #4, 6, 9, 10, 11, 14, 19, 21, 23, 27, 28, 30, and 36, respectively) appeared to be malnourished and rated approximately "ones or twos" on the body condition scale. (Tr. 364).

On August 11, 2009, the State charged Hill with one count of class A misdemeanor cruelty to an animal. On August 12, 2009, the trial court issued an order to temporarily confiscate the horses. On August 14, 2009, the trial ordered the horses removed to the Adams County fairgrounds.[3] On August 19, 2009, the State amended its charging information to reflect the following charges: count 1, class A misdemeanor cruelty to an animal; count 2, class D felony improper disposal of an animal that has died; and counts 3 -15, thirteen additional counts of class A misdemeanor cruelty to an animal.

[3] On September 15 and 21 of 2009, Adams County moved to have the horses placed into temporary foster care placements, which motion was granted on September 22, 2009. On September 15 and 21, 2009, attorney for Adams County, Mark Burry, filed motions to approve an agreement for temporary placement and adoption of the horses; and on September 22, 2009, the trial court entered its order approving the county's request for temporary placement. On October 9, 14, and 16, 2009, the State moved for permanent placement of the horses.

On October 30, 2009, the County filed a motion to set bond for the care and custody of the animals and request for final placement and hearing. On November 3, 2009, the trial court issued an order establishing bond. On November 30, 2009, Hill filed a real estate bond for $19,054.46; however, he failed to post further bonds as required by the trial court. Subsequently, on December 30, 2009, Adams County moved for an order authorizing final disposition of the thirty-eight horses, which the trial court issued on January 4, 2010.

On January 6, 2010, the State filed a second amended information, wherein it alleged the following: count 1, class D felony improper disposal of animals that have died; and counts 2 – 14, thirteen counts of class A misdemeanor cruelty to horses.

On January 6, 2010, the State filed a motion in limine requesting, in pertinent part, that Hill be barred from arguing a theory of jury nullification in his opening or closing remarks. At a hearing on January 8, 2010, defense counsel argued,

> I don't know that I had specific jury nullification argument in mind, but, but I don't want to be in a position where I'm foreclosed from arguing that this isn't, isn't the type of thing that the criminal law's for or something of that nature given, given that in my opinion [my] client has, has the right to determine the best way to raise his animals so if . . . the state is saying that that's a jury nullification argument, I believe I have the right to make that argument.

(Tr. 164). The trial court issued an order in limine barring Hill "from arguing jury nullification in opening or closing arguments." (App. 122).

On January 11 and 12, 2010, the trial court conducted a jury trial. Among its preliminary instructions to the jury, the trial court stated, "Under the Constitution of Indiana, you have the right to determine both the law and the facts. The Court's instructions are your best source in determining the law." (App. 125). In its final instructions to the jury, the trial court reiterated this instruction. (App. 93).

The jury found Hill guilty of class D felony improper disposal of an animal after it has died and twelve class A misdemeanor counts of cruelty to an animal, and found him not guilty of one count of class A misdemeanor cruelty to an animal. On February 9, 2010, the trial court sentenced Hill to 545 days on the improper disposal of a dead animal

conviction and 365 days on each of the animal cruelty convictions. The court ordered the animal cruelty sentences served concurrently with one another, but consecutive to the sentence for improper disposal of a dead animal. The trial court also ordered Hill to make restitution in the amount of $9,296.84 to reimburse Adams County for the cost of caring for and placing the horses. Hill now appeals.

Additional facts will be provided as necessary.

DECISION

Hill argues that the evidence is insufficient to support his convictions; that the trial court erred in issuing the order in limine as to jury nullification; and that his twelve convictions for cruelty to an animal constituted a single offense under the continuing crime doctrine.

1. Sufficiency of the Evidence

Hill argues that the State failed to present sufficient evidence that he improperly disposed of a dead animal. He does not challenge the State's evidence of the elements, but rather, invites us to construe the applicable statute to include an additional element -- namely, that the dead animal's body actually produced a nuisance. We cannot.

Our standard of review with regard to sufficiency claims is well settled. In reviewing a sufficiency of the evidence claim, this Court does not reweigh the evidence or judge the credibility of the witnesses. *Fought v. State*, 898 N.E.2d 447, 450 (Ind. Ct. App. 2008). We consider only the evidence most favorable to the judgment and the

reasonable inferences drawn therefrom, and will affirm if the evidence and those inferences constitute substantial evidence of probative value to support the judgment. *Id*.

Indiana Code section 15-17-11-20 provides, in part, as follows:

> (a) A person who owns or cares for an animal that has died from any cause shall dispose of the animal's body not later than twenty-four (24) hours after knowledge of death so as not to produce a nuisance.[4] * * *
>
> (b) The board may adopt rules to allow alternate methods for the safe, orderly, and efficient disposal of dead animals.
>
> (c) The board may adopt rules and issue orders restricting the use of the disposal methods described in subsection (a) to control disease.

I.C. § 15-17-11-20 (emphasis added).

Hill argues that we should "interpret [Indiana Code section 15-17-11-20(a)] such that so long as no nuisance results, no criminal action will lie for improper disposal of a dead animal." Hill's Br. at 7. He maintains that his proposed statutory construction "better effectuates the legislative intent" because "[t]he interest of the State lies in the public health, not in the proper burial of animals per se." *Id*.

The primary goal in statutory construction is to determine, give effect to, and implement the intent of the legislature. *State v. Dugan*, 793 N.E.2d 1034, 1036 (Ind. 2003). The best evidence of legislative intent is the language of the statute itself, and all words must be given their plain and ordinary meaning unless indicated by statute. *Hendrix v. State*, 759 N.E.2d 1045, 1047 (Ind. 2001). If the language of a statute is clear

[4] Subsection (a) also prescribes various proper means of disposing of animal remains.

and unambiguous, it is not subject to judicial interpretation. *Dunn v. State*, 900 N.E.2d 1291, 1292 (Ind. Ct. App. 2009).

The instant statute is not subject to judicial interpretation. The clear and unambiguous language of Indiana Code section 15-17-11-20(a) provides that an animal owner or caregiver must take steps to dispose of the dead animal within twenty-four hours of learning of the death. When read together with Chapter 1 of Article 17, which states the various "purposes of this article," our legislature's intent with respect to the "so as not to produce a nuisance" language is also clear. *See Merritt v. State*, 829 N.E.2d 472, 475 (Ind. 2005) (Statutes concerning the same subject matter must be read together to harmonize and give effect to each.).

In Chapter 1, our legislature asserts its concurrent aims of (1) "promot[ing], encourag[ing] and advanc[ing] the prevention, detection, control, and eradication of diseases and pests affecting the health of animals within Indiana"; (2) "safeguard[ing] the public health and welfare of the citizens of Indiana against health hazards, annoyances, and nuisances that might arise" from animal feeding conditions; and (3) "control[ling] and regulat[ing]" the disposal of "the carcasses of dead animals not slaughtered and intended for human foods" to ensure that the "spread of animal diseases in Indiana is controlled and that the public health and welfare of the citizens of Indiana is conserved and protected against dangers, annoyances, and nuisances that might arise from carcasses . . .and disposal of carcasses." I.C. § 15-17-1-1(A).

Hill's proposed construction is inconsistent with our legislature's express aims in enacting the statute. He essentially argues that the only way to convict an individual of the offense is to prove that the very eventuality that the State seeks to prevent has actually occurred. This interpretation defies common sense, and further disregards our legislature's intention to punish unreasonable delay. Stated differently, the punishable criminal act herein is delay, not the actual occurrence of the feared contingency -- a hazard to human and/or animal health.

At trial, the State presented the following testimony from Eric Stockman:

> Q: [O]n any of the occasions that you were on the defendant's property, did you seen any animal remains?
>
> A: Yes.
>
> Q: What did you see?
>
> A: Just in the back building there was a I assume was a mare, a horse that had been there probably at least a year.
>
> Q: Okay.
>
> A: From what Rick [Hill] told me the, it had passed at least a year ago before I was around. It had strangles[5] or something that it . . .
>
> * * *
>
> Q: And this was on the floor of a barn?
>
> A: Um hum.
>
> Q: Okay and the defendant told you it had been there from the year before?
>
> A: Yes.

[5] The record reveals that strangles is a highly contagious streptococcal infection that occurs in horses.

(Tr. 285).

The foregoing evidence is sufficient to sustain Hill's conviction. We find that a reasonable jury could conclude from this evidence that Hill improperly disposed of a dead animal.

2. Motion in Limine

Next, Hill argues that the trial court abused its discretion in granting the State's motion in limine as to his jury nullification[6] theory. In recognition of the fact that he failed to preserve the alleged error with a timely objection at trial, he alleges fundamental error.

Generally, a failure to object during the trial court proceeding results in waiver of that issue for appeal unless the unpreserved error constitutes fundamental error. *Kimbrough v. State,* 911 N.E.2d 621, 634 (Ind. Ct. App. 2009). To rise to the level of fundamental error, an error "must constitute a blatant violation of basic principles, the harm or potential for harm must be substantial, and the resulting error must deny the defendant fundamental due process." *Brown v. State,* 913 N.E.2d 1253, 1258 (Ind. Ct. App. 2009). "The standard for fundamental error is whether the error was so prejudicial to the rights of the defendant that a fair trial was impossible." *Boatright v. State,* 759 N.E.2d 1038, 1042 (Ind. 2001).

[6] Jury nullification is "[a] jury's knowing and deliberate rejection of the evidence or refusal to apply the law either because the jury wants to send a message about some social issue that is larger than the case itself or because the result dictated by law is contrary to the jury's sense of justice, morality, or fairness." BLACK'S LAW DICTIONARY 875 (8th ed. 2004).

Article 1, section 19 of the Indiana Constitution provides that "[i]n all criminal cases whatever, the jury shall have the right to determine the law and the facts." In the same vein, Indiana Code section 35-37-2-2(5) provides, in part,

> In charging the jury, the court must state to them all matters of law which are necessary for their information in giving their verdict. The judge shall inform the jury that they are the exclusive judges of all questions of fact, and that they have a right, also, to determine the law.

Hill argues that the trial court's order in limine "prevented [him] from expounding upon this instruction or relying upon his established constitutional right to have the jury decide the law of his case." Hill's Br. at 11. He acknowledges that the jury was correctly informed that it determined the law and the facts of the case; however, he cites Justice Rucker's dissent from the majority in *Walden v. State*, 895 N.E.2d 1182 (Ind. 2008) for the proposition that a jury has the right to decide whether our legislature intended the law to apply to the facts of the case-at-bar. He urges us to employ Justice Rucker's reasoning herein. Hill's Br. at 11.

While it is true that Justice Rucker argued that a jury's right to determine the law "encompasses . . . whether the legislature intended [the statutory elements of the offense] to be applied to the facts presented," *id.* at 1187, such is not controlling;[7] and, moreover, does not give rise to reversible error herein. "Indiana juries do not have a broad general nullification power in criminal cases." *Walden*, 895 N.E.2d at 1184; *see also Holden v. State*, 884 N.E.2d 903 (Ind. Ct. App. 2008) (finding no abuse of discretion from trial

[7] Hill acknowledges that dissents lack precedential weight.

court's refusal of tendered jury instruction on jury nullification because Article 1, section 19 does not provide right of jury nullification).

Absent any binding legal authority in that regard, we cannot say that the trial court's order in limine barring Hill from arguing a theory of jury nullification during the guilt phase of his trial gave rise to egregious error that denied Hill a fair trial. We find no fundamental error.

3. Continuing Crime Doctrine

Last, Hill argues that his failure to provide adequate nutrition for his horses constituted a single negligent act under the continuing crime doctrine. We cannot agree.

The continuing crime doctrine defines those instances where a defendant's conduct amounts only to a single chargeable crime and prevents the State from charging a defendant twice for the same continuous offense. *Buchanan v. State*, 913 N.E.2d 712, 720 (Ind. Ct. App. 2009), *trans. denied.* This doctrine "essentially provides that actions that are sufficient in themselves to constitute separate criminal offenses may be so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction." *Firestone v. State*, 838 N.E.2d 468, 471 (Ind. Ct. App. 2005).

In support of his claim, Hill directs us to *Buchanan v. State*, 913 N.E.2d 712 (Ind. Ct. App. 2009). *Buchanan*, however, is factually inapposite. In *Buchanan*, shortly before robbing a bank at gunpoint, Buchanan first created a diversion by telephoning two schools with bomb threats. He was subsequently tried and convicted of felony robbery,

felony criminal confinement, felony intimidation, felony false reporting, and felony theft. On appeal, we found that Buchanan's false reporting and intimidation offenses were "so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction." *Id.* at 721-22. Finding that Buchanan's false reporting and intimidation offenses "amount[ed] only to a single chargeable crime," we vacated his convictions therefor. *Id.* at 721.

Unlike Buchanan's false reporting and intimidation offenses, the evidence here reveals that Hill's offenses did not constitute a single transaction or a single chargeable crime, but rather was comprised of several acts or omissions over a considerable period of time. At trial, the State presented the following evidence: Hill's horses (numbers #4, 6, 9, 10, 11, 14, 19, 21, 23, 27, 28, 30, and 36, respectively) were severely malnourished, stemming from Hill's sustained failure to provide adequate feed, water, or grazing pastures. Witness testimony established that Hill occasionally traveled from his premises (for up to two weeks at a time) without first making adequate provisions "to keep the[ ] [horses] all at a[n] acceptable body condition score." (Tr. 392). Equine veterinarian Larry Smith testified that some of Hill's horses rated a one or two on the body condition scale, where "basically one is about as emaciated as you can get," and five and six are ideal. (Tr. 344). Smith testified further that such deterioration would occur over the span of "about six months . . . if [the horses] started out at a 5 on the body condition [scale] down to the ones and twos that these were." (Tr. 362).

The foregoing facts establish that day after day over the span of as many as six months, Hill failed to provide adequate and accessible feed, maintain an uncompromised water supply, and provide satisfactory grazing land. As a result of his protracted neglect, specific horses within his herd sustained adverse health effects.[8] *See* I.C. § 35-46-3-7(a). We cannot say that Hill's crimes were "so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction." *Firestone*, 838 N.E.2d at 471. *See Davis v. State*, 907 N.E.2d 1043 (Ind. Ct. App. 2009) (upholding on alternate grounds defendant's twelve convictions for cruelty to an animal (dog fighting) where he provided inadequate food and water, his dogs were emaciated and malnourished, and a decomposing dog carcass was found on his property).

Affirmed.

BROWN, J., and BRADFORD, J., concur.

[8] The record reveals that due to its grave condition, one of Hill's horses had to be euthanized shortly after being seized.