IN THE COURT OF APPEALS OF IOWA

No. 7-481 / 06-1316
Filed October 12, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT EUGENE WEST,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mary E. Howes (motion to dismiss) and Douglas C. McDonald (trial), District Associate Judges.

Robert E. West appeals his convictions for two counts of animal abuse and one count of criminal mischief in the fifth degree. **REVERSED.**

Kent Simmons, Davenport, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, William E. Davis, County Attorney, and Marc Gellerman, Assistant County Attorney, for appellee.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

MILLER, J.

Robert E. West appeals his convictions for two counts of animal abuse and one count of criminal mischief in the fifth degree. He contends the trial court (1) erred in overruling his motion to dismiss, (2) erred in denying his motion for judgment of acquittal, (3) abused its discretion in overruling his motion in limine and admitting prejudicial and irrelevant evidence, (4) erred in failing to properly instruct the jury, and (5) erred by answering a question the jury posed without informing or consulting with counsel. We reverse.

I. BACKGROUND FACTS AND PROCEEDINGS.

From the evidence presented at trial the jury could find the following facts. Robert West had been raising white-tailed deer on his rural Scott County property for the past twenty years. He raises the deer for sale to petting zoos, game preserves, and for breeding purposes. He keeps the herd of approximately one hundred deer in eleven different pens within a large fenced area.

On January 26, 2006, around 4:30 p.m. West's wife noticed that some of the deer were running around in a pen in an agitated manner. West went out on the deck of their home and could hear a dog or dogs barking. West grabbed his twenty-gauge shotgun and ran toward the deer pen. There he saw two dogs running back and forth along his deer-pen fence barking at about fifteen deer in that area. According to West the deer were "bouncing off the fences." West shot and killed both dogs.

The dogs were owned by West's neighbor, Stephen Piatak. Piatak had bought the property adjacent to West in 2005. He built a home and horse barn on the property and moved in with his family in late October 2005. They already owned one dog when they moved in and had acquired the other one from the animal shelter about a month before the shooting. Both dogs had their proper shots and tags.

At some point after Piatak moved in he had removed a portion of a fence located about twenty feet from West's deer-pen fence, doing so in order that electrical service to Piatak's property could be relocated. The fence was located near the boundary line between the West and Piatak properties, although it was unclear both at the time of removal and at the time of trial whether it was located on the boundary line, on West's property, or on Piatak's property. Removal of this portion of the fence allowed Piatak's dogs to get into a twenty-foot-wide "brushy" area between the two fences.

Piatak testified that on the day of the shooting his dogs were "outside playing in the field someplace" when he heard them barking from the property line between his property and West's. He called to them, but shortly after heard a gunshot, a yelp, and a second gunshot. When he heard the shots he was in the process of running toward where the dogs were. As he reached the top of a hill he could smell gun smoke and saw West walking away from the fence line holding a gun. Piatak testified that when he asked West what had happened, West replied he had already lost one deer and that he had $15,000 worth of deer to protect.

The dogs' bodies were found near the boundary line between Piatak's and West's properties. Piatak called the sheriff and deputies responded. West told a deputy that he shot the dogs because they were scaring his deer, and deer then get excited and run into the fences and injure themselves. At that time it was dark and the deputy did not see any dead or injured deer nor did West mention any to him. West did tell the deputy he did not know who owned the dogs when he shot them. Piatak disputes this, and testified that prior to the shooting he had come into contact with West and waved at him on several occasions while he was walking the dogs.

The next morning West called the sheriff's office to have someone come back out to his property. He told the deputy who responded that because the incident the day before had occurred as night was falling he had been unable to see all the deer, but that first thing the next morning he had found his prize fawn buck dead from a broken neck. He believed the broken neck had been caused by the buck throwing itself against the fence when the deer were being chased by the barking dogs. West stated the fawn had been fine the prior afternoon at feeding time. He claimed the particular fawn was going to be used for breeding purposes and was worth $30,000.

The State charged West, by trial information, with two counts of animal abuse, in violation of Iowa Code section 717B.2 (2005), and one count of criminal mischief in the fourth degree, in violation of sections 716.1 and 716.6. West filed a motion to dismiss, seeking dismissal of the two counts of animal abuse. He argued he had a right, under the facts and Iowa Code section 351.27, to destroy

the dogs in order to protect his livestock, and his right under that provision was a complete defense to the section 717B.2 charges. Following hearing the court denied the motion.

The case proceeded to jury trial. At the close of the State's case-in-chief the trial court reserved West's right to make a motion for judgment of acquittal until after the presentation of all the evidence. After the presentation of all the evidence West moved for judgment of acquittal on all counts. The court denied the motion. The jury found West guilty of the two counts of animal abuse and the lesser included offense of criminal mischief in the fifth degree.

West filed a motion for new trial. The court overruled the motion and sentenced West to pay a fine of $2,000 on each of the animal abuse charges and $500 on the criminal mischief charge. Concurrent terms of one year in jail were imposed and suspended on the animal abuse charges and West was placed on unsupervised probation for one year.

West appeals his convictions, contending the trial court (1) erred in overruling his motion to dismiss, arguing the minutes of evidence did not allege the particulars that would constitute any offense charged, (2) erred in denying his motion for judgment of acquittal, thus violating his constitutional right to due process of law, (3) abused its discretion in overruling his motion in limine and admitting photographs showing the dead dogs, and in admitting irrelevant evidence of a quiet title action by West, (4) erred in failing to properly instruct the jury, and (5) erred by improperly answering a legal question the jury posed without informing or consulting with counsel.

II. MERITS.

The two statutes at issue in this case are section 717B.2(8) and section 351.27. Section 717B.2 provides, in relevant part,

> A person is guilty of animal abuse if the person intentionally . . . destroys an animal owned by another person. . . . This section shall not apply to any of the following:
>
> . . .
>
> (8) A person reasonably acting to protect the person's property from damage caused by an unconfined animal.

Section 351.27 provides,

> It shall be lawful for any person to kill a dog, wearing a collar with a rabies vaccination tag attached, when the dog is caught in the act of worrying, chasing, maiming, or killing any domestic animal or fowl, or when such a dog is attacking or attempting to bite a person.[1]

West argues, as he did in the trial court, that section 351.27 provides an absolute defense to the charges of animal abuse and that he had the right under the facts and this statute to summarily kill Piatak's dogs because they were worrying and chasing his deer. He contends that under facts as described in the statute no additional "reasonableness" requirement applies and the trial court was incorrect to graft the "reasonably acting" standard from section 717B.2(8) onto section 351.27. The proper interpretation and interplay of these two statutes is the crux of West's argument and is dispositive of all issues presented in this appeal.

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[1] We note the parties agree, and there is no dispute, that West's deer are included in and fit under the definition of "domestic animal" in section 351.27. Accordingly, for purposes of this decision we will assume, without so deciding, that the deer in question are domestic animals under this statute.

We first address West's argument that the court erred in denying his motion for judgment of acquittal. To preserve error for appellate review on a claim of insufficient evidence, generally the defendant must make a motion for judgment of acquittal at trial that identifies the specific grounds raised on appeal. *State v. Truesdell,* 679 N.W.2d 611, 615 (Iowa 2004). "However, we recognize an exception to the general error-preservation rule when the record indicates that the grounds for a motion were obvious and understood by the trial court and counsel." *State v. Williams,* 695 N.W.2d 23, 27 (Iowa 2005).

West's motion for judgment of acquittal was general in nature. However, in both a hearing on his motion to dismiss and again at the time of jury selection West had made extended arguments to the court regarding the proper interpretation and application of sections 351.27 and 717B.2(8), and had argued that the facts did not support the charges. We conclude that although West's motion for judgment of acquittal was general, it is clear from the record as a whole that the grounds for the motion were obvious and understood by the trial court and counsel. Furthermore, despite the State's argument to the contrary, we believe these arguments were broad enough and understood by all involved to pertain to the criminal mischief charge as well as the two counts of animal abuse.[2] Thus, West's claim is sufficiently preserved for our review. *Id.*

Our scope of review of sufficiency-of-evidence challenges is for correction of errors at law. *State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997). In reviewing such challenges we give consideration to all the evidence, not just that

[2] Criminal mischief involves acts "by one who has no right to so act." If under section 351.27 and the facts West acted within his rights, it cannot be said that he "ha[d] no right to so act."

supporting the verdict, and view such evidence in the light most favorable to the State. *State v. Schmidt*, 588 N.W.2d 416, 418 (Iowa 1998). We will uphold a trial court's denial of a motion for judgment of acquittal if there is substantial evidence to support the defendant's conviction. *State v. Kirchner*, 600 N.W.2d 330, 333 (Iowa Ct. App. 1999). Substantial evidence is such evidence as could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id*. at 334.

Our review of issues of statutory interpretation is also for correction of errors at law. *State v. Stratmeier*, 672 N.W.2d 817, 820 (Iowa 2003). "'Where the issue on appeal is not one of fact but rather one of statutory interpretation and application, the supreme court is not bound by trial courts determinations of law.'" *State v. Hornik*, 672 N.W.2d 836, 838 (Iowa 2003) (quoting *State v. Davis*, 271 N.W.2d 693, 695 (Iowa 1978)).

> In interpreting . . . statutes, our primary goal is to give effect to the intent of the legislature. That intent is gleaned from the language of the statute as a whole, not from a particular part only. Because we presume the legislature intends a just and reasonable result, we interpret statutes to avoid impractical or absurd results.

In re Detention of Betsworth, 711 N.W.2d 280, 283 (Iowa 2006) (internal quotations and citations omitted).

> The polestar of statutory interpretation is the intent of the legislature. We seek to ascertain and effectuate the true legislative intent. We must not only examine the language of the statute, but also its underlying purpose and policies, as well as the consequences stemming from different interpretations. In doing so, we must construe the statute in its entirety.

State v. Carpenter, 616 N.W.2d 540, 542 (Iowa 2000) (citations omitted); *see also Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v.*

Mobil Oil Corp., 606 N.W.2d 359, 363 (Iowa 2000) ("In interpreting the statute, our ultimate goal is to ascertain and give effect to the intent of the legislature. We look to both the language and the purpose behind the statute.") (citations omitted)).

The State concedes in its appellate brief that West's claim regarding the motion for judgment of acquittal turns on the statutory interpretation issue, and if the right to kill the dogs under facts described in section 351.27 is an absolute defense to animal abuse then the evidence is insufficient to support West's convictions for animal abuse. If, on the other hand, the statute imposes a "reasonableness" requirement, then the evidence is sufficient. For the following reasons we conclude section 351.27 does not contain an additional, unstated reasonableness requirement and it thus provides an absolute defense to the present charges of animal abuse. Accordingly, relying on the State's concession on appeal we conclude there was insufficient evidence to support West's convictions of animal abuse and the trial court erred in overruling his motion for judgment of acquittal as to those charges.

Rules of statutory construction can aid us in interpreting a statue to determine legislative intent. However, we resort to such rules only when the terms of a statute are ambiguous. *State v. Haberer*, 532 N.W.2d 757, 759 (Iowa 1995). We find nothing ambiguous about the language of section 351.27. Its language is plain and its meaning is clear. Under facts described in the statute it is "lawful for any person to kill a dog." The legislature has thus itself made a "reasonableness" determination and decided as a matter of law that it is

reasonable for a person to kill a dog under a circumstance described in section 351.27.

Assuming, without so deciding, that the terms of section 351.27 are ambiguous, application of pertinent rules of statutory construction leads us to the same interpretation of that statute. The legislature enacted relevant portions of Iowa Code chapter 717B in 1994. *See* 1994 Iowa Acts ch.1103, §§ 12-20, 22. As set forth above, this chapter initially makes it a crime to intentionally destroy "an animal owned by another person." Iowa Code §717B.2. However, this provision is subject to eleven exceptions, including one which provides that criminal liability does not apply to a "person reasonably acting to protect the person's property from damage caused by an unconfined animal." Iowa Code § 717B.2(8).

Section 351.27, set forth above in its entirety, was enacted in 1862 and provides that it is "lawful for any person to kill a dog . . . when the dog is caught in the act of worrying, chasing, maiming, or killing any domestic animal."[3] The legislature included no additional reasonableness requirement in the original version of the statute.

In 1994, the year it enacted chapter 717B, the same session of the legislature made some changes to the wording of section 351.27.[4] Significantly,

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[3] We note that the legislature amended section 351.27 during the 2007 session to delete the term "worrying." *See* S.F. 406, § 1, 82nd Gen. Assem. (Iowa 2007). The legislature again did not impose an additional "reasonableness" limitation on the right provided by the statute.

[4] The changes that were made to section 351.27 were minor, the most notable being simply to replace the term "license" with the term "rabies vaccination tag." *See* 1994 Iowa Acts ch. 1173, § 34.

while it included an express reasonableness limitation in section 717B.2(8), in amending section 351.27 it did not add similar language.

Chapter 717B and section 351.27 deal with similar subject matter. It is reasonable to assume that had the legislature intended the "reasonably acting" limitation found in section 717B.2(8) to apply to facts described in section 351.27, and to thus limit the right provided by section 351.27, it would have amended section 351.27 to so provide at the same time it enacted chapter 717B in 1994. It did not do so then or thereafter. It is not for us to do so now. *See Painters Local 246 v. City of Des Moines*, 451 N.W.2d 825, 827 (Iowa 1990) (holding that a court cannot alter and expand a statute by reading a term into the statute that the legislature chose not to provide).

Section 717B.2 is a broad and general statute, dealing with abuse of a broad range of animals. Section 351.27 on the other hand is a narrow and specific statute, dealing only with killing a dog under limited circumstances. To the extent any conflict between the two provisions exists, section 351.27 prevails unless it appears the legislature intended the contrary. *See City of Des Moines v. City Dev. Bd.*, 633 N.W.2d 305, 311 (Iowa 2001) ("Yet, if any conflict exists, the statute 'dealing with the common subject matter in a minute way[ ] will prevail over the general statute . . . unless it appears that the legislature intended to make the general [statute] controlling.'" (Omissions and alteration in original.) (Citation omitted.)). Nothing suggests that the legislature intended the broad and general provisions of section 717B.2 to control over the narrow, specific, and clear provision of section 351.27.

We conclude section 351.27 provides an absolute defense to a charge of animal abuse under section 717B.2. Based on the State's concession on appeal that if the right provided by section 351.27 is an absolute defense to animal abuse then the evidence is insufficient to support West's convictions for animal abuse, we conclude the trial court erred in denying West's motion for judgment of acquittal on the counts charging animal abuse. We must therefore reverse West's convictions on those two counts.

Our analysis is equally applicable to the charge of criminal mischief under section 716.1. West had a "right to so act" in killing the dogs because the legislature has determined through section 351.27 that such action is reasonable under facts such as those conceded to exist in this case. The trial court therefore should have granted West's motion for judgment of acquittal as to the criminal mischief count as well.

III. CONCLUSION.

For the reasons set forth above, we conclude the legislature made its own determination of reasonableness in section 351.27. The trial court erred in grafting additional "reasonably acting" language from 717B.2(8) onto section 351.27. The right provided by section 351.27 is an absolute defense to the charge of animal abuse under the facts of this case. The evidence is thus insufficient to support West's convictions for animal abuse and criminal mischief. We conclude the trial court erred in denying West's motion for judgment of acquittal and we reverse his convictions. Because we are reversing the

convictions on this ground we do not address West's other claims of trial court error.

REVERSED.