IN THE COURT OF APPEALS OF IOWA

No. 9-326 / 08-1040
Filed July 2, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TERRY LEE WILSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Lee (North) County, Emily S. Dean, District Associate Judge.

Terry Wilson appeals his convictions for animal torture and animal neglect.

AFFIRMED IN PART AND REVERSED IN PART.

Mark C. Smith, State Appellate Defender, and E. Frank Rivera, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Michael P. Short, County Attorney, and Gordon Liles, Assistant County Attorney, for appellee.

Heard by Mahan, P.J., and Eisenhauer and Mansfield, JJ.

EISENHAUER, J.

Terry Wilson appeals his convictions for animal torture and animal neglect. Wilson killed his nine-month-old puppy with a samurai sword. Wilson argues the court erred in instructing the jury and in denying his motion in limine. Wilson also claims the evidence is insufficient to support the jury's verdicts. We review for correction of errors at law. Iowa R. App. P. 6.4. We reverse Wilson's conviction for animal neglect. We affirm Wilson's conviction for animal torture.

I. Jury Instructions.

Wilson challenges the court's jury instructions arguing: (1) the instructions overall are confusing and contradictory, (2) the animal torture instructions lack a definition of specific intent, and (3) the animal neglect instruction utilizes an overly broad definition of "confine or impound."

The State argues Wilson did not preserve error on his first two challenges. Generally, error in jury instructions is waived if the error is not raised, "specifying the matter objected to and on what grounds." Iowa R. Civ. P. 1.924. Further, "[n]o other grounds or objections shall be . . . asserted on appeal." *Id*. Specific objections are required "to alert the trial court to the basis of the complaint, so that if error does exist, the court may correct it before placing the case in the hands of the jury." *Olson v. Sumpter*, 728 N.W.2d 844, 849 (Iowa 2007).

We agree with the State. Wilson did not object and argue the instructions were confusing and contradictory. Likewise, Wilson did not alert the trial court to any concerns regarding the specific intent instructions. Therefore, those challenges are waived.

Turning to Wilson's challenge to the animal neglect instructions, the jury was instructed a guilty verdict required two elements: (1) Wilson "impounded or confined in any place a dog," and (2) Wilson "killed a dog by any means which caused the dog unjustified pain, distress, or suffering." *See* Iowa Code § 717B.3(1) (2007). The phrase "impounded or confined" is not defined in the animal injury statutes. *See* Iowa Code § 717B.1 (definitions). In drafting a definition for the jury, the court stated it checked numerous dictionaries and: "the majority of the time impounded was defined as, 'to confine as if within a pound,' which is redundant." The court instructed "impounded or confined" means "to keep within bounds or restrain." The court ruled this meaning applied to both terms together "as an accurate description of what the legislators envisioned."

Wilson argues the court's definition of "impound or confine" was overly broad because impounded only refers to animals within a pound. "[C]riminal statutes are to be construed in the defendant's favor, but they must be construed reasonably and in such a way as to not defeat their plain purpose." *State v. Peck*, 539 N.W.2d 170, 173 (Iowa 1995). Our courts do not search for meaning beyond the express terms of the criminal statute "when the statue is plain and its meaning is clear." *State v. Albrecht*, 657 N.W.2d 474, 479 (Iowa 2003). We find no error. The court's definition summarized various dictionary definitions into a concise and understandable meaning for the jury.

II. Sufficiency of the Evidence.

Wilson argues there is insufficient evidence to support his convictions. Appellate review is limited to the specific grounds and issues Wilson argued in

his motion for judgment of acquittal. *State v. Westeen*, 591 N.W.2d 203, 206 (Iowa 1999). Therefore, the issues on appeal are the sufficiency of the evidence of Wilson's intent as an element of animal torture and the sufficiency of the evidence that Wilson "impounded or confined" the dog causing animal neglect.

The jury's verdict is binding upon a reviewing court unless there is an absence of substantial evidence in the record to sustain it. *Fenske v. State*, 592 N.W.2d 333, 343 (Iowa 1999). Substantial evidence is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt. *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000). "When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record." *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006).

The intent element of animal torture requires proof Wilson acted "with a depraved or sadistic intent to cause prolonged suffering or death. Iowa Code § 717B.3A(1). The unchallenged jury instructions defined "sadistic" as enjoyment in being cruel, and defined "depraved" as evil or perverted. Intent may be inferred by the surrounding circumstances. *State v. Taylor*, 689 N.W.2d 116, 132 (Iowa 2004).

The jury could reasonably find Wilson chopped and stabbed his dog to death with a samurai sword. The puppy was yelping in pain for up to nine minutes and, afterwards, Wilson exhibited a remorseless demeanor. When viewing the evidence in the light most favorable to the State, we conclude a

rational trier of fact could have found Wilson acted "with depraved or sadistic intent to cause the animal prolonged suffering or death." Substantial evidence supports the jury's verdict finding Wilson guilty of animal torture.

Wilson next challenges the sufficiency of the evidence he impounded or confined the dog as an element of animal neglect. He argues, "merely holding the dog was part of the crime of killing it. There was no separate incident of confining or impounding." We agree. It is incongruous to convict the defendant for animal torture and animal neglect for the same act. Other cases resulting in convictions for animal neglect deal with incidents where animal(s) are confined and then not fed or not properly cared for. *See Johnson County v. Kriz*, 582 N.W.2d 759, 759-60 (Iowa 1998); *see also State v. Wells*, 629 N.W.2d 346, 349-51 (Iowa 2001); *State v. Walker,* 236 N.W.2d 292, 293-94 (Iowa 1975). Under the specific facts of this case, any confinement of the dog was merely incidental; therefore, there is insufficient evidence to support the charge of animal neglect.

III. Prior Bad Acts Evidence.

Before trial, Wilson filed a motion in limine to exclude testimony from a neighbor/daycare provider that his children were at her house for protective daycare. Wilson contends the evidence is prejudicial evidence of prior bad acts and inadmissible under Iowa Rule of Evidence 5.403. The court denied Wilson's motion in limine with sufficient finality to preserve error for our review.[1] *See State v. Schaer*, 757 N.W.2d 630, 634 (Iowa 2008).

[1] Because we conclude error was preserved on Wilson's motion in limine, we need not address Wilson's alternative argument his counsel was ineffective "in failing to preserve error on the issue of the prejudicial effect of irrelevant prior bad act evidence."

To succeed, Wilson must show the court exercised its discretion "on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *Graber v. City of Ankeny*, 616 N.W.2d 633, 638 (Iowa 2000). The record's oblique references to protective daycare do not constitute evidence of prior bad acts and we find no abuse of discretion.

AFFIRMED IN PART AND REVERSED IN PART.