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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1163**

State of Minnesota,
Respondent,

vs.

Paul Scott Seeman,
Appellant.

**Filed July 17, 2017
Affirmed
Jesson, Judge**

Rice County District Court
File No. 66-CR-15-1621

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John Fossum, Rice County Attorney, Terence Swihart, Assistant County Attorney,
Faribault, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Susan Andrews, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Jesson, Judge; and Smith,
John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

JESSON, Judge

Convicted of rustling and felony theft after he sold livestock, which were originally on his land with permission, appellant Paul Scott Seeman challenges his conviction, arguing that his conduct—though perhaps a civil theft—did not constitute a crime. He further asserts that he had a “claim of right” to the livestock and that he was denied effective assistance of counsel. We affirm.

FACTS

This case involves three neighbors and an assortment of horses, cows, sheep, pigs, turkeys, ducks, and chickens. R.K. owned the animals, but he did not own enough land to sustain them. Seeman owned 25 acres of property, but no livestock. In September 2014, Seeman agreed that R.K. could move his horses and sheep to Seeman’s farm on a temporary basis, until R.K. was able to purchase his own property or find another place for the animals. Under the oral agreement, R.K. was responsible for care of the animals, including providing gated pens for them. Over the next month or so, R.K. moved the rest of his animals to Seeman’s property. At the time he moved his animals to Seeman’s farm, R.K. was under investigation by the Humane Society for animal neglect. While Seeman did not initially charge R.K. rent, after R.K. moved all his animals, Seeman began charging him \$500 per month.

Seeman directed R.K. to house his animals down the hill from his house, where a creek ran through Seeman’s farm, as well as a farm belonging to a second neighbor, D.T. In early spring 2015, Seeman began to notice that the animals were escaping from their

pens. Seeman found pigs and sheep foraging near his house, as well as on neighboring properties. He alerted D.T. to this, and D.T., upon investigation, found pens on his property, as well as dead animals, loose livestock, and piles of manure.¹ On April 1, Seeman demanded that R.K. (who had never paid the \$500 monthly charges) remove the livestock by May 1. R.K. made no attempt to do so. After the May 1 deadline passed, Seeman blocked R.K. from entering his farm. Shortly thereafter, he contacted a livestock hauler to remove the animals from his and D.T.'s properties. Without notice to R.K. or his permission, Seeman sold the livestock at auction for a value of \$6,883.33 and deposited the proceeds of the sale into his bank account. Seeman admitted that he did not intend to reimburse R.K. for the sale, claiming that the animals had caused in excess of \$30,000 in property damage.

Seeman was charged with felony livestock theft. *See* Minn. Stat. § 609.551, subd. 1(a) (2014). After a two-day jury trial, Seeman was found guilty. In a thorough and lengthy order, the district court denied Seeman's motion for a judgment of acquittal or a new trial. At sentencing, the district court stayed imposition of a one-year sentence, placed Seeman on three years' probation, and ordered him to serve one day in jail. This appeal follows.

¹ D.T. called local law enforcement for assistance on numerous occasions, but they declined to intervene in what was deemed to be a civil dispute.

DECISION

I. The evidence was sufficient to sustain Seeman's conviction of felony livestock theft.

Seeman acknowledges that by selling R.K.'s animals, instead of seizing and impounding them, he may have "unknowingly chose[n] the wrong course of action" but argues that his actions in removing animals trespassing on his property, without more, are not criminal and to make them so would result in an absurd result. In essence, he argues that the uncontroverted evidence is not sufficient to sustain a criminal conviction.

When reviewing the sufficiency of the evidence, we are limited to considering whether the legitimate inferences drawn from the evidence would permit the jury to find the defendant guilty beyond a reasonable doubt. *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). In reaching this determination, our review is limited to a close analysis of the record, and we view the evidence in the light most favorable to the conviction. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

In order to obtain a conviction under the livestock-theft statute, the state must prove that a person "intentionally and without claim of right shoots, kills, takes, uses, transfers, conceals or retains possession of live cattle, swine or sheep or the carcasses thereof belonging to another without the other's consent and with the intent to permanently deprive

the owner.” Minn. Stat. § 609.551, subd. 1. To obtain a felony conviction, as in this case, the state must also prove that the value of the livestock exceeded \$2,500. *Id.*, subd. 1(a).

The record is undisputed. Seeman admitted to selling the livestock at auction. The total value of the livestock was \$7,763.29. Seeman admitted to keeping the proceeds of the sale, which amounted to \$6,883.33 after fees were assessed. He testified that he did not intend to reimburse R.K.

Seeman argues that his conduct does not constitute a crime because the legislature did not intend a landowner to endure trespassing livestock. But Seeman does not dispute the constitutionality of the statute or the statute’s plain proscription. Instead, he argues that sustaining his conviction would reach an absurd result. We are not persuaded.

The plain language of the statute prohibited Seeman from intentionally selling the livestock without a claim of right and with the intent to permanently deprive the owner. Minn. Stat. § 609.551, subd. 1. It is the exclusive province of the Minnesota Legislature to define by statute what acts constitute a crime. *See State v. Taylor*, 590 N.W.2d 155, 157 (Minn. App. 1999), *review denied* (Minn. May 18, 1999). Here, Seeman was not convicted because of his act of removing the animals from his property. He was convicted because he sold the livestock without a valid claim of right and kept the proceeds of the sale. Seeman’s conduct falls within the statute’s plain proscription.

And Seeman’s conviction does not reach an absurd result. *Cf. State v. Schouweiler*, 887 N.W.2d 22, 26 (Minn. 2016) (explaining that, in construing a statute, Minnesota courts presume that the legislature does not intend absurd results). The legislature does not require landowners to endure trespassing livestock; a landowner may impound trespassing

livestock. *See* Minn. Stat. §§ 561.07 (2014), 346.08 (2014). The landowner also may dispose of the livestock—but only after giving notice to the owner and receiving an appraisal of the property damage. *See* Minn. Stat. § 346.09, subd. 1 (2014). Although this civil remedy was available to Seeman, he did not avail himself of it.

In summary, because Seeman’s undisputed act of selling the animals falls within the purview of the statute and application of it does not lead to an absurd result, given the availability of impounding and selling trespassing animals under a statutory provision, we conclude that there is sufficient evidence to sustain Seeman’s conviction of felony livestock theft.

II. Seeman’s pro se claims are without merit.

In his pro se brief Seeman raises two issues properly before this court: whether he had a “claim of right” and whether he was denied effective assistance of counsel.² We address each issue in turn.

To sustain a conviction under the livestock theft statute, the state was required to prove that Seeman was without claim of right when he sold the animals. Minn. Stat. § 609.551, subd. 1. Seeman contends that he had a claim of right for three reasons: (1) he

² Seeman makes two arguments in his pro se brief that are not properly before this court. First he argues that the state’s failure to disclose evidence constitutes a *Brady* violation. *See* Minn. R. Crim. P. 9.01, subd. 1(6) (requiring the state to disclose exculpatory evidence in the state’s possession to the defendant); *Brady v. Maryland*, 373 U.S. 83, 87, 83 S. Ct. 1194, 1196-97 (1963). But because this claim was not raised before the district court, it is not properly before this court. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). And Seeman also argues that he was targeted for malicious prosecution. Because he fails to provide any legal or factual support for his allegation, he has forfeited review of this allegation. *See State v. Sontoya*, 788 N.W.2d 868, 876 (Minn. 2010).

had a valid feeder's lien for the animals, (2) he had permission from his neighbor, D.T., to remove the animals; and (3) R.K. abandoned the animals. As a result, he argues that the district court erred by denying his posttrial motion for a judgment of acquittal.

We review the denial of a motion for a judgment of acquittal de novo and in the light most favorable to the verdict. *State v. DeLaCruz*, 884 N.W.2d 878, 890 (Minn. App. 2016) (stating that this court essentially reviews such a denial for sufficiency of the evidence). Based on this review, we conclude that the district court correctly denied Seeman's posttrial motion for acquittal based on his alleged claim of right.

Seeman did not have a valid feeder's lien, *see* Minnesota Statute section 514.966, subdivision 4(a) (2014), because he did not care for animals in his routine trade or business. Seeman testified at trial, "We're not farmers. We're not—we rent out our crop land. I don't raise—I don't want to raise animals. If I wanted to I would." While Seeman claims that he was not prohibited from having livestock and that the livestock used his property, these facts do not establish that he cared for the livestock in his ordinary course of business as required by statute. *See id.*

Nor did Seeman have a claim of right because D.T. gave Seeman permission to remove the animals from D.T.'s property. As the district court points out, even if D.T. authorized Seeman to remove the animals, he had no authority to authorize Seeman to sell the livestock, which is the crux of this matter.

And Seeman's claim of right because of R.K.'s alleged abandonment of the animals—which R.K. denied—was heard and determined by the jury. The jury, as the district court notes, apparently judged R.K. more credible by concluding that Seeman had

no claim of right to the animals. Because the fact-finder is in the best position to make credibility determinations, we conclude that there is sufficient evidence to sustain his conviction. *State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002) (stating that appellate courts defer credibility determinations to the fact-finder).

Finally, Seeman contends that he was denied effective assistance of trial counsel. Ordinarily, we review claims of ineffective assistance of trial counsel de novo because they involve mixed questions of fact and law. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003). But we will not review such a claim based on trial strategy, which includes determining which witnesses to call, the extent of counsel's investigation, and the selection of evidence to present at trial. *Staunton v. State*, 784 N.W.2d 289, 302 (Minn. 2010); *see also Rhodes*, 657 N.W.2d at 845 (concluding that defendant failed to demonstrate how he was prejudiced when his trial counsel's representation fit squarely within the "wide range of reasonable professional assistance").

Seeman generally claims that his trial counsel failed to call a police officer as a witness and to present satellite images, which show his property line and the trespassing animals. Because trial counsel's decisions regarding which witnesses to call and what evidence to present to the jury constitute trial strategy, we reject Seeman's claim of ineffective assistance of trial counsel. *See Staunton*, 784 N.W.2d at 302.

Based on the foregoing, we conclude that there is sufficient evidence to sustain Seeman's conviction of felony livestock theft because he did not have a claim of right to dispose of the livestock and that his claims of ineffective assistance of trial counsel are without merit.

Affirmed.