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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1797**

State of Minnesota,
Respondent,

vs.

Joann Marie Dokken,
Appellant.

**Filed September 3, 2013
Affirmed
Schellhas, Judge**

Swift County District Court
File No. 76-CR-11-322

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

Robin William Finke, Swift County Attorney, Harry D. Hohman, Assistant Swift County Attorney, Benson, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Stephen Lemar Smith, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Presiding Judge; Schellhas, Judge; and Chutich, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant argues that the evidence was insufficient to support her conviction of mistreatment of animals, Minn. Stat. § 343.21, subd. 7 (2010). We affirm.

FACTS

Appellant Joann Marie Dokken, her husband, Leroy Dokken, and her son, Michael Dokken, owned horses that they kept at property owned by Dan Tosel. The Dokkens' horses were located on the property when Tosel bought it in the spring of 2011, and Tosel permitted the Dokkens to keep the horses on the property while they looked for another stable. But Tosel grew tired of waiting for the Dokkens to move the horses and, on June 29, 2011, Tosel told the Dokkens to remove the horses from his property. The next day, Tosel looked in the barn and found a dead horse decomposing in a pile of manure and three extremely thin horses. Tosel called the sheriff, who inspected the property.

Sheriff John Holtz and Deputy Justin Girard testified that the three living horses were shut inside a barn, standing in piles of manure estimated as 8 to 12 inches thick. The horses had no feed, had very little water in the water trough, and were extremely thin. Sheriff Holtz could see ribs protruding through the horses' skin, and they had sunken eyes and missing hair. The smallest horse was covered with wet fecal matter. The mare's hooves had not been cared for and were curling up for lack of a trim. Sheriff Holtz and Deputy Girard also observed the decomposing corpse in the manure and noted that the smell of manure, urine, and decaying horse was overwhelming. Respondent State of Minnesota introduced photographs of the condition of the barn and horses at trial.

Because of the poor condition of the horses, Sheriff Holtz contacted the local veterinarian, Kathleen Jost, and a licensed police officer, Keith Streff, who was the senior investigator of the Animal Humane Society and an expert on animal maltreatment. Officer Streff, Dr. Jost, Sheriff Holtz, and Michael and Leroy Dokken inspected the three

horses on July 5. Officer Streff used the Heneke scale, a measure of equine condition known as a Body Condition Score (BCS), to rate the condition of the horses. Officer Streff rated the condition of the horses as less than 2.5 to 3.0 on a scale of 10.0, indicating culpable neglect. Officer Streff described the sanitary conditions of the barn and horses as “just deplorable.” He noted a “significant accumulation of feces”; a decomposing horse corpse; poor ventilation and lighting; no residual hay in the barn or pen, indicating that the horses had foraged desperately for food; and that nothing was located in the barn to suggest that appropriate animal-husbandry skills were being applied to the remaining three horses. After talking to Leroy Dokken, Officer Streff concluded that “no significant biological or philosophical answer . . . would justify the condition those horses were exhibiting” and decided that intervention was necessary. The condition of the horses’ hooves indicated a lack of veterinary care, and Officer Streff opined that this fact was one of the circumstances that mandated removal of the horses. He considered “the totality of the circumstances” to determine if the horses could continue living under the conditions and concluded that the horses needed to be removed.

Dr. Jost described the horses’ condition as 1.5 BCS on a scale of 9.0, most obviously caused by “poor quality feed or inconsistent feeding or lack of feed.” All three horses had worms and lice. Dr. Jost was unable to attribute the condition of the horses to any parasitic condition or other cause, particularly since they responded quickly to increased food and water and more sanitary conditions.

At trial, both Leroy Dokken and Michael Dokken testified and denied maltreating the animals, stating that they supplied feed during the winter months and permitted the

horses to pasture during the warmer months. Michael Dokken testified that he provided hoof care for the horses and the reason that the horses were confined to the barn on June 29 was because Tosel knocked down a fence and the horses had to be confined until the fence was fixed. Michael Dokken stated that Dr. Jost had refused to provide veterinary care in April 2011. Dr. Jost testified that the Dokkens had large unpaid vet bills with her practice.

Sheriff Holtz testified that when he first visited the farm, he asked who owned the horses and Joann Dokken stated that all three of the Dokkens owned them. Leroy Dokken acknowledged that all three Dokkens, including Joann Dokken, owned the horses and provided care for them together. Michael Dokken testified that Joann Dokken helped to feed and care for the horses and was with him about 75% of the time. Michael Dokken testified that the barn had not been cleaned since December 2010, although he did not consider this fact unusual. Joann Dokken declined to testify.

The jury found Joann Dokken guilty of two counts of animal mistreatment but the district court entered a judgment of conviction on only one count under Minn. Stat. § 343.21, subd. 7. This appeal follows.

DECISION

We review a claim of insufficient evidence to determine whether the record evidence reasonably supports the jury's verdict that the defendant was guilty beyond a reasonable doubt. *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). If a guilty verdict is based on circumstantial evidence, we apply heightened scrutiny, considering "whether

the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than guilt.” *Id.* (quotation omitted).

If a verdict is based on circumstantial evidence, the reviewing court must first identify the circumstances proved; in doing so, the reviewing court defers to the fact-finder’s acceptance of proof and rejection of conflicting evidence. *State v. Hokanson*, 821 N.W.2d 340, 354 (Minn. 2012) (citing *State v. Andersen*, 784 N.W.2d 320, 329–30 (Minn. 2010)). Next, without deferring to the fact-finder, the reviewing court determines what reasonable inferences can be drawn from the circumstances proved. *Id.* If these inferences exclude all reasonable hypotheses other than guilt, the verdict will be upheld. *Id.*

The verdict here is necessarily based on circumstantial evidence. A jury found Dokken guilty of violating Minn. Stat. § 343.21, subd. 7, which states that “[n]o person shall willfully instigate or in any way further any act of cruelty to any animal or animals, or any act tending to produce cruelty to animals.” An act of “cruelty” is defined as “every act, omission, or neglect which causes or permits unnecessary or unjustifiable pain, suffering, or death.” Minn. Stat. § 343.20, subd. 3 (2010). The state was required to prove beyond a reasonable doubt that Dokken (1) willfully acted, failed to act, or neglected to act on behalf of an animal (2) in a manner that caused unnecessary or unjustifiable pain or suffering.

An act is “willful” if it is negligent and “so far from a proper state of mind that it is treated in many respects as if it were so intended.” *State v. Cyrette*, 636 N.W.2d 343,

348 (Minn. App. 2001) (quotation omitted), *review denied* (Minn. Feb. 19, 2002).¹ A person has acted willfully if that “actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow, and which thus is usually accompanied by a conscious indifference to the consequences.” *Id.* (quotation omitted).

As a circumstance proved, the jury found that the Dokken horses were not suffering from disease or parasite infestation but from emaciation caused by lack of feed; this inference is supported by the pictures received into evidence and the testimony of Dr. Jost and Officer Streff. The only reasonable inference to draw from these facts is that Dokken neglected to provide adequate feed. The lack of food at the site and the obvious emaciated condition of the horses were sufficient to suggest that Dokken disregarded the risk to the horses or was indifferent to the consequences. *See State v. Klammer*, 230 Minn. 272, 276–77, 41 N.W.2d 451, 453–54 (1950) (affirming conviction of animal maltreatment based on lack of feed, presence of dead horses, and emaciated condition of living horses); *State v. Maguire*, 188 Minn. 627, 628, 248 N.W. 216, 216 (1933) (affirming animal maltreatment conviction based on horse’s death from starvation).

As to the second element, whether Dokken’s actions caused unnecessary or unjustifiable pain or suffering, Sheriff Holtz testified that the horses met him at the barn door “very eager to see me the way it seemed. One of ‘em started neighing right away when I started getting closer to him.” He stated that the horses did not pay much more

¹ The definition of “willful” is based on tort law, but *Cyrette* is a criminal case dealing with gross-misdemeanor child neglect. *Id.* at 345, 348.

attention to him “with the water[,] they were just more concentrating on just the small amount of feed that we were able to give ‘em with the grass and the hay.” Beyond the fact of hunger, Officer Streff testified that the conditions of the barn, with the heat, fecal matter, smell of the dead horse, and lack of ventilation, would cause suffering. He noted that all of the rotting hay had been eaten by the horses. He also testified that the neglected hooves could cause the horses pain and impair their gait; Dr. Jost testified that the mare’s neglected hooves were causing her to limp. In addition to malnourishment, Dr. Jost testified that the horses were infested with lice, which can be irritating and cause discomfort.

The jury accepted this testimony and the accuracy of the submitted photographs and rejected Michael Dokken’s testimony that the pictures were inaccurate and did not reflect the horses’ condition. The only reasonable inference that can be drawn from this evidence is that the neglect caused the horses to experience pain or to suffer. We conclude that circumstantial evidence was sufficient to support the jury’s verdict.

Dokken also challenged the proof of ownership or control of the horses as inadequate. Section 343.21, subdivision 2, requires that the offender have charge of or control the subject animal, but subdivision 7, the charge of which the district court convicted Dokken, does not. Subdivision 7 prohibits a person from willfully instigating or furthering “any act of cruelty.” The evidence here was sufficient to establish Dokken’s involvement with care of the horses and satisfies the requirements of Minn. Stat. § 343.21, subd. 7. Dokken told Holtz that all three Dokkens owned the horses. Leroy Dokken testified that the Dokkens all cared for the horses together. He described Joann

Dokken as a “farming girl” who helped to clean the barn. Michael Dokken testified that Joann Dokken assisted with horse chores about 75% of the time. These facts show that Dokken had sufficient familiarity with the conditions so that her failure to correct them indicated willful indifference.

Affirmed.