



**IN THE
TENTH COURT OF APPEALS**

No. 10-15-00070-CR

CLIFTON THOMAS MUZYKA,

Appellant

v.

THE STATE OF TEXAS,

Appellee

**From the 82nd District Court
Falls County, Texas
Trial Court No. 9238**

MEMORANDUM OPINION

Clifton Muzyka appeals from a conviction for cruelty to livestock animals with two previous convictions. TEX. PENAL CODE ANN. § 42.09(a)(2), (c) (West 2011). Muzyka complains that the evidence was insufficient for the jury to have found that he had the requisite mental state to have committed the offense. Because we find that the evidence was sufficient, we affirm the judgment of the trial court.

SUFFICIENCY OF THE EVIDENCE

In his sole issue, Muzyka complains that the evidence was insufficient for the

jury to have found that he intentionally or knowingly failed to provide reasonable and necessary food, care, or shelter for the horse in question. Muzyka was originally tried for six counts of cruelty to livestock animals. The jury was unable to reach a verdict as to five of the six counts, but found Muzyka guilty of one count. It is the count of which Muzyka was convicted that is at issue in this proceeding.

In January of 2013, the Falls County Sheriff's Department received a complaint regarding some horses Muzyka kept on two tracts of land that he owned. Two deputies went to the property and observed multiple horses that they believed were starving. After a rescue organization agreed to assist the deputies, 36 horses were seized and placed with the Houston SPCA. The horses were examined and approximately eighty percent of them were found to be underweight and all of them had worms which were untreated. Several of the horses had to be euthanized by the SPCA due to their condition. The examining veterinarian determined that the horse at issue in this proceeding was "suffering from malnourishment and dehydration due to neglect." The veterinarian's report also stated that the horse had gastrointestinal parasites which were causing the horse to have symptoms of colic. Further, the report stated that the parasites could cause a decrease in digestion, anemia, and diarrhea in the horse. If left untreated, the parasites could cause serious illness or death. A side view photograph of the horse showed that the horse's ribs were significantly protruding. The veterinarian also stated that if the horse had been properly cared for the issues could

have been prevented.

Muzyka argues that because he presented evidence that he bought food almost every day and was attempting to feed the horses regularly, the evidence was insufficient for the jury to have found that he acted intentionally or knowingly in failing to unreasonably provide necessary food, care, or shelter for the horse.

STANDARD OF REVIEW

The Court of Criminal Appeals has expressed our standard of review of a sufficiency issue as follows:

In determining whether the evidence is legally sufficient to support a conviction, a reviewing court must consider all of the evidence in the light most favorable to the verdict and determine whether, based on that evidence and reasonable inferences therefrom, a rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *Hooper v. State*, 214 S.W.3d 9, 13 (Tex. Crim. App. 2007). This “familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Jackson*, 443 U.S. at 319. “Each fact need not point directly and independently to the guilt of the appellant, as long as the cumulative force of all the incriminating circumstances is sufficient to support the conviction.” *Hooper*, 214 S.W.3d at 13.

Lucio v. State, 351 S.W.3d 878, 894 (Tex. Crim. App. 2011).

The Court of Criminal Appeals has also explained that our review of “all of the evidence” includes evidence that was properly and improperly admitted. *Conner v. State*, 67 S.W.3d 192, 197 (Tex. Crim. App. 2001). And if the record supports conflicting inferences, we must presume that the factfinder resolved the conflicts in favor of the

prosecution and therefore defer to that determination. *Jackson v. Virginia*, 443 U.S. at 326. Further, direct and circumstantial evidence are treated equally: “Circumstantial evidence is as probative as direct evidence in establishing the guilt of an actor, and circumstantial evidence alone can be sufficient to establish guilt.” *Hooper v. State*, 214 S.W.3d at 13. Finally, it is well established that the factfinder is entitled to judge the credibility of witnesses and can choose to believe all, some, or none of the testimony presented by the parties. *Chambers v. State*, 805 S.W.2d 459, 461 (Tex. Crim. App. 1991).

Muzyka was charged with intentionally or knowingly “fail[ing] unreasonably to provide necessary food, water, or care for a livestock animal” in his custody. See TEX. PENAL CODE ANN. § 42.09(a)(2). “Necessary food, water, or care” includes food, water, or care “provided to the extent required to maintain the livestock animal in a state of good health.” TEX. PENAL CODE ANN. § 42.09(b)(6).

Cruelty to animals is a “nature of the conduct” offense. See *Amaya v. State*, 733 S.W.2d 168, 174 (Tex. Crim. App. 1986). A person acts intentionally with respect to the nature of the conduct when the person has a conscious objective or desire to engage in the conduct; a person acts knowingly when he is aware of the nature of his conduct. TEX. PENAL CODE ANN. § 6.03(a), (b) (West 2011). Proof of a culpable mental state almost invariably depends upon circumstantial evidence. *Krause v. State*, 243 S.W.3d 95, 111 (Tex. App.—Houston [1st Dist.] 2007, pet. ref’d). A jury may infer a culpable mental state from the circumstances surrounding the offense of cruelty to animals, including

the horse's physical condition. *Martinez v. State*, 48 S.W.3d 273, 276 (Tex. App.—San Antonio 2001, pet. ref'd) ("Here, the evidence indicates obvious and severe illness, and a long-neglected need for treatment. Presented with such an obvious need for treatment, a jury could easily infer intent or knowledge.").

The veterinarian who examined the horse after the seizure and the deputies involved in the investigation testified that the horses were clearly underfed. The deputies testified that they saw no signs on the property that the horses were being fed regularly. The land where the horses were being kept did not have grass or other food on it for the horses since it was winter. Even the witnesses who testified that Muzyka bought feed on almost a daily basis and who observed Muzyka at the property agreed that the horse in question was overly thin and appeared to be underfed and not healthy.

Based on the condition of the horse, the evidence was sufficient for a jury to have found beyond a reasonable doubt that Muzyka failed unreasonably to provide necessary food, water, or care for the horse in his custody. Even if Muzyka had attempted to provide the horse with some amount of food, it was clearly not sufficient to keep the horse in good health. Additionally, Muzyka's failure to treat the horse for parasites exacerbated the failure to provide adequate food for the horse. It is clear from the photograph of the horse that the horse was severely malnourished. One could observe the horse and know that it was not being adequately fed and it was undisputed that it was Muzyka's duty to do so. It was not unreasonable for the jury to determine

that Muzyka, at a minimum, was aware that the nature of his conduct by not adequately feeding or caring for the horse resulted in the horse's condition. We overrule Muzyka's sole issue.

CONCLUSION

Having found that the evidence was sufficient, we affirm the judgment of the trial court.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Scoggins

Affirmed

Opinion delivered and filed February 11, 2016

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