

**FILED**  
**JULY 24, 2012**  
**In the Office of the Clerk of Court**  
**WA State Court of Appeals, Division III**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

STATE OF WASHINGTON,	)	No. 30122-2-III
	)	
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
JOSE LUIS ZAPIEN,	)	
	)	
Appellant.	)	
	)	

Kulik, J. — Jose Luis Zapien was convicted of one count of animal fighting. Mr. Zapien appeals, contending that the trial court erroneously allowed a police officer to state a legal conclusion during trial testimony. Mr. Zapien also contends there was insufficient evidence to convict, and he received ineffective assistance of counsel.

We conclude that the trial court properly admitted a deputy’s testimony as expert opinion, there was more than sufficient evidence to support the conviction, and Mr. Zapien received effective assistance of counsel. We affirm the conviction.

## FACTS

On May 5, 2011, Benton County Sheriff Deputies Arin Reining and Abel Campos responded to a complaint of cockfighting at 168102 West 215 Private Road Southwest, Benton County. The deputies made contact with the property owner, Maria Zapien, and Mr. Zapien. Ms. Zapien gave the deputies permission to search the property. Mr. Zapien lived in a trailer on the property.

The deputies found 35 roosters and 6 hens. Mr. Zapien claimed ownership of 6 roosters and admitted to deputies that he raised the roosters for cockfighting. Mr. Zapien admitted that once a month he took his roosters to different areas of Benton County and Yakima County to fight and that he transported the roosters in wooden crates. He said that he borrowed blades<sup>1</sup> at fights and returned them to the owners once the fight was over. Mr. Zapien showed the deputies his roosters.

Mr. Zapien was charged with one count of animal fighting, RCW 16.52.117(1)(a). At trial, Deputy Campos testified about Mr. Zapien's admissions.

Before Deputy Reining offered her testimony on the investigation, Deputy Reining testified that she received extra training in animal fighting and cruelty. She stated that her

---

<sup>1</sup> During a fight, roosters wear boots fitted with razor blades.

most recent training covered investigations of animal fighting, the organizational aspects of cockfighting, how roosters were prepared for fighting, and all arenas of fighting. Deputy Reining also stated that she had 13 years' experience with the Benton County Sheriff's Department.

Over the defense's objection, the trial court allowed some limited questioning of Deputy Reining in the area of cockfighting organization. The court felt that this was an area that many people did not have a basis of knowledge. Deputy Reining testified that based on her training and experience with animals and cockfighting, a rooster's combs are cut to prepare the rooster for fighting. As for the rooster's spurs, Deputy Reining testified that the spurs are shaved down or cut off completely to accommodate the razor blade boots that will be put on the rooster's feet.

Deputy Reining stated that it was not typical for a person with free-range chickens on their property to have more than one rooster. As for her investigation of Mr. Zapien, Deputy Reining stated that she saw 35 roosters and 6 hens. She also noticed multiple brands and types of feed, gravel powder, and vitamin supplements to enhance roosters. She said that this investigation did not show a normal chicken operation or breeding program.

Next, Deputy Reining testified that she observed a preparation area outside Mr.

Zapien's trailer. She stated that a bench by the trailer was covered in blood and feathers, had two tie downs, and had a soiled, rusted needle with thread and scissors. She said the items were the type used to stitch the rooster after the comb had been cut.

Deputy Reining then testified that she found wooden boxes on the property that were the type commonly used to transport roosters. One box contained blood spatter and feathers, which would be consistent with having held a rooster that had just fought. The State showed the jury pictures of the roosters, the extra feed and supplements, the wooden crates, and the table.

In conclusion, Deputy Reining stated that based on her observations, the chickens were consistent with chickens raised for cockfighting and that the boxes found on the property were consistent with boxes used to transport roosters to fights. The court overruled Mr. Zapien's objection to this conclusory testimony.

A jury found Mr. Zapien guilty of animal fighting. The trial court sentenced Mr. Zapien to 60 days in jail. Mr. Zapien appeals, contending that the trial court erroneously allowed Deputy Reining to give an expert opinion that was a legal conclusion. Mr. Zapien also contends that he received ineffective assistance of counsel because his counsel failed to make a corpus delicti challenge regarding Mr. Zapien's testimony. Last, Mr. Zapien contends that absent Deputy Reining's expert opinion and Mr. Zapien's

admissions, the State failed to present sufficient evidence to convict Mr. Zapien of animal fighting.

#### ANALYSIS

*Deputy Reining's Expert Opinion.* The trial court's decision on whether to admit expert opinions, and to what extent, is reviewed for an abuse of discretion. *State v. Nelson*, 152 Wn. App. 755, 765, 219 P.3d 100 (2009). A trial court abuses its discretion when it bases its decision on untenable grounds or untenable reasons. *Id.*

RCW 16.52.117(1) provides, in pertinent part, that a person commits the crime of animal fighting if the person knowingly owns, possesses, keeps, breeds, or trains any animal with the intent that the animal shall be engaged in an exhibition of fighting with another animal.

ER 702 states, "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

In *Nelson*, this court concluded that the trial court did not abuse its discretion when the trial court allowed an expert to offer a conclusion that the evidence supported a dogfighting operation. *Nelson*, 152 Wn. App. at 768. This court concluded that the trial

court's assumption that most jurors would not be familiar with the world of dogfighting was a fair assumption and, thus, the expert opinion would be helpful to the jury. *Id.*

Mr. Zapien contends that Deputy Reining's opinion that the roosters were being raised for cockfighting was not necessary and that the deputy's observations alone were sufficient to allow the jury to form its opinion. Here, similar to the dogfighting in *Nelson*, the trial court justifiably assumed that most jurors would not be knowledgeable about cockfighting. Deputy Reining's opinion was based on the evidence. Her extensive training in animal and cockfighting would be helpful to the jury in understanding the totality of the evidence gained from the deputy's various observations. The trial court did not abuse its discretion by allowing Deputy Reining to offer her opinion as an expert in cockfighting.

*Sufficiency of the Evidence.* The test for sufficiency of the evidence is whether, after viewing the evidence and all reasonable inferences most favorably to the State, any rational jury could have found guilt beyond a reasonable doubt. *State v. Gentry*, 125 Wn.2d 570, 596-97, 888 P.2d 1105 (1995). Only the trier of fact weighs the evidence and judges the credibility of the witnesses. *State v. Carver*, 113 Wn.2d 591, 604, 781 P.2d 1308, 789 P.2d 306 (1989).

Evidence is sufficient if a rational trier of fact could find each element of the crime

beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)).

RCW 16.52.117(1) provides in pertinent part that a person commits the crime of animal fighting if the person knowingly owns, possesses, keeps, breeds, or trains any animal with the intent that the animal shall be engaged in an exhibition of fighting with another animal.

At trial, the State presented evidence that Mr. Zapien admitted to owning roosters for cockfighting. The State also presented evidence that Mr. Zapien told deputies that once a month he took his roosters to different areas of Benton County and Yakima County to fight and that he transported the roosters in wooden crates. Deputy Reining testified that she observed evidence of cockfighting on the property where Mr. Zapien kept his roosters. The admissions of Mr. Zapien and the testimony of Deputy Reining provide sufficient evidence to show that Mr. Zapien knowingly possessed his roosters with the intent to engage in cockfighting.

*Ineffective Assistance of Counsel.* On review, this court engages in a strong presumption that counsel provided effective representation. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

“To demonstrate ineffective assistance of counsel, a defendant must make two showings: (1) defense counsel’s representation was deficient, *i.e.*, it fell below an objective standard of reasonableness based on consideration of all the circumstances; and (2) defense counsel’s deficient representation prejudiced the defendant, *i.e.*, there is a reasonable probability that, except for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 334-35.

Counsel’s legitimate trial strategy or tactics cannot provide a basis for a claim of ineffective assistance of counsel. *State v. Aho*, 137 Wn.2d 736, 745, 975 P.2d 512 (1999).

In Washington, the sole evidence of a party’s admission or confession to a crime is not sufficient to prove the corpus delicti, or “body of the crime.” *State v. Aten*, 130 Wn.2d 640, 655-56, 927 P.2d 210 (1996) (citing 1 McCormick on Evidence § 145 at 227 (John W. Strong ed., 4th ed. 1992)). The corpus delicti must be corroborated by other independent evidence. *Id.* at 656. The independent evidence “need not be enough to support a conviction or send the case to the jury.” *Id.* Instead, there needs to be “‘evidence of sufficient circumstances which would support a logical and reasonable inference’ of the facts sought to be proved.” *Id.* (quoting *State v. Vangerpen*, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995)).



Mr. Zapien contends that he received ineffective assistance of counsel because defense counsel failed to raise a corpus delicti challenge at trial.

Mr. Zapien fails to show how his counsel acted deficiently. Deputy Reining's testimony provides sufficient evidence to support a logical inference of intent, independent of Mr. Zapien's admissions. Deputy Reining testified that she observed an unusually large amount of roosters for a normal chicken operation, roosters with combs removed, wooden boxes with blood and feathers, and a preparation area with blood and feathers. Because of the likelihood that the corpus delicti challenge would fail, it would not be unreasonable for the defense not to make that challenge.

Also, Mr. Zapien fails to show he was prejudiced by counsel's decision. The objection would have likely been overruled. He does not show a reasonable probability that the result would have been different. Mr. Zapien's claim of ineffective assistance of counsel fails.

We affirm the conviction for animal fighting.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to

No. 30122-2-III  
*State v. Zapien*

RCW 2.06.040.

---

Kulik, J.

WE CONCUR:

---

Brown, J.

---

Siddoway, A.C.J.