

Lykins v. State

Indiana Court of Appeals

726 N.E.2d 1265

April 18, 2000.

Summary of Opinion

Defendant Lykins was convicted of three misdemeanor offenses of horse neglect. The trial court sentenced him to 30 days in jail, terminated his ownership of the horses, and ordered that he reimburse the county almost \$11,000 to cover the costs of caring for the impounded horses. The Court of Appeals upheld all of the trial court's orders, including that portion of the reimbursement order that paid the county for the costs of constructing a facility in which to house the horses.

Text of Opinion

Glen Lykins appeals his convictions for three counts of neglect of a vertebrate animal, all class B misdemeanors. Glen raises five issues, which we restate as: 1) whether there was sufficient evidence to support Glen's convictions for neglect of a vertebrate animal; 2) whether the trial court erred in ordering Glen to pay for labor and materials to construct structures for the maintenance of the horses and for veterinary bills while they were in the custody and care of the county; 3) whether Glen was convicted of an offense with which he was not charged; 4) whether Glen received ineffective assistance of counsel; and 5) whether the trial court's questioning of Glen regarding his finances during his sentencing resulted in a violation of his Fifth Amendment right not to incriminate himself.

We affirm.

The facts most favorable to the conviction follow. In 1997, Glen owned three horses, Cody, a nine year old paint gelding, Rusty, a four year old sorrel gelding, and Lady, a four year old bay mare. All three horses were in his care and custody. In January of 1997, Gerald Lykins, Glen's cousin, began receiving numerous phone calls from people, who mistakenly believed that he was Glen, complaining about the poor condition of the horses. Gerald told the callers that he would relay their concerns to Glen. Mac Lykins, who is Glen's uncle, also received a phone call from someone complaining about the condition of Glen's horses. The caller threatened to "turn [Glen] in" because the horses were not fed. Mac promised the caller that he would feed the horses. Both Gerald and Mac had observed that Glen's horses were very thin, did not have food, and were kept in a muddy area with no bedding. On at least one occasion, Mac and Gerald went to Glen's and provided the horses with enough hay to feed the horses for approximately ten days. Both Gerald and Mac informed Glen that they had received calls regarding the poor condition of the horses and informed Glen that they had taken the hay over to Glen's horses in response to phone calls complaining about their condition.

In January of 1997, the Fayette County Sheriff's Department also began receiving complaints that when the callers had passed by Glen's property, they observed that the horses were being neglected. In addition, Gerald had contacted the Sheriff's department about the complaints that he was receiving. In mid-January, Sergeant Jack Jones from the Sheriff's Department went to Glen's home and observed that "[t]he horses were in very bad condition" and were kept in a bare lot with no access to food. Record, p. 250. Sergeant Jones told Glen about the complaints and voiced his opinion that the horses were being neglected. Glen told Sergeant Jones that he could not locate any hay to purchase to feed the horses. Sergeant Jones, also a horse owner, told Glen that hay was available, but that the price was higher than

average. Sergeant Jones gave Glen the name of an individual that was selling hay.

A few weeks later, Sergeant Jones received a call from an animal shelter reporting that someone had contacted it regarding the poor condition of the horses. In addition, anonymous complaints had been made to the Sheriff's Department. Sergeant Jones went to Glen's to see if Glen had acquired any hay for the horses yet. Although Glen had not yet obtained any hay, he had purchased some alfalfa cubes to feed to the horses. Glen told Sergeant Jones that he had not been able to acquire any hay and even if he did, he did not have a way to haul it. Sergeant Jones told Glen that he would haul the hay for him and also pointed out that Glen could ask one of Glen's many relatives that had trucks to pick up the hay.

Approximately two weeks later, Sergeant Jones went to Glen's again. By this time, Glen had purchased hay, but he was not feeding them enough to improve their condition. To maintain a horse in normal condition, it should be fed approximately ten pounds of grain per day and two flakes of hay, but Glen was feeding his horses only a cup of grain and two flakes of hay each per day. The horses were still in "terrible shape" and because they were kept in a bare muddy lot with feces it was likely that they had contracted many parasites in their system. Record, p. 271. Sergeant Jones told Glen that he would continue to monitor the horses. However, the investigation was taken over by Sergeant Michelle Dudley.

Then, on March 17, 1997, Vicki Turner, who had been around horses her whole life, called the Sheriff's Department and told Sergeant Dudley that she was "furious about the poor condition" of Glen's horses. Record, p. 282. She said that the horses were living in a dried up "muddy pit" and that the horses had nothing to eat and no bedding. She further described the horses as: "very poor looking. They were looked like they had been starved. They had, I couldn't see no food. Their hips were, their bones were sticking out. Their backbones were sticking out. Their ribs were showing. Their hair was matted, it was very coarse looking. They seemed to be very lifeless. They were just very in terrible condition." Record, pp. 272-273. Turner reported that she had checked on the horses for four of the last five days and never saw any food available for them. In addition, she purchased some hay and fed it to the horses. She did not encounter any problems in purchasing hay.

On March 18, 1997, Sergeant Jones, Sergeant Dudley, and Sheriff Harold Steel along with Dr. Warren Buhler, the state veterinarian, went to Glen's residence with a search warrant to inspect the physical condition of the horses and the premises. Dr. Buhler did a visual inspection of the horses and used a Purdue University Veterinary School scale of one to nine, with nine being an extremely fat horse and one being an extremely emaciated horse to evaluate the horses' health. He rated Glen's horses as being in category two condition, which includes horses that are very thin and emaciated. The bones of all the horses were protruding to such an extent that from a distance of fifty to one hundred feet you could "count [their] ribs." Record, p. 345. One of the horses had advanced pustule dermatitis, an infection of the skin which is caused by improper nutrition. Dr. Buhler also observed that the horses were being kept in an extremely muddy lot with muddy stalls and no place to rest. Based upon this evidence, Dr. Buhler labeled the horses as neglected. Dr. Buhler noted that Glen had an adequate amount of fair quality hay and grain to feed the horses. Dr. Buhler instructed Glen to provide the horses with a twenty-four hour continuous supply of hay to eat, to feed them grain twice a day increasing the amounts gradually, and treat the horses for any parasites that they might have. Due to the poor condition of the horses, Dr. Buhler also told Glen that the horses should be checked by a veterinarian, and treated by a veterinarian in order to eliminate any parasites.

Later that evening, Sergeant Dudley returned to Glen's to check on whether the horses were being provided with continuous access to hay pursuant to Dr. Buhler's instructions. The feeders were empty. Sergeant Dudley checked the horses' feeders again early the next morning and found that they were still empty. During the next two days, Sergeant Dudley checked on the horses several times and found that the horses were not being fed in accordance with Dr. Buhler's instructions.

On March 20, 1997, the State charged Glen with three counts of neglect of a vertebrate animal, as class B misdemeanors. That same day, his horses were impounded and placed in the temporary care and custody of the Fayette County Animal Shelter. The jury found Glen guilty as charged. The trial court terminated Glen's rights to possession, title, custody or care of the three horses, granted a judgment against Glen for \$10,936.87 to Fayette County as payment for the cost of caring for the horses, and sentenced him to thirty days incarceration on each of the three counts with the sentences to run concurrently.

I.

The first issue is whether there was sufficient evidence to support Glen's convictions for neglect of a vertebrate animal. When reviewing sufficiency claims, we neither judge the credibility of the witnesses nor reweigh the evidence. *Gant v. State*, 668 N.E.2d 254, 255 (Ind.1996). Instead, we consider only the evidence which supports the conviction and all the reasonable inferences therefrom. *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind.1994). We will affirm the conviction when there is evidence of probative value from which a reasonable trier of fact could infer guilt beyond a reasonable doubt. *Brewer v. State*, 646 N.E.2d 1382, 1386 (Ind.1995). Reversal is only appropriate when reasonable persons would not be able to draw inferences as to each material element of the offense. *Smith v. State*, 660 N.E.2d 357, 358- 359 (Ind.Ct.App.1996).

Glen argues that the State failed to present sufficient evidence that he knowingly, intentionally, or recklessly neglected his horses. Glen asserts that he knew that his horses were thin and did "everything in his power to provide care for the animals." Appellant's brief, p. 10. Specifically, he asserts that when he ran out of hay, he was unable to obtain more hay to feed the horses. He also asserts that once he obtained hay, he fed the horses properly. Therefore, according to Glen, he did not have the requisite intent to commit the offenses.

The offense of neglect of a vertebrate animal is governed by Ind.Code § 35- 46-3-7. This statute provides that: "A person having a vertebrate animal in the person's custody who recklessly, knowingly, or intentionally abandons or neglects the animal commits cruelty to an animal, a Class B misdemeanor." Ind.Code § 35-46-3-7. The element of intent may be proven by circumstantial evidence alone, and it is well established that knowledge and intent may be inferred from the facts and circumstances of each case. *Biggerstaff v. State*, 435 N.E.2d 621, 623 (Ind.Ct.App.1982). The State is not required to prove intent by direct and positive evidence. *Id.*

Here, the State provided testimony by many witnesses, including Glen's relatives, a local horse owner, the state veterinarian, and Sheriff's deputies, that during the period from January, 1997, to March, 1997, the animals were very thin and generally in poor health. The State also presented evidence that during that same period these individuals told Glen that the horses were thin and that they needed to be properly fed. In addition, Glen was told about complaints that had been made by individuals to his relatives, the Sheriff's Department, and the animal shelter. Three different people acquired hay and fed the horses themselves. None of these three people had any problems obtaining hay to feed the horses. Sergeant Jones even told Glen where he could acquire hay to feed his horses and offered to help Glen haul the hay to the horses. Therefore, while hay prices in January through March might have been higher than normal, it was available. [FN3] Moreover, the evidence indicates that Glen had hay in his possession for over a month when Dr. Buhler evaluated his horses. Yet at the time of Dr. Buhler's visit, the horses' bones were protruding and he concluded that the horses were being neglected. Dr. Buhler instructed Glen to provide the horses with a continuous supply of hay. Nonetheless, Glen failed to comply with the veterinarian's instructions. When Glen was arrested, his horses were still being deprived of the food necessary to a healthy condition. Clearly, from the facts set forth in this case, the jury could infer that Glen knowingly, recklessly, or intentionally, neglected the horses. See *Biggerstaff*,

435 N.E.2d at 623 (holding that evidence that five dogs in defendant's possession were kept in a filthy room covered with feces, were infected with hook worms, were emaciated, and were dehydrated due to inadequate food and water was sufficient evidence from which the trial court could have inferred that the defendant knowingly or intentionally neglected the dogs); Reynolds v. State, 569 N.E.2d 680, 682 (Ind.Ct.App.1991) (holding that the jury could infer that the defendant neglected her animals where evidence was presented that the animals were kept in an inhumanely hot environment, were thin, were not provided with a proper place to excrete waste, were not provided with food or water, were not inoculated, were kept in cages that were too small, and the animals were frightened of humans).

FN3. Even assuming *arguendo* that Glen could not find hay, the horses were also not being fed enough grain. Glen does not claim that grain was not available.

Glen's assertion that he did not have the requisite intent to neglect his horses because he was unable to obtain hay to feed his horses is merely an invitation for this court to engage in reweighing of evidence, which we cannot do. See Gant, 668 N.E.2d at 255. We conclude, based upon the above facts, that a reasonable trier of fact could infer Glen's guilt beyond a reasonable doubt. Brewer, 646 N.E.2d at 1386. Therefore, the evidence was sufficient to support his conviction.

II.

The second issue is whether the trial court erred in ordering Glen to pay for labor and materials to construct structures for the maintenance of the horses and for veterinary bills while they were in the custody and care of the county. When a person is convicted of neglect of a vertebrate animal, Ind.Code § 35-46-3-6(h) specifically authorizes the trial court's imposition of an

additional penalty that "require[s] that the person pay the costs of caring for an animal involved in the offenses that are incurred during a period of impoundment ..." Ind.Code § 35-46-3-6(h).

Here, the trial court ordered Glen to pay for the costs incurred by Fayette County in constructing stables to house Glen's three horses while they were impounded. The stables were built solely because the trial court had previously ordered the Fayette County Animal Shelter to house Glen's three horses. Pursuant to I.C. § 35-46-3-6(h), the trial court was authorized to require that Glen pay for the costs of providing shelter for the horses while they were impounded because shelter is a necessary part of caring for the horses. See I.C. § 35-46-3-6(h).

The trial court also ordered Glen to pay for costs incurred by the county for veterinary treatment of one of his horses while it was housed at the animal shelter. The horse was injured after it ran into a fence during a lightning storm. The resulting injury to the horse necessitated that the horse be treated by a veterinarian. Regardless of where the horse was housed when this injury occurred, the costs associated with treating it for injuries were necessary to properly care for the horse. See I.C. § 35-46-3-6(h).

Glen argues that the statute should only cover reasonable expenses, and that \$10,936.87 in costs for labor and materials to build structures to shelter the horses and for the veterinary bill is unreasonable. However, Glen fails to set forth any specific amounts in relation to building the structures that he claims were unreasonable and does not tell us why he claims the veterinary bill is unreasonable. [FN4] Moreover, it is implicit in the trial court's order of \$10,936.87, a lesser amount than the \$12,226.96 originally requested, that it considered the charges for the care of Glen's horses and decided that \$10,936.87 was a reasonable amount. [FN5] Because the costs incurred by Fayette County to house the horses and for the veterinary bill were for caring for Glen's horses and he does not tell us how they were unreasonable, we conclude that the trial court did not err in ordering Glen to pay the costs. See I.C. § 35-46-3-6(h).

FN4. Glen merely states that it is unreasonable for him "to pay for capital improvements at the shelter and for injuries a horse received through no fault of [his]." Appellant's brief, p. 14.

FN5. The trial court denied Fayette County's request to the extent that it included reimbursement for additional fencing installed at the shelter while the horses were kept there.

[The rest of the opinion, dealing with notice of the charges and ineffective assistance of counsel, is omitted.]