

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-14-1083

Appellee

Trial Court No. CR0201301551

v.

Carl Steward

DECISION AND JUDGMENT

Appellant

Decided: July 31, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Brenda J. Majdalani, Assistant Prosecuting Attorney, for appellee.

Diana L. Bittner, for appellant.

* * * * *

JENSEN, J.

{¶ 1} Defendant-appellant, Carl Steward, appeals a judgment of the Lucas County Court of Common Pleas finding him guilty, after a bench trial, of five counts of felony dogfighting. For the reasons that follow, we affirm, in part, and reverse, in part, the decision of the trial court.

{¶ 2} Appellant was indicted on six counts of dogfighting, in violation of R.C. 959.16(A)(3), felonies of the fourth degree. The following evidence was presented at trial.

{¶ 3} On the evening of January 31, 2013, Toledo Police were dispatched to 230 South Fearing Street to investigate a “suspicious person.” Upon arrival at the partially boarded-up home, officers suspected that the back door had been forced open. When they entered to investigate, they heard dogs barking and “a lot of chains wrestling.”

{¶ 4} A search of the home revealed no “suspicious person.” Rather, officers found six dogs secured in six different rooms on three floors of the home. The home had running water, heat, and electricity. A stack of mail addressed to appellant was found on the fireplace mantle. However, there were no other signs that the home was being inhabited by humans. Instead, it appeared to be a kennel, of sorts, for six “pit bull” canines.

{¶ 5} In the living area of the home, officers encountered a large kennel containing one female pit bull (dog 0165). A second room on the first floor bedroom contained a kennel housing one female pit bull (dog 0163).

{¶ 6} Officers found one dog in each of the three upstairs bedrooms (dogs 0162, 0164, and 0166). The floors of the bedrooms were covered in plastic material and wood chips. An eyebolt was attached to the floor in the center of each bedroom. Heavy gauge chain connected the dogs to the eyebolts.

{¶ 7} In the basement, officers discovered a male pit bull (dog 0161). His collar was secured to an eyehook in the ceiling with a heavy gauge chain.

{¶ 8} All of the dogs had access to water and most of the dogs had access to food. The dogs were seized and taken to the dog warden's facility. None of the dogs were aggressive toward people. However, dogs 0161, 0162, 0164, and 0165 were aggressive toward other dogs.

{¶ 9} The Chief Lucas County Dog Warden, Julie Lyle, testified that several items were seized from the home. These items included a weighted dog vest, three sections of cow hide, horse leads, a 50' aerial dog run, a dog treadmill, injectable penicillin, syringes, topical antibiotic ointment, equine dewormer, an empty bottle of hydrogen peroxide, and an empty box picturing an electronic hanging scale.

{¶ 10} Dr. Sidney Thurston is a veterinarian employed by the dog warden. At trial, Dr. Thurston described the physical condition of the six dogs when they were received at the facility. Dog 0165 was very thin. She had old scars on her front legs that were, in Dr. Thurston's opinion, too numerous to count. The dog's left rear leg had some scarring. She had fresh puncture wounds on her face and head. The tip of her tail was bleeding.

{¶ 11} Dog 0163 was very dirty and sticky. A moderate skin infection covered her entire belly. She did not, however, have any visible injuries or scarring.

{¶ 12} Dog 0162 was very thin and had a skin infection. She had scarring above the chest and a wound on her neck. The inner half of one ear was missing while the other

ear was ragged and torn. A fresh puncture wound at the base of one ear was, in Dr. Thurston's opinion, only a couple of days old. The dog's other wounds were in various stages of healing.

{¶ 13} Dog 0164 was moderately underweight. An examination of her right front leg suggested she had suffered a fracture in the recent past. Her right front paw was swollen but had healed in a way that it rotated outward. The dog had several old scars on her head, face, feet, and legs. She had fresh wounds on her nose. A portion of her right ear was missing. In Dr. Thurston's opinion, some of the dog's injuries were less than a week old.

{¶ 14} Dog 0166 was very underweight. She had numerous scars on her head, face, and neck. There were "several pieces" missing from her left ear. In Dr. Thurston's opinion, an injury to the dog's leg was at least a month and one-half old.

{¶ 15} Dog 0161 had scarring on his face, neck, back leg, forelimbs, and chest. The dog's ears had ragged edges and "relatively fresh" wounds were found on his nose and ears. The wounds on the top of his head were puncture wounds about the size of a tooth.

{¶ 16} In Dr. Thurston's opinion, the scars and wounds found on dogs 0161, 0162, 0164, 0165, and 0166 were consistent with wounds found on dogs engaged in dogfighting.

{¶ 17} Jessica Poupard, an employee of the dog warden, testified that she assisted appellant with the necessary paperwork when he arrived at the facility to claim the

subject dogs on February 12, 2013. Poupard asserted that appellant listed his address as 230 S. Fearing, Toledo, Ohio, and acknowledged ownership of all six dogs. When appellant was informed that the dogs would not be released without a court order because the dogs were evidence in a dogfighting investigation, appellant asserted, “you can’t prove it.”

{¶ 18} Doug Allen is a detective with the Toledo Police Gang Task Force Special Enforcement Division. In addition to his duties on the Gang Task Force, he is also responsible for all of the city’s dogfighting investigations. Detective Allen opined that based on his experience, the wounds found on five of the six dogs were “very definitely consistent with dog fighting wounds.” Considering the conditions of the home and the evidence seized therein, it was Detective Allen’s opinion that the dogs were being kept for the purpose of dogfighting.

{¶ 19} Mark Kumpf is the Chief County Dog Warden for Montgomery County, Ohio. Over appellant’s objection, Kumpf was qualified to testify as an expert in the area of dog fighting investigations. In regard to dogs 0161, 0162, 0164, 0165, and 0166, Kumpf opined that the dogs’ injuries, scars and wounds were “wholly consistent with a dog that has been engaged or coerced to fight” as opposed to wounds consistent with “natural dominance displays.”

{¶ 20} In regard to dog 0163, Kumpf explained that the dog may not have actually been placed into a fight but had “potential to be used for breeding for purposes of rearing dogs for fighting.”

{¶ 21} Kumpf explained that treadmills, high gauge chains, weighted vests, and animal hides are frequently used in training dogs for dogfighting. The hanging scale is a significant piece of evidence in a dogfighting investigation because it is considered more accurate than a stationary scale when weighing dogs for a fight. Kumpf further explained that it was not uncommon for owners of fighting dogs to use medications similar to those seized in this case because owners generally do not take fighting dogs to veterinarians because of the risk that the owners will be reported to the authorities. Kumpf concluded:

Based on reviewing all of the evidence, the photos, the types of dogs, the injuries, the medical reports, and having examined the evidence in the case, my technical opinion would be that all of the dogs to a degree were kept or trained or used for the purpose of supporting an on-going dog fighting operation, and that would include the unmarked unscarred dog, which in my technical opinion was a breeding female used for that purpose.

{¶ 22} At the close of the state's case-in-chief, appellant moved for acquittal on all counts pursuant to Crim.R. 29. The trial court denied his motion.

{¶ 23} Appellant testified on his own behalf. He indicated that he had entered into a "rent-to-own lease" on the subject home and was intending to move in once he had finished some remodeling work. He further indicated that he had accumulated all six dogs in the three months prior to his arrest. According to appellant, a few of the dogs were found "roaming around, just like roaming around the neighborhood" and the rest

were given to him by “people throughout the neighborhood.” When cross-examined on how he acquired the dogs, the following exchange took place:

Q. [Y]ou collected these dogs from roaming the streets?

A. Yes.

Q. And some were given to you?

A. Correct.

Q. Do you recall which ones were roaming the streets?

A. Not right offhand, no. I know Bear was roaming the street, the male. And two of the females.

* * *

Q. You testified that some of these were given to you * * * No one that you know?

A. I knew one of them.

Q. Who was it?

A. Dude named Michael.

Q. And did Michael charge you for this dog?

A. No. He was moving from a house to an apartment, and he couldn't take it with him.

Q. What about the other individual, who was that guy or gal?

A. Just random people trying to get rid of the dogs for what reason I have no other clue.

{¶ 24} He explained that he kept the dogs separated in the home because he did not want anything to happen when he was gone. He kept four of the dogs on chains because he was afraid they would chew their way out of a crate.

{¶ 25} Appellant admitted to purchasing the various medications from a farm supply store. He indicated he purchased the treadmill for about \$480 at a “dog competition” in the summer of 2012 and used the treadmill to train dog 0161 for treadmill races. He further indicated he purchase the weighted vest on the internet for about \$108 and used it when walking the dogs to “burn off energy.” He purchased the hides for use as “dog toys” because they last longer than other toys. He indicated, however, that he did not have sufficient funds to take the dogs to the veterinarian and that it was more cost-effective to treat the dogs with medications he obtained from a local feed store.

{¶ 26} When the state asked appellant about dogfighting, the following exchange took place:

Q. Now, [appellant] * * * the time that you in fact possessed these dogs did they ever get into fights with each other at all?

A. No.

* * *

Q. Do you know if they were involved in dog fighting for certain?

A. Not for sure.

Q. Did you ever ask if any of these dogs were ever involved in dog fighting?

A. No.

Q. Did it matter to you at all?

A. No. * * * Cuz even if they was by them being in my keep they wasn't going to be in none, so it just didn't matter to me.

Q. And have you ever been engaged in any – have you ever been engaged in dog fighting at all?

A. No.

Q. Have you ever actually seen a dog fight in person before?

A. No.

Q. Were you keeping these dogs for the purpose of fighting them in the future?

A. No.

Q. Were you keeping these dogs to train them to fight in the future?

A. No.

{¶ 27} Appellant disputed allegations that the dogs displayed “fresh wounds” when they were seized by the warden. He asserted that none of the dogs suffered any injuries while in his care. Upon consideration of the evidence, the trial court found appellant guilty on five counts of dogfighting. A finding of not guilty was entered as to dog 0163. Appellant was sentenced to five years of community control, 100 hours of

community service, and ordered to pay \$12,030 to the Lucas County Dog Warden in restitution.

{¶ 28} Appellant appeals his conviction, setting forth the following assignments of error:

I. THE TRIAL COURT ERRED IN DENYING DEFENDANT-APPELLANT'S RULE 29 MOTION AND CONVICTING DEFENDANT-APPELLANT OF FIVE COUNTS OF DOGFIGHTING, AS DEFENDANT-APPELLANT'S CONVICTION WAS NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE.

II. THE TRIAL COURT'S FINDING DEFENDANT-APPELLANT GUILTY OF FIVE COUNTS OF DOGFIGHTING WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN THE CASE.

III. THE TRIAL COURT ERRED IN ORDERING DEFENDANT-APPELLANT TO PAY \$12,030 TO THE LUCAS COUNTY DOG WARDEN AS RESTITUTION IN THIS CASE.

First Assignment of Error

{¶ 29} In his first assignment of error, appellant asserts that the trial court erred in overruling appellant's Crim.R. 29 motion for judgment of acquittal. Specifically, appellant asserts there was insufficient evidence introduced to support the mens rea element of the offenses, i.e., that appellant acted "knowingly."

{¶ 30} Crim.R. 29(A) provides:

The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses. The court may not reserve ruling on a motion for judgment of acquittal made at the close of the state's case.

{¶ 31} Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally adequate to support a jury verdict as to all elements of the crime. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). The proper analysis under a sufficiency of the evidence standard is “whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Williams*, 74 Ohio St.3d 569, 576, 660 N.E.2d 724 (1996), quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. In order to affirm the denial of a Crim.R. 29 motion, we need only find that there was legally sufficient evidence to sustain the guilty verdict. *Thompkins* at 386.

{¶ 32} Appellant was convicted of five counts of dogfighting in violation of R.C. 959.16(A)(3). This section provides that “[n]o person shall knowingly * * * [s]ell, purchase, possess, or train a dog for dogfighting[.]” R.C. 2901.22 defines culpable mental states. R.C. 2901.22(B) states, in relevant part: “A person acts knowingly

regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist.”

{¶ 33} Here, the state offered the physical evidence and testimony which was the basis for reasonable inferences from which a rational trier of fact could find all essential elements of the crimes alleged in the indictment. Consequently, the evidence was sufficient to support appellant's convictions. The trial court did not err in denying appellant's Crim.R. 29 motion for acquittal. Appellant's first assignment of error is not well-taken.

Second Assignment of Error

{¶ 34} In his second assignment of error, appellant asserts that his conviction was contrary to the manifest weight of the evidence. Specifically, he asserts there was “no evidence of appellant training dogs for the purpose of dogfighting.”

{¶ 35} When an appellate court considers a claim that a conviction is against the manifest weight of the evidence, the court must dutifully “examine the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses, and determine whether the jury ‘clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.’” *State v. Tibbetts*, 92 Ohio St.3d 146, 163, 749 N.E.2d 226 (2001), quoting *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541.

{¶ 36} As stated above, R.C. 959.16(A)(3) provides that “[n]o person shall knowingly * * * [s]ell, purchase, possess, or train a dog for dogfighting[.]” At trial, the state presented evidence that appellant was in possession of six dogs. Each dog was kept in a separate room on three levels of a home in a manner, identified by the dogfighting expert, consistent with an urban dogfighting operation. Appellant was in possession of equipment commonly used to train dogs for dogfighting, e.g., a treadmill, animal hides, a weighted vest and numerous over-the-counter medicines and antibiotics. Both the warden’s veterinarian and the dogfighting expert testified that the injuries found on five of the six dogs were indicative of recent dogfighting activities. We cannot say, based upon the record of evidence that the disputed finding of fact went against the manifest weight of the evidence. Appellant’s second assignment of error is not well-taken.

Third Assignment of Error

{¶ 37} In his third assignment of error, appellant asserts the trial court erred by ordering \$12,030 in restitution to the Lucas County Dog Warden for the dogs’ boarding and medical expenses because the warden is not a “victim” as that term is defined in R.C. 2930.01(H). The state concedes the restitution order was improper. We agree. Appellant’s third assignment of error is well-taken.

Conclusion

{¶ 38} The judgment of the Lucas County Court of Common Pleas finding appellant guilty of five counts of dogfighting in violation of R.C. 959.16(A)(3) and

959.99(H) is affirmed, in part, and reversed, in part. The portion of the judgment ordering restitution to the Lucas County Dog Warden in the amount of \$12,030 is reversed and vacated. The judgment is affirmed in all other respects. The court costs of this appeal are to be borne equally by the parties.

Judgment affirmed, in part,
and reversed, in part.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.