1992 WL 43316
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Court of Appeals of Minnesota.

STATE of Minnesota, Respondent,
v.
Marvin Gerhart STOLT, Appellant.

No. C3-91-1350.
|
March 10, 1992.
|
Review Denied April 29, 1992.

Appeal from District Court, Pope County; Jon Stafsholt, Judge.

Attorneys and Law Firms

Hubert H. Humphrey, III, Attorney General, St. Paul, Bruce D. Obenland, Pope County Attorney, Glenwood, Charles C. Glasrud, Special Assistant Pope County Attorney, Martin, Nelson & Glasrud, P.A., Morris, for respondent.

Ronald R. Frauenshuh, Jr., Ortonville, for appellant.

Considered and decided by CRIPPEN, P.J., and PARKER and EDWARD D. MULALLY [*], JJ.

UNPUBLISHED OPINION

EDWARD D. MULALLY, Retired Judge.

***1** Appellant Marvin Gerhart Stolt challenges his misdemeanor convictions of mistreatment of animals under Minn.Stat. § 343.21, subds. 1 and 2 (1988). Stolt contends he was denied a fair trial because the trial court refused to instruct the jury that knowledge is an element of the crimes of which he was convicted, because of prosecutorial misconduct and because of evidentiary rulings by the trial court. We affirm.

FACTS

On November 17, 1989, a Pope County Deputy Sheriff executed a search warrant on property of Marvin Gerhart Stolt. Two adult horses, a foal, a dog with eleven puppies, and one dead rabbit and one live rabbit were found. The live animals were removed from the premises because it appeared they were not being fed and cared for. Stolt was charged under Minn.Stat. § 343.21, subds. 1 and 2. After a trial, a jury found Stolt guilty of both counts.

On July 25, 1991, the trial court filed an order denying Stolt's motions for a new trial or judgment of acquittal. Stolt appeals that order.

DECISION

1. Stolt contends the trial court erred in refusing to instruct the jury that knowledge is an element of the crimes of which he was convicted. We disagree. The jury was instructed by the trial court that Stolt had to have "charge or control" of the animals under Minn.Stat. § 343.21, subd. 2. The state also informed the jury that a person must have a responsibility to care for animals in order to be found guilty of "neglect" under Minn.Stat. § 343.21, subd. 1. In essence, "knowledge" of the mistreatment is simply another way to say that a person had "charge or control" or was "responsible." Therefore, the jury had the element of knowledge before it.

This analysis is in conformity with *State v. Klammer,* 230 Minn. 272, 41 N.W.2d 451 (Minn.1950). There, the supreme court decided the evidence was sufficient to show the defendant had adequate knowledge to be found to have control or responsibility. *Id.* at 278-79, 41 N.W.2d at 454-55. We do not read the case as requiring a specific jury instruction that knowledge is a subpart of the element of control or responsibility. We note that *State v. Maguire,* 188 Minn. 627, 248 N.W. 216 (Minn.1933) has no application here because the charge was for "wilfull" mistreatment. *Id.* at 627, 248 N.W. at 216.

We also note the jury was fully informed that Stolt claimed he was not responsible for the animals. In their closing arguments, both sides discussed responsibility for the animals. Stolt argued to the jury that the care of the animals was the responsibility of other family members, including his 12-year-old daughter. The jury clearly had the issue of responsibility before it and determined Stolt was responsible for the mistreatment of the animals.

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2. We find no merit in Stolt's claim he was denied a fair trial by prosecutorial misconduct. Stolt argues the state misstated the evidence in its closing argument. The evidence as a whole, however, supports the objected-to statement. Furthermore, after Stolt's objection, the state told the jury to rely on its own recollection of the testimony. We also find no merit to Stolt's other claims of prosecutorial misconduct.

***2** 3. We find the trial court did not abuse its discretion in its rulings during the trial. Stolt argues the trial court erred in refusing to allow him to read from a deposition in closing argument. Stolt, however, did not advise the court and the state of his intention to read from the deposition. *See State v. Waters,* 276 N.W.2d 34, 36 (Minn.1979) (requiring notice of intent to read from a deposition transcript in closing argument). We find no abuse of discretion.

We also find the trial court did not abuse its discretion in making other evidentiary rulings challenged by Stolt.

Affirmed.

All Citations

Not Reported in N.W.2d, 1992 WL 43316

Footnotes

* Retired judge of the district court, acting as judge of the Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 2.

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