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Court of Appeals of Minnesota.

STATE of Minnesota, Respondent,
v.
Tracey Lea ROSS, Appellant.

No. C8-00-1305.
|
May 15, 2001.

Attorneys and Law Firms

Mike Hatch, Attorney General, St. Paul, MN; and John J. Muhar, Itasca County Attorney, W. James Mason, Assistant County Attorney, Grand Rapids, MN, for respondent.

Craig S. Hunter, Hunter Law Office, Duluth, MN, for appellant.

Considered and decided by ANDERSON, Presiding J., LANSING and HALBROOKS, JJ.

UNPUBLISHED OPINION

LANSING.

***1** Tracey Ross appeals from a misdemeanor conviction of mistreatment of animals for failing to provide necessary food to horses under her charge or control. Ross challenges the sufficiency of the evidence to prove that she had "charge or control" of the horses and the district court's evidentiary rulings that excluded a photograph and a portion of her proposed testimony. Because the evidence supports the jury's determination that Ross had charge or control of the horses and because the exclusion of the photograph and the limitation on Ross's testimony were within the district court's discretion, we affirm.

FACTS

A jury found Tracey Ross guilty of failure to provide necessary food to horses under her charge and control during the winter of 1998-99. Ross owned five horses that she placed in the summer of 1997 at a farm owned by Kurt Heaser. The five horses included a black stallion. In November 1998, Ross brought a sixth horse-a dark blue roan-to the Heaser farm.

At trial, Heaser testified that he watered the horses and Ross was responsible for feeding them. During the winter of 1997-98, according to Heaser, Ross took good care of the horses, arranging for hay, grain, and veterinary supplies. But during the winter of 1998-99, Heaser did not see Ross or anyone else feed the horses. He did see two round hay bales that were delivered to the farm in early November 1998; the horses consumed the hay bales within two weeks. From mid-November until January 23, 1999, when the sheriff's office seized the horses, the horses had no food except for a small amount of grain that Heaser gave them and some hay that neighbors donated in mid-January. Heaser testified that the black stallion lost weight and looked "tough." Two neighbors testified that the black stallion and the dark roan were thin and emaciated.

Ross testified that because of a change in her work shift in late November 1998, she arranged for Kelly Kloepfer to feed the horses. She further testified that she gave money to Kloepfer to purchase feed for the horses. Even though she delegated the responsibility to Kloepfer to feed the horses, Ross continued to visit the horses and went to Heaser's farm at least five times between Thanksgiving weekend 1998 and January 16, 1999. Ross testified that each time she checked the horses, including once in January when she knew that someone had complained to the sheriff about their condition, the horses looked fine.

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After the sheriff seized the horses on January 23, 1999, veterinarian Paul Koskinen examined the six horses. At trial, Dr. Koskinen testified that the black stallion was in very poor condition, having lost both fat and muscle mass. In that condition in cold weather, the black stallion could become hypothermic and die. Koskinen also testified that the dark roan was in poor condition. Koskinen did not detect any specific disease in any of the horses.

During the trial, Ross attempted to introduce a photograph of the black stallion taken during the winter of 1997-98 after the black stallion had contracted strangles, a bacterial infection, and a virus at a horse show. The district court sustained a relevancy objection to the admissiblity of the photograph because Ross provided no evidence that the black stallion had any disease during the time at issue, the winter of 1998-99. The court also sustained an objection to Ross's proposed testimony that the black stallion was a "hard keeper" that lost weight every winter and gained it back in the spring because Ross had already testified that the black stallion lost weight the prior winter because of strangles, and not because he was a hard keeper.

***2** The jury found Ross guilty of failing to provide necessary food for the horses "on or about January 14, 1999." Ross appeals, contending (1) that the evidence is insufficient to show that the horses were under her care and control, and (2) that the district court's evidentiary rulings require a new trial.

DECISION

I

Evidence is sufficient to support a conviction if the facts in the record, viewed in the light most favorable to the verdict, and any legitimate inferences drawn from those facts, support the conclusion that the defendant committed the crime charged. *State v. Wilson,* 535 N.W.2d 597, 605 (Minn.1995). The reviewing court must assume the jury believed the state's witnesses and disbelieved any evidence to the contrary. *State v. Moore,* 438 N.W.2d 101, 108 (Minn.1989).

The jury convicted Ross of failure to provide adequate food to her horses in violation of Minn.Stat. § 343.21, subd. 2 (1998), which provides that "[n]o person shall deprive any animal over which the person has charge or control of necessary food, water, or shelter." Ross contends that the evidence is insufficient to establish the element of charge or control. We disagree.

The terms "charge or control" are not defined in the statute. In the absence of a definition, statutory language should be construed according to common and approved usage. Minn.Stat. § 645.08(1) (2000). Black's Law Dictionary defines "charge" as "[a]n assigned duty or task; a responsibility" and "control" as "the power or authority to manage, direct, or oversee." Black's Law Dictionary 227, 330 (7th ed.1999).

No Minnesota case has construed these statutory terms, but the Minnesota Supreme Court has twice applied the terms to uphold convictions when "charge or control" of horses was an element of the offense. In *State v. Maguire,* 188 Minn. 627, 631, 248 N.W. 216, 217 (1933), the court held that the evidence was sufficient to find that defendant had charge or control of horses that starved to death while the defendant, who did not own the horses, was holding the horses on his land under claim of lien for unpaid pasture rent. In *State v. Klammer,* 230 Minn. 272, 277-79, 41 N.W.2d 451, 454-55 (1950), the court held that the evidence was sufficient to find that defendant had charge or control of horses that he owned when the horses starved to death on his land after he discharged the employee who had been hired to feed and care for the horses.

Relying on the plain meaning of the words and the application of their plain meaning in *Maguire* and *Klammer,* we conclude that the evidence is sufficient to support the jury's finding that Ross had charge or control of the horses. First, Ross owned the horses. As their owner, she had the primary responsibility to feed and care for the horses. Ross's arrangement with Kloepfer did not divest her of her right to control the horses or her responsibility to take charge of them

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if Kloepfer did not perform the duties entrusted to her. Second, Ross's testimony did not establish that she had delegated to Kloepfer the full responsibility for feeding the horses. Ross stated that she continued to make regular visits to the farm, and when she became aware of the complaint to the sheriff's office, she responded by going to the farm to check on the horses. The evidence is sufficient to support the jury's finding that Ross had charge or control over the horses.

II

***3** Ross challenges two evidentiary rulings as reversible error. Evidentiary rulings are within the discretion of the trial court and will not be reversed absent a clear abuse of discretion. *State v. Willis,* 559 N.W.2d 693, 698 (Minn.1997). A defendant claiming that the district court erred in admitting evidence has the burden of proving both error and resulting prejudice. *State v. Grayson,* 546 N.W.2d 731, 736 (Minn.1996). Reversal is warranted only when a district court's evidentiary error substantially influences the jury's decision. *Id.*

In the first disputed ruling, the district court excluded a photograph of the black stallion taken during the winter of 1997-98 after the stallion contracted strangles and a virus at an October 1997 horse show. The district court concluded the photograph was irrelevant for purposes of the criminal trial because no evidence suggested the stallion had strangles in December 1998 and January 1999, the claimed period of neglect.

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn.R.Evid. 401. The trial court was well within its discretion to conclude that this post-strangles photograph was not relevant to determining whether the black stallion was provided adequate food during the winter of 1998-99.

In the second disputed ruling, the district court excluded testimony that the black stallion was a "hard keeper" that would lose weight every winter, then gain it back in the spring. Ross had already testified to the jury that the reason the black stallion lost weight the previous winter was because it had strangles and not because he was a "hard keeper." Ross made no offer of proof that the black stallion had exhibited seasonal weight loss apart from the loss attributable to strangles in 1997-98. Therefore, the court could reasonably exercise its discretion by disallowing the testimony on the basis that it may have resulted in confusion of the issues and may have misled the jury. *See* Minn.R.Evid. 403.

Finally, the excluded photograph and testimony would only have provided a possible explanation for the condition of the stallion. The unchallenged evidence of the dark roan's condition was independently sufficient to establish Ross's failure to provide necessary food to a horse under her charge or control. Thus even if Ross could have established evidentiary error, she cannot show a reasonable possibility that the verdict might have been different if the evidence was admitted. *See State v. Post,* 512 N.W.2d 99, 102 (Minn.1994).

Affirmed.

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