

COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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NO. 40721-3-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

PM 10/25/10

STATE OF WASHINGTON, Respondent,

v.

JOSEPH DOBBS, Appellant.

APPELLANT'S BRIEF

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I. ASSIGNMENTS OF ERROR

1. The trial court erred by finding without sufficient evidence in the record that lack of adequate food caused the death of the horse. (FF #5 & 6)
2. The trial court erred by finding without sufficient evidence that Mr. Dobbs' negligence caused the death of the horse. (FF #6)
3. The trial court erred by finding without sufficient evidence that Mr. Dobbs knew that there was a "substantial risk of starvation." (FF #3)
4. The trial court erred by finding without sufficient evidence that the horses had not been fed. (FF #IX)
5. The trial court erred by finding without sufficient evidence that Dr. Hagerman testified to a cause of death. (FF #VI)
6. The trial court erred by finding Mr. Dobbs guilty of animal cruelty in the first degree without sufficient evidence to support the crime.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court erred by convicting Mr. Dobbs of felony first-degree animal cruelty where there was insufficient evidence that

the horse died as a result of starvation and where there is insufficient evidence that the horse's suffering elevated the crime above second degree?

III. STATEMENT OF THE CASE

The circumstances that led to the charges in this case began a few months before the actual incident in February of 2009. There are two defendants in this case, ex-spouses Amanda and Joseph Dobbs. RP 280, 374. Mr. Dobbs is an MP in the army. The Dobbs have three children. RP 281. Their middle child, an eight year old son, is profoundly disabled with spina bifida and hydrocephalus and needs constant care. RP 281. The Dobbs also owned three horses.

When times were better, the Dobbs had purchased three horses for Mrs. Dobbs, who had grown up around them. RP 289. Mr. Dobbs did not know anything about horses. RP 364. Although it was costly to maintain the horses, Mrs. Dobbs arranged to work at a local stable to defray the cost of their boarding and the family lived in army housing, which had low costs. RP 283. Still, the cost of paying for the stable became too much of a financial burden. RP283-84.

Then, in the summer of 2008, the Dobbs purchased a home with an acre of land and moved the horses there in October, allowing them to

graze and supplementing with grain and hay. RP 285. The Dobbs cleared the land and built a corral for the horses. There was no constructed shelter for the horses, but neither of the Dobbs realized that they would need this and in any case, they could not afford to build one. RP 291, 398. They believed the horses could be healthy without a shelter. RP 291, 398.

Then, Mrs. Dobbs moved out in November. RP 285. After this time, the Dobbs purchased feed for the horses every couple of weeks. RP 287, 377. The Dobbs were able to provide receipts from one of the grain stores they used and lived testimony from the owner of the other about how often and how much feed they had purchased. RP 407, RP 325. In all, the Dobbs provided evidence of purchasing around 2,800 pounds of feed from November to February 19. RP 411. Mrs. Dobbs went to the house and fed them a few times a week. RP 287. Mr. Dobbs also fed them in the mornings and his teenage daughter fed them in the afternoons. RP 375.

Mrs. Dobbs testified that as it got cold in December, the horses seemed to be losing weight. RP 290, 303. Mr. Dobbs noticed that the horses seemed thinner starting in mid-January. RP 386. They asked at the feed store what to do about this and were advised to purchase deworming medicine and feed that was supplemented—which they did. RP 292, 304, 376-77, 408.

But the horses did not gain weight and the winter got colder. RP 304. Despite being fed what the Dobbs thought was enough, the horses looked thin. RP 304. Mr. Dobbs wanted to find another home for the horses. RP 285-87, 377. He asked friends if they would take the horses or knew anyone who would. RP 378. He called the humane society in January to find out if they had stables—but was told they did not. RP 378, 391. He went to see the breeder who sold them the horses and asked if he could bring them back, but the breeder did not respond. RP 287, 377. The night the horse fell down, Mr. Dobbs asked the vet if he would help find someone who could take the horses—if he knew of any rescue organizations for horses.¹ RP 210. Mr. Dobbs did not know there were rescue organizations available for horses. RP 392.

Moreover, there were severe financial problems for the family. RP 300-1. Mr. Dobbs struggled that winter to feed his children, care for his disabled son, work long days for the military, and hold himself together. RP 336. A friend of the family testified that he often had to give the family food and money to keep the children from going hungry. RP 337. Mr. Dobbs testified that he did the best he could for the horses and never meant to harm them.

¹ Dr. Dugan said he would help if Mr. Dobbs called the office the next day. RP 210. But, by the next day Animal Control was already there.

Mr. Dobbs also had to struggle against Mrs. Dobbs, who did not want to give away the horses and kept telling him she was taking care of it. RP 285-6, 293-4, 336, 380-81. He thought he could not give away the horses without Mrs. Dobbs' approval, since they were her horses. RP 345, RP 378-80. In February, Mr. Dobbs finally found another home for the horses—he had arranged for a woman named Deanna Larkin to drive over to get the horses in the next week or two and bring them to her ranch. RP 355-56.

Then, on February 24, Mr. Dobbs came home one evening with his children and found one of the horses down. RP 364. The mare had been fed the night before and was up in the morning when the family left. RP 248. The ground was muddy and the horse had fallen and had become stuck under a fence. RP 364. Mr. Dobbs immediately called his friend and Mrs. Dobbs for help, and they cut the fence from around the horse and worked for some time to lift up the horse to no avail. RP 364-65, 367. Eventually, the friend convinced Mrs. Dobbs to call a veterinarian. RP 340.

Dr. John Dugan helped the men to pull the horse to level ground, but they could not get him to his feet. RP 203. He testified that the horse was very thin. RP 204. Dr. Dugan did not believe that the horse would survive the night—that she would likely succumb to hypothermia. RP

207-8. Dr. Dugan testified that the stress of being caught under the fence was a contributing factor in the horse's death. RP 220. He told the Dobbs to try to keep the horse warm and give an anti-inflammatory. RP 209. The Dobbs covered the horse with a blanket, but by the next day, the horse had died. RP 209.

When the vet did not hear from the Dobbs the next day, he called animal control to go check on the horse. RP 208. Animal control found the horse dead and the other two horses to be very thin. RP 22-26. They saw evidence that the wood shed and the trees had been gnawed at by the horses. RP 41, 43. Mr. Dobbs walked up as animal control officers were examining the horses. RP 34. When they told him the horse had died, he was visibly "shocked." RP 34-35.

The Dobbs signed over their rights to animal control that day to allow the two surviving horses to be adopted out. RP 54, 61. The other two horses were also found to be very thin, one even thinner than the horse that died, but they were otherwise healthy. RP 226. Both horses survived and are now in good health.

Dr. Linda Hagerman performed a necropsy on the horse that had died on February 27 (two days later). RP 96-97. The horse was very thin. RP 99-100. But there was undigested hay in the horse's stomach,

indicating it had been fed within 18 hours of its death. RP 124. She was not able to establish a cause of death to a medical certainty. RP 108, 125.

Dr. Hagerman testified that an average 1,000 pound horse needs 10 pounds of hay each day. RP 104. Animal control officer Jodi Page testified that 15-20 pounds a day is necessary. RP 143. A horse can also survive on grass, but must have sufficient grazing available. RP 105.

Mr. and Mrs. Dobbs were charged with one count of animal cruelty in the first degree and two counts of animal cruelty in the second degree. CP 2-3. Following a bench trial, both were convicted of one count of animal cruelty in the first degree, but were found not guilty on both counts of second degree animal cruelty due to “economic distress beyond defendant’s control.” RP 456, CP 24. Mr. Dobbs timely appeals his conviction.

IV. ARGUMENT

ISSUE 1: THE TRIAL COURT ERRED BY CONVICTING MR. DOBBS OF FELONY FIRST-DEGREE ANIMAL CRUELTY WHERE THERE WAS INSUFFICIENT EVIDENCE THAT THE HORSE DIED AS A RESULT OF STARVATION AND WHERE THERE IS INSUFFICIENT EVIDENCE THAT THE HORSE’S SUFFERING ELEVATED THE CRIME ABOVE SECOND DEGREE.

Mr. and Mrs. Dobbs were convicted of one count of animal cruelty in the first degree (for the horse that died after a fall). RP 455-56, CP 18-25. Although the court found that the State had proved two counts of animal cruelty in the second degree (for the two surviving horses), the

court found Mr. Dobbs not guilty of these crimes due to the affirmative defense of economic distress. RP 456, CP 24. There is insufficient evidence to support the first degree animal cruelty conviction because there is insufficient evidence to convince a fair-minded fact-finder beyond a reasonable doubt that the horse died as a result of lack of food (rather than the stress of the fall) and no evidence that this horse suffered substantial and unjustifiable physical pain that would have elevated the negligence to first degree.

Due process requires the State to prove all elements of a crime beyond a reasonable doubt. *State v. Aver*, 109 Wn.2d 303, 310, 745 P.2d 479 (1987). Evidence is insufficient to support a conviction when, viewed in the light most favorable to the prosecution, it would not permit a rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

RCW 16.52.205(2) states that a person is guilty of animal cruelty in the first degree, when:

he or she, with criminal negligence, starves, dehydrates, or suffocates an animal and as a result causes: (a) Substantial and un-justifiable physical pain that extends for a period sufficient to cause considerable suffering; or (b) death.”

On the other hand, RCW 16.52.207(2) states that a person is guilty of animal cruelty in the second degree, when:

the owner knowingly, recklessly, or with criminal negligence:

(a) Fails to provide the animal with necessary shelter, rest, sanitation, space, or medical attention and the animal suffers unnecessary or unjustifiable physical pain as a result of the failure.

The difference between first and second degree animal cruelty seems to be either starvation caused the death, or the period of time over which the horse has suffered. There is insufficient evidence in this record for the court to conclude that the horse died from starvation. Dr. Hagerman, who performed the necropsy on the horse, testified that she was not able to establish a cause of death to a medical certainty. RP 108, 125. In other words, she could not say what caused death in this case. The vet who saw the horse after it fell, Dr. Ness, testified that he expected the horse to die that night from the stress of the fall and hypothermia. RP 220. Both vets also noted that the horse was thin, but this was not a fatal condition. In fact, the other two horses were fed the same way and both survived—because neither horse fell. The only evidence that distinguishes count one from counts two and three, was that the horse died after it fell. If there was evidence that starvation was the cause of death, this would

satisfy the statute for first degree. But, there is no evidence that starvation was the cause of death.

In its oral ruling, the court appears to find that starvation was not the cause of death, but rather a contributing factor. RP 459 (lack of sufficient food caused “extreme suffering that led to death.”). The written findings conclude that lack of food was the cause of death. CP 24. There is insufficient evidence in the record to support this conclusion. No veterinarian was able to testify to a medical certainty what the cause of death was. The findings erroneously state that Dr. Hagerman “concluded that the horse’s death was caused by metabolic disease cause by a lack of food and/or exposure to elements.” There is no evidence to support this finding. What Dr. Hagerman actually testified was that she could not establish a cause of death, then she was asked to speculate on what could cause death—there was no evidence that this was the actual cause of death. While the horse may have been weakened by its general condition, the only evidence is that the horse died from the stress of a fall and hypothermia.

Further, there is not evidence that the horse that fell suffered any more than the other two horses. There was food in her stomach when she died, showing she had been fed. The evidence shows that the Dobbs did feed the horses regularly and that they attempted to care for them through

the worst winter the family had ever suffered. Although their efforts proved insufficient because the horses did not have sufficient shelter to compensate for the weather, this family did not intentionally cause any harm to the horses. Despite this, all three horses were thin. Yet, there is no evidence that the horse suffered more than the other two, such that the degree of the crime could be elevated to first degree. Certainly the period of time for the suffering was the same.

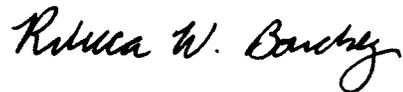
Thus, the trial court erred when it convicted Mr. Dobbs of first degree animal cruelty without sufficient evidence. The evidence supports only second degree animal cruelty for all three horses. Therefore, this court should reverse Mr. Dobbs' conviction for first degree animal cruelty and remand.

V. CONCLUSION

This case is a tragedy for the entire Dobbs family. They loved their horses and never meant to harm them in any way. Mr. Dobbs struggled to serve his country as an Army MP, take care of his children, feed his family and care for the horses, all while suffering through the demise of his marriage. The evidence showed that they were feeding the horses regularly, although the amount of food was insufficient for the weather conditions. Mr. Dobbs tried to find another home for the horses,

but his lack of knowledge made these efforts ineffective. Then, tragedy struck when the horse fell and exhausted itself trying to rise from the mud while stuck under a fence. In short, although there was negligence in the Dobbs' care of their horses that winter, there is insufficient evidence that the negligence caused the death of a horse and therefore insufficient evidence that Mr. Dobbs was guilty of felony first degree animal cruelty. The trial court should have found that he committed second degree animal cruelty, a gross-misdemeanor, as it did for the other two horses.

DATED: October 25, 2010

A handwritten signature in black ink that reads "Rebecca W. Bouchey". The signature is written in a cursive style with a large, looping 'R' and 'B'.

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Attorney for Appellant

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BY _____

CERTIFICATE OF SERVICE

I certify that on October 25, 2010, I caused a true and correct copy of this Appellant's Brief to be served on the following via prepaid first class mail:

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