

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

FILED

AT KNOXVILLE

JULY SESSION, 1999

September 8, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

STATE OF TENNESSEE,)	C.C.A. NO. 03C01-9807-CC-263
)	
Appellee,)	
)	
)	SEVIER COUNTY
VS.)	
)	HON. RICHARD R. VANCE,
LILLIE RUSSELL,)	JUDGE
)	
Appellant.)	(Cruelty to Animals)

ON APPEAL FROM THE JUDGMENT OF THE
CIRCUIT COURT OF SEVIER COUNTY

FOR THE APPELLANT:

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OPINION FILED _____

AFFIRMED

DAVID H. WELLES, JUDGE

OPINION

The Defendant was tried before a Sevier county jury and convicted of two counts of cruelty to animals.¹ Her convictions grew out of the poisoning deaths of two of her neighbor's dogs. For these Class A misdemeanor convictions, she was sentenced to concurrent terms of eleven months and twenty-nine days, with all but twenty days suspended. The Defendant appeals her convictions and her sentences. We affirm the judgment of the trial court.

In this appeal, the Defendant argues that the evidence presented at trial is insufficient to support her convictions because the circumstantial evidence presented did not exclude all theories other than her guilt. She further argues that there is not sufficient proof corroborating the statement which she allegedly made implicating herself in the commission of the crimes.

Tennessee Rule of Appellate Procedure 13(e) prescribes that “[f]indings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.” Tenn. R. App. P. 13(e). In addition, because conviction by a trier of fact destroys the presumption of innocence and imposes a presumption of guilt, a convicted criminal defendant bears the burden of showing that the evidence was insufficient. McBee v. State, 372 S.W.2d 173, 176 (Tenn. 1963); see also State v. Evans, 838 S.W.2d 185, 191 (Tenn. 1992) (citing State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1976), and State v. Brown,

¹ Tenn. Code Ann. § 39-14-202.

551 S.W.2d 329, 331 (Tenn. 1977)); State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982); Holt v. State, 357 S.W.2d 57, 61 (Tenn. 1962).

In its review of the evidence, an appellate court must afford the State “the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences that may be drawn therefrom.” Tuggle, 639 S.W.2d at 914 (citing State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978)). The court may not “re-weigh or re-evaluate the evidence” in the record below. Evans, 838 S.W.2d at 191 (citing Cabbage, 571 S.W.2d at 836). Likewise, should the reviewing court find particular conflicts in the trial testimony, the court must resolve them in favor of the jury verdict or trial court judgment. Tuggle, 639 S.W.2d at 914.

A crime may be established by circumstantial evidence alone. State v. Tharpe, 726 S.W.2d 896, 899-900 (Tenn. 1987). However, before an accused may be convicted of a criminal offense based only upon circumstantial evidence, the facts and circumstances “must be so strong and cogent as to exclude every other reasonable hypothesis save the guilt of the defendant.” State v. Crawford, 470 S.W.2d 610, 612 (Tenn. 1971). In other words, a “web of guilt must be woven around the defendant from which he cannot escape and from which facts and circumstances the jury could draw no other reasonable inference save the guilt of the defendant beyond a reasonable doubt.” Id. at 613.

A person commits the offense of “Cruelty to Animals” by intentionally or knowingly torturing an animal. Tenn. Code Ann. § 39-14-202. “Torture” includes any act “whereby unreasonable physical pain, suffering or death” is caused. Tenn. Code Ann. § 39-14-201(4).

The evidence presented at trial showed that the Defendant had been involved in a rather longstanding and ongoing feud or dispute with one of her neighbors. Cindy Taylor, the neighbor and the owner of the deceased dogs, explained that the parties resided in rural Sevier County, "in Kodak, up on Tucahoe Road . . . not far from the Dumplin Valley Flea Market." The Defendant, who raised goats, chickens and dogs, became upset with Ms. Taylor's dogs because she said they came on her property, threatening her animals and at times disturbing her garbage cans. The Defendant admitted that she had shot at the dogs with a shotgun on several occasions, although she said she was only trying to scare them away and was not trying to kill them. Ms. Taylor testified that the Defendant had told Taylor's daughter that she (the Defendant) was going to shoot the dogs if they were not kept up. Taylor said that the Defendant had also told her that she was going to kill the dogs.

Ms. Taylor testified that in December of 1995, within about a two-day time span, both her "chow mix" named "Bear" and her Labrador retriever named "Ubu" suddenly became very sick. She took the animals to Doctor Thomas S. Crawford, a veterinarian in Knoxville. Both animals died shortly thereafter. Doctor Crawford testified that both dogs died from "antifreeze poisoning."

Christopher Paul Trammell, who at the time also lived in the neighborhood, testified that the Defendant had given him a ride to his house at about the time the dogs had died. When they went by Ms. Taylor's house, the Defendant told him that she had "spiked" three hot dogs by injecting them with antifreeze from a syringe and had placed the contaminated hot dogs on Taylor's property for those "'blank' dogs."

The Defendant testified and denied making any statement to Mr. Trammell to the effect that she had spiked hot dogs with antifreeze and placed them on Ms. Taylor's property. She said Mr. Trammell had lied during his testimony. She denied poisoning the dogs and stated that she "wouldn't believe in being cruel to any animal." She did admit, however, that she had shot at the dogs with a shotgun several times.

There was much more testimony concerning the ongoing dispute between these parties in addition to what we have summarized in this opinion. The credibility of some of the witnesses was clearly placed at issue. The evidence presented by the State, if believed by the jury, was sufficient to establish that the Defendant caused the death of the two dogs. The jury, by its verdict, credited the testimony of the State's witnesses. It is apparent that the jury did not find the Defendant's denial of responsibility for the poisoning of the animals to be worthy of belief. In our view, the evidence presented a classic credibility issue for the jury to resolve, which the jury resolved in favor of the state. We conclude that the evidence is sufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.

The Defendant also argues that the trial judge erred or abused his discretion when he ordered that twenty days of her sentences be served in confinement. She argues that she is entitled to full probation because she has no prior criminal record and because alternatives to incarceration should be employed whenever possible.

When an accused challenges the length, range, or manner of service of a sentence, this Court has a duty to conduct a de novo review of the sentence with a presumption that the determinations made by the trial court are correct. Tenn. Code Ann. § 40-35-401(d). This presumption is “conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances.” State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991).

When conducting a de novo review of a sentence, this Court must consider: (a) the evidence, if any, received at the trial and sentencing hearing; (b) the presentence report; (c) the principles of sentencing and arguments as to sentencing alternatives; (d) the nature and characteristics of the criminal conduct involved; (e) any statutory mitigating or enhancement factors; (f) any statement made by the defendant regarding sentencing; and (g) the potential or lack of potential for rehabilitation or treatment. State v. Smith, 735 S.W.2d 859, 863 (Tenn. Crim. App. 1987); Tenn. Code Ann. §§ 40-35-102, -103, -210.

If our review reflects that the trial court followed the statutory sentencing procedure, that the court imposed a lawful sentence after having given due consideration and proper weight to the factors and principles set out under the sentencing law, and that the trial court’s findings of fact are adequately supported by the record, then we may not modify the sentence even if we would have preferred a different result. State v. Fletcher, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

Misdemeanor sentencing is controlled by Tennessee Code Annotated

§ 40-35-302, which provides in part that the trial court shall impose a specific sentence consistent with the purposes and principles of the 1989 Criminal Sentencing Reform Act. In misdemeanor sentencing, a separate sentencing hearing is not mandatory, but the court is required to provide the Defendant with a reasonable opportunity to be heard as to the length and manner of the sentence. Tenn. Code Ann. § 40-35-302(a). The trial court retains the authority to place the defendant on probation either immediately or after a time of periodic or continuous confinement. Tenn. Code Ann. § 40-35-302(e). Misdemeanor sentencing is designed to provide the trial court with continuing jurisdiction and a great deal of flexibility. One convicted of a misdemeanor, unlike one convicted of a felony, is not entitled to a presumption of a minimum sentence. State v. Creasy, 885 S.W.2d 829, 832 (Tenn. Crim. App. 1994). This Court has also held that the statutory presumption regarding alternative sentencing does not apply to a defendant who has been convicted of a misdemeanor. State v. Williams, 914 S.W.2d 940, 949 (Tenn. Crim. App. 1995). Our law does not mandate that a trial judge make specific findings of fact in misdemeanor sentencing when determining what portion of a defendant's sentence the defendant will serve in confinement. State v. Troutman, 979 S.W.2d 271, 274 (Tenn. 1998).

In the case at bar, the trial judge conducted a separate sentencing hearing. The record reflects that in sentencing the Defendant, the trial judge considered the sentencing principles, including enhancement and mitigating factors, and the relevant facts and circumstances of the case. The judge noted that the Defendant was fifty-eight years of age and that she had no history of criminal convictions. However, the trial judge observed that the proof established a pattern of poisoning of animals within the Defendant's community. The judge

pointed out that at the sentencing hearing the State had presented testimony from another individual who said the Defendant admitted to him that she was responsible for the poisoning death of his dog. The director of the Sevier County Humane Society testified that her agency would not place dogs for adoption in the Defendant's neighborhood because so many poisonings had occurred in that area. The judge noted his concern with the Defendant's action in setting out poisoned food because "[p]oison doesn't take aim. Poison is there for any animal or creature, or even person." In emphasizing the need for deterrence and to avoid depreciating the seriousness of the offense, the judge found that the proof showed that the Defendant's neighbors were afraid of her due to the escalating conflict in the community.

Trial judges are traditionally vested with much discretion in misdemeanor sentencing. The trial judge, who has observed first-hand the demeanor and responses of a defendant in court, must be allowed discretion in arriving at the appropriate sentence. This Court may not substitute its discretion for that exercised by the trial court, unless we find an abuse of discretion. From our review of this entire record, we cannot conclude that the trial judge abused his discretion in ordering the Defendant to serve twenty days in confinement.

The judgment of the trial court is affirmed.

DAVID H. WELLES, JUDGE

CONCUR:

GARY R. WADE, PRESIDNG JUDGE

JOE G. RILEY, JUDGE