

IN THE COURT OF APPEALS OF IOWA

No. 8-880 / 08-0242
Filed November 26, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

FRANK L. CAMPBELL,
Defendant-Appellant.

Appeal from the Iowa District Court for Wayne County, Gary G. Kimes,
Judge.

Frank Campbell appeals from his conviction and sentence for livestock
neglect. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert Ranschau, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas Tauber, Assistant Attorney
General, and Alan M. Wilson, County Attorney.

Considered by Vaitheswaran, P.J., and Potterfield, J. and Robinson, S.J.*
*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

POTTERFIELD, J.**I. Background Facts and Proceedings**

In the spring of 2007, Frank Campbell kept roughly eighty to one hundred cows and roughly sixty to eighty calves in a fenced pasture. He also kept approximately ten horses in an adjacent pasture. On April 17, 2007, a neighboring farmer called the county sheriff's office complaining that some of Campbell's cattle were dead. The county deputy, Charles Henderson, and veterinarian Lucas Whitney drove to Campbell's pasture to investigate. They found seven calves and two cows dead in the pasture. According to Whitney, the remaining cows were weak, malnourished, thin, and lethargic.

Defendant testified that his livestock were fed on a daily basis and produced some receipts for hay and gluten. The receipts did not show that Campbell had purchased enough hay or gluten to feed the cattle and horses in accordance with customary animal husbandry practices, but Campbell testified that he did not have a receipt for each purchase he had made.

After a bench trial, the court found Campbell guilty of livestock neglect in violation of Iowa Code section 717.2(1)(a), (b), (2) (2007). Campbell appeals, claiming: (1) he was denied effective assistance of counsel by his counsel's failure to insist that the court conduct a colloquy on the record with Campbell to ensure that his waiver of jury trial was knowing, voluntary, and intelligent; and (2) there was not sufficient evidence to support Campbell's conviction.

II. Standard of Review

The right to reasonably effective assistance of counsel is a Sixth Amendment right, and therefore we review ineffective-assistance-of-counsel claims de novo. *State v. Wills*, 696 N.W.2d 20, 22 (Iowa 2005).

We review a claim of insufficiency of evidence for errors at law. Iowa R. App. P. 6.4. The district court's guilty verdict is binding unless substantial evidence does not exist in the record to support it. *State v. McFarland*, 598 N.W.2d 318, 320 (Iowa Ct. App. 1999). Substantial evidence is evidence that would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id.* We review the evidence in the light most favorable to the State and make all inferences that may fairly be drawn from the evidence. *Id.*

III. Insufficiency of Evidence

Campbell claims that the State failed to prove beyond a reasonable doubt that the condition or deaths of the livestock was caused by Campbell's neglect. The State has the burden of proving every element of the crime with which the defendant is charged. *State v. Gibbs*, 239 N.W.2d 866, 867 (Iowa 1976). We find that, when viewed in a light most favorable to the State, the evidence could establish defendant's neglect beyond a reasonable doubt.

Henderson and Whitney observed that the grass in the pasture was beginning to turn green, but was short, sparse, and insufficient to sustain the cattle. Whitney and Henderson both testified that they saw no hay rings or feed bunks and no indication the cattle had recently been given hay or gluten. Whitney reported that the overall body conditions of the cattle in most cases scored only a two out of nine, with some cattle scoring only a one out of nine.

This score “reflects little evidence of fat deposits present and muscle wasting.” Whitney testified that some of the cattle had poor hair coats and that the condition of the cattle could not have occurred suddenly, but was the result of at least several months of malnutrition. Whitney further testified that the condition of the cattle was “a clear indication of neglect.” Because the dead cattle had begun to decompose, Whitney could not determine with absolute certainty the cause of death, but he believed the most probable cause of death was lack of nutrition. However, he testified that he could say with one hundred percent certainty that the thinness of the cows was caused by malnutrition and underfeeding.

Campbell testified that he fed the cattle two bales of hay and 500 pounds of gluten each day. However, Campbell produced receipts showing that between March 23 and April 17, he bought only eighteen bales of hay and 4200 pounds of gluten. While Campbell testified that he only had receipts for some of his purchases, the district court was free to reject this testimony as it was inconsistent with the condition of the cattle and much of the other evidence. There is substantial evidence supporting the district court’s finding that Campbell neglected his cattle and that neglect resulted in the death of some animals.

VI. Ineffective Assistance of Counsel

Generally we decline to resolve claims of ineffective assistance of counsel on direct appeal. *State v. Lopez*, 633 N.W.2d 774, 784 (Iowa 2001). We prefer to leave ineffective assistance claims for postconviction relief proceedings so that an adequate record of the claim can be developed and the attorney may respond to the defendant’s claims. *State v. Biddle*, 652 N.W.2d 191, 203 (Iowa 2002)

(citing *State v. Kinkead*, 570 N.W.2d 97, 103 (Iowa 1997)). At the time the briefs were prepared in this case, our supreme court had ruled that a failure of trial counsel to assure compliance with both the written and oral waivers of the right to jury trial required by Iowa Rule of Criminal Procedure 2.17(1) constituted a breach of duty by counsel. *State v. Stallings*, 658 N.W.2d 106, 112 (Iowa 2003). The supreme court further held that a violation of the requirement for both the written and oral waivers amounted to a “structural defect” in which prejudice would be presumed. *Id.* After this case was submitted to our court, however, the supreme court overruled *Stallings* and ruled, in a case very similar to this one, that a defendant is required to show actual prejudice in order to prevail on a claim of ineffective assistance of counsel for failure to insist on an in-court colloquy regarding the waiver of a jury trial. *State v. Feregrino*, 756 N.W.2d 700, 705-09 (Iowa 2008).

Because of the recent change in law effected by *Feregrino*, the record here is not sufficient to allow us to determine whether Campbell was actually prejudiced by his counsel’s failure to obtain a jury trial waiver that complied with the requirements of Iowa Rule of Criminal Procedure 2.17(1). We therefore decline to rule on the issue of ineffective assistance in this direct appeal and preserve it for a possible postconviction proceeding. See *State v. Bass*, 385 N.W.2d 243, 245 (Iowa 1986). Accordingly, we affirm Campbell’s conviction and preserve his claim of ineffective assistance of counsel for a possible postconviction proceeding.

AFFIRMED.