

ONTARIO COURT OF JUSTICE
(Central East Region)

BETWEEN:

HER MAJESTY THE QUEEN

and

GIESEPPINA GALLORO & VINCENZO GALLORO

Accused

JUDGEMENT

<i>Counsel for the Crown</i>	Mr. Jeffrey Pearson
<i>Counsel for the Defence</i>	Mr. Rocco Loccisano

KENKEL J.,

Introduction

1. Mr. and Mrs. Galloro stand charged with a number of criminal offences involving the alleged mistreatment of animals on their farm.
2. Both the Crown and defence agreed to the joint trial of the two Informations before the court. The charges refer to a three week period from October 31st, 2002 to November 21st, 2002. The Crown elected to proceed summarily on both Informations on June 13th, 2003. The accuseds pleaded not guilty on all counts on June 17th 2005 in 103 Court and evidence was heard. The trial continued on August 26th in 104 court, November 18th in 103 Court, and concluded January 25th 2006 in 104 Court. Written submissions were then filed by both the Crown and Defence.

Background

3. Mrs. Galloro is 73 years of age, her husband is now 78. They were born in Southern Italy and lived there until they emigrated to Canada in 1960. From 1960 to 1992 they

lived in the Ossington and Dundas area of Toronto. Mr. Galloro worked as a bricklayer and Mrs. Galoro worked raising her 7 children during the day and cleaning offices at night. In 1992 they took their savings and bought a farm in Schomberg. They purchased animals, but operated the farm more as a hobby than for profit.

4. The Ontario Society for the Prevention of Cruelty to Animals (OSPCA) is an animal welfare agency that exercises powers granted to them by provincial legislation. They have attended the Galloro farm with respect to care for animals prior to the time of the alleged offences. In the past, the OSPCA issued compliance orders with respect to animals in the Galloro's care and on at least two occasions animals have been removed. This led OSPCA officers to a follow-up visit on October 30th, 2002 to check compliance with outstanding orders. They inspected the farm and issued a further verbal warning that day. The following day the OSPCA was notified by a veterinary doctor that the Galloros had brought in a dog for emergency treatment. Both of the dog's ears had been cut multiple times with a sharp object. The next day OSPCA inspectors again attended the farm and directed the Galloros to take the dog to a veterinarian. The Galloros did not comply and the dog was later seized with the assistance of the York Regional Police.

5. Further compliance orders were issued with respect to the remaining dogs and animals. On November 21st, 2002, a warrant was executed on the Galloro farm. The attending veterinarian directed the seizure of 16 dogs and assorted other small animals.

6. The Galloros have both been charged with offences under the *Criminal Code* in relation to the dog seized on November 1st and with further offences in relation to the animals seized in the execution of the warrant November 21st, 2002.

Wilfully Failing to Provide Food & Care s.446(1)(c)

7. Section 446 imposes upon animal owners various legal duties with respect to care. Wilfully neglecting or failing to comply with those duties is a criminal offence. In assessing whether the provision of food and care was "suitable and adequate" on a criminal standard under s.446, in my view the Crown must prove more than a slight deviation from reasonable care. Evidence of a substantial or marked departure from reasonable care is required to prove the *actus reus* of the offence in s.446 (1)(c) beyond a reasonable doubt.

8. If the alleged failure to provide adequate care is proved, the court must then assess whether the failure was "wilful". "Wilfully" is defined in s.429 of the *Criminal Code* as causing the occurrence of an event by doing or omitting to do an act pursuant to a legal duty, knowing that the act or omission will probably cause the occurrence of the event and being reckless whether the event occurs or not. The requirement that the accused's failure be "wilful" involves a subjective test. See: Kent Roach, *Criminal Law 3ed*. Irwin (2004) at p.157. The reference to recklessness in s.429 also indicates a subjective standard as recklessness requires subjective advertence to the prohibited risk (as described in that section) and can be distinguished from negligence, which requires only

that a reasonable person in the accused's circumstances would have recognized the risk. Roach, *Criminal Law 3ed.* at p.162.

9. For a very thorough review of the legislative history of sections 446 and 429, and a detailed analysis of those sections see: *R. v. Clarke* [2001] N.J. 191 (Nfld. Prov.Ct.)

Wilfully Causing Unnecessary Pain s.446(1)(a)

10. Section 446(1)(a) prohibits the wilful causing of pain, suffering or injury that is unnecessary to an animal or bird. What constitutes "unnecessary" pain, suffering or injury is determined by the circumstances of each case including the purpose of the act, the social priorities, and the means available to accomplish the purpose. *R. v. Menard* (1978), 43 C.C.C. (2d) 458 (Que.C.A.). If the pain or suffering could have reasonably been avoided while effecting the lawful purpose in the circumstances of the case, then that pain or suffering was unnecessary. *R. v. D.L.* [1999] A.J. No.539 (Alta.Prov.Ct.) at para.30.

11. By virtue of s.429, wilfully under this section involves an act or omission that the accused knows will probably cause pain or injury where the accused either intends that result or is reckless to that result. Section 446(1)(a) does not require proof that the accused intended to act cruelly or that he or she knew that their acts would have this result. *R. v. Clarke* [2001] N.J. 191 (Nfld. Prov.Ct.) at para.61.

Charges Relating to Their Dog "Pina" – Information #03-01108

12. Mrs. Galloro is charged with failing to provide suitable and adequate food and care for a dog contrary to s.446(1)(c). She is further charged with two counts under s.446(1)(a) of the *Criminal Code* by wilfully causing suffering to the same dog by failing to seek veterinary medical attention and by wilfully causing unnecessary pain to the dog by cutting its ears. Mr. Galloro is jointly charged on the first two counts, but it is not alleged that he took part in the cutting of the dog's ears.

13. After Pina suffered seizures, the Galloro's brought their dog to be examined by a veterinarian on October 31st of 2002. Dr. Wigglesworth examined Pina and found that her ears had been cut. He testified that both ears had "deep lacerations". Ms. Galloro admits in Exhibit #8 that she cut the dog's ears intentionally with scissors. She says she did that to try to relieve what she thought was a blood buildup in the dog's head that was causing the seizures. Dr. Wigglesworth confirmed that there was no medical basis for inflicting those cuts to the dog's ears.

14. Dr. Wigglesworth also found that the dog was in the late stages of pregnancy. He concluded that most likely her seizures were likely attributable to hypocalcaemia related to the pregnancy. He advised the Galloros to take Pina to an emergency clinic that would be open all night for critical care. The Galloros told him they would not take Pina to the clinic. Pina was sent home against medical advice with specific instructions to return the next day.

15. Aside from the cuts to the ear, Pina was due to whelp any day and when the doctor asked about prior pregnancies it became clear that Pina had been having too many litters too quickly. He was very concerned about the condition of the dog, the fact that its ears had been intentionally cut, and the fact that the Galloros would not take the dog to the emergency clinic, so he contacted the SPCA.

16. Inspector Jones had attended the Galloro farm just the day before, on October 30th, 2002. She was aware that in February of 2002 the SPCA had issued a number of orders with respect to the animals on the Galloro farm. She had attended on two prior occasions when animals were removed by the SPCA. The visit on October 30th was to check compliance with previous orders. She inspected the barn and noted ongoing concerns about poor lighting, overcrowding in the goat pen, concerns over wet straw and the food provided for the dogs. The prior orders included a warning about providing proper food for the dogs. Mr. Galloro was issued a further verbal warning on October 30th and one cat in medical distress was taken into SPCA care.

17. Inspector Jones attended again on November 1st to respond to the call from Dr. Wigglesworth's office about a dog in urgent need of immediate veterinary care. Pina was found in a room inside the home that contained a lot of clutter and garbage. The dog was lying flat on the ground and there was vomit present. She was unresponsive and could not walk. Inspector Jones noticed that her ears had been cut. The Inspector told Mr. Galloro that he needed to return to the veterinary clinic. When he declined she suggested that if it was an issue of cost they could surrender the dog to the SPCA for treatment, but Mr. Galloro declined saying that his wife loved the dog. At 11:30 a.m. Inspector Jones issued and served Mr Galloro with an OSPCA compliance order directing him to take the dog to the veterinary hospital. Given the urgent circumstances, the time for compliance was set for approximately half an hour.

18. Ms. Galloro became verbally abusive, so Inspector Jones left the property to give the Galloros an opportunity to comply with the order. At approximately 2:40 in the afternoon that same day, she returned with an OSPCA search warrant. She was accompanied by two SPCA officers and two York Regional Police officers. Inspector Jones was informed that the dog had still not been taken to the vet. The officers and Inspectors were initially barred from entering the home by Mrs. Galloro who stood at the door waving a stick. Her son had to restrain her, then pick her up and carry her away.

19. Pina was removed for non-compliance with the prior order. She was carried out of the home because she couldn't walk. The dog was taken to the OSPCA facility and examined by Dr. Mehti. The photographs in exhibit #3 show Pina's condition at that time.

20. Dr. Mehti's report regarding the dog Pina is set out in Exhibit #1. Dr. Mehti made the following observations:

- Pina was very thin – some 6 kilograms underweight
- she was unable to stand and was extremely weak

- she was mentally depressed
- her coat was extremely dirty in the hind leg and tail area due to diarrhea
- both ears showed multiple lacerations
- there were also old healed scars or previous lacerations on both ears
- she was in late term pregnancy
- she experienced a partial seizure while being examined

21. Dr. Mehti concluded that, “this dog was extremely malnourished for a pregnant dog, had been kept in an unsanitary condition, and had been subjected to repeated cuts on her ear flaps that were intentionally inflicted. Her owners neglected to provide for basic nutritional and hygiene requirements, failed to seek proper veterinary advice for her seizures and caused her repeated pain and suffering with the ear lacerations.”

22. Much of the defence evidence was tendered by way of “will say” statements marked as Exhibit #8. The Crown consented to the defence filing these statements which were not subject to cross-examination. Given the age of both accused’s and considering Ms. Galloro’s displays of temper even in the courtroom, I find Mr. Pearson’s agreement to this procedure is both generous and appropriate.

23. The Galloros both state that they have an affection for animals, particularly dogs, and that they run their farm as a hobby in their retirement. Mrs. Galloro explains that she cut the dog Pina’s ears with scissors in an effort to treat at home the seizures she was having in the late stages of pregnancy. She did not want the dog left with a veterinarian because she was about to give birth. Both Mr. and Mrs. Galloro stated that the animals and birds on their farm are fed regularly in adequate amounts. Mr. Galloro describes the dogs in the barn as “well fed”. Their straw bedding was changed and cleaned regularly and the animals were cared for as required.

Count One – Failure to Provide Suitable Food and Care s.446(1)(c)

24. Count 1 on the Information relating to the dog “Pina” (#03-01108) alleges that Mr. and Mrs. Galloro wilfully failed to provide suitable and adequate food and care contrary to s.446(1)(c) of the *Criminal Code*. This count relates to the provision of food and care up to the point of the events of the medical emergency on October 31st, 2002. The acts leading to the medical emergency and the Galloro’s actions thereafter are the subject of the two further counts on the information.

25. Pina was found by Dr. Mehti to be “extremely malnourished” for a pregnant dog. She was weak, depressed and dirty. She had had too many pregnancies too quickly. The Galloro’s evidence in Exhibit 8 as to their care for their animals is contradicted by their history of OSPCA interventions, their failure to comply with the resulting compliance orders, and most importantly the conditions observed on their farm by OSPCA Inspectors on their visits around the time of the offences alleged in this information.

26. Mrs. Galloro’s evidence as to her care for Pina is completely contradicted by the photographs and detailed doctors’ reports that document the dog’s condition. The only

reasonable inference on all of the evidence is that the dog Pina had been subjected to long term neglect that continued through the offence dates alleged in count #1.

27. Considering all of the evidence, I find that the Crown has proved that the food and care provided to Pina were neither suitable nor adequate and amounted to a marked departure from the standard of care a reasonable person would provide.

28. Considering the photographs of the dog Pina, the medical evidence as to her condition, the fact that the Galloro's had been previously warned about their treatment of animals by the OSPCA and that their farm was subject to unmet compliance orders at the time of the alleged offences, I find that Mrs. Galloro wilfully failed to provide suitable food and care.

29. Exhibit #8 shows that both Mr. and Mrs. Galloro fed and cared for the animals on their property, including the 17 dogs. However, on the dates of this alleged offence - from October 31st, 2002 to November 1st, 2002 - Exhibit #8 shows that Mrs. Galloro was the sole caregiver for the dog she referred to as, "my baby". While they both participated in the medical decisions that are the subject of count #2, in all other respects I find I have a reasonable doubt as to Mr. Galloro's wilful failure to provide suitable food and care with respect to Pina on the dates alleged. If that is in error and his participation in the medical decisions is sufficient to prove this count as well as count #2, then I would stay this count with respect to Mr. Galloro pursuant to the principle in *Kienapple v. The Queen* (1974), 15 C.C.C. (2d) 524 (S.C.C.)

Count Two – Causing Suffering by Failing to Seek Medical Attention s.446(1)(a)

30. Count # 2 alleges that Mr. and Mrs. Galloro wilfully caused suffering to the dog Pina by failing to seek veterinary medical attention for the dog contrary to s.446(1)(a).

31. When Dr. Wigglesworth examined Pina, he determined that the dog needed immediate emergency medical care. They refused to take Pina to emergency care as directed and Dr. Wigglesworth provided them with what help he could. The next day, OSPCA inspectors attended the farm, viewed the condition of the dog and served the Galloros with a compliance order that required them to immediately take Pina for veterinary care. When they failed to comply with that order, the dog was seized.

32. Both veterinary doctors found Pina to be in very poor condition. She was suffering from the cuts to her ears, her very low weight, her seizures and she was found in an unsanitary condition. Both Mr. and Mrs. Galloro knew that Pina was suffering and that immediate emergency veterinary care was required. Their refusal to bring the dog to emergency care continued and extended that suffering. I find that the fact that they both refused the doctor's instructions and they then refused an OSPCA compliance order to take the dog to veterinary care shows that they both wilfully caused further unnecessary suffering to Pina as alleged.

33. Considering all of the evidence, I find that the Crown has proved Count 2 as alleged beyond a reasonable doubt with respect to both accuseds.

Count Three - Wilfully Causing Suffering by Cutting the Dog's Ears - s.446(1)(a)

34. The third count on this information charges Mrs. Galloro alone with wilfully causing unnecessary pain and suffering to her dog by cutting the dog's ears with scissors. The fact that Mrs. Galloro intentionally cut the dog's ears with scissors is admitted.

35. It is plain that the cutting of both ears with scissors would cause extreme pain and suffering to any animal. The medical evidence shows that the injury inflicted to the dog's ears by Mrs. Galloro did in fact cause pain and suffering. Despite her other medical problems, the evidence of both doctors cites the trauma to both ears as a significant injury. Sadly, the pain and suffering caused was completely unnecessary.

36. While I accept that Mrs. Galloro must have had some other purpose than to simply torture the dog, she knew that cutting the dog's ears with scissors would cause severe pain. She also knew that such an extreme procedure was not necessary as she had ready access to proper veterinary care from a number of sources. She none-the-less chose to attempt a bizarre home remedy of her own invention, with complete disregard to the pain she knew it would cause the dog and knowing that previous cutting of the ears had not stopped the seizures. In Exhibit #8 Mrs. Galloro stated that she did this in a panic, but the findings of prior similar wounds by Dr. Mehti show that she had in fact previously engaged in this practice.

37. Mrs. Galloro wilfully caused pain to Pina as alleged. The act was intentional and she knew that it would be extremely painful for the dog. There was no medical reason to inflict that injury. There was no necessity for her action nor does the evidence leave any doubt as to a reasonable excuse or justification.

38. Considering all of the evidence, I find that the Crown has proved count #3 beyond a reasonable doubt.

Charges Relating to Other Animals – Information #03-01109

39. The Crown concedes that there was not sufficient evidence called at trial to sustain a conviction on counts 1,2,4 and 5 on this information.

40. The remaining count #3 alleges that Mr. and Mrs. Galloro failed to provide suitable and adequate food, shelter and care for the 16 other dogs they kept on their property.

41. Inspector Jones testified that at the time "Pina" was seized on November 1st, 2002, the Galloro's were served with an SPCA order with respect to all of the other dogs on the property. The order addressed issues of lighting, ventilation, potable water, and appropriate length of tethers. The order set out a compliance date of November 10th,

2002. The OSPCA re-attended November 17th, but the gate to the farm was closed and given past difficulties they decided to obtain a warrant prior to entry.

42. On November 21st, York Regional assisted the OSPCA officers and Veterinary Doctor Anthony Ang in the execution of a warrant at the Galloro farm. Dr. Ang's evidence is contained in his report of May 14th, 2003 which was admitted in evidence as Exhibit #2 on consent. He described the conditions on the Galloro farm as, "deplorable".

43. He noted:

- several dogs housed together in quarters less than 6x4 feet
- some dogs housed in dark musty areas in an old barn
- food being fed to the dogs was composed mostly of pasta and old bread
- signs of upper respiratory infection in two cats
- several chickens housed in a dark muddy coop, some with sores on their feet,
- two goats showing signs of lameness

44. As a result of his observations, Dr. Ang ordered the immediate removal of 16 dogs, 2 cats, 10 birds, and 2 goats.

45. Dr. Mehti, Director of the OSPCA Centre Veterinary Hospital, examined the 16 dogs on November 21st, 2002. Her evidence is contained in her report dated December 5th, 2002 which was admitted in evidence as Exhibit #1 on consent.

46. Dr. Mehti found:

- flea infestations;
- internal parasites;
- malnourishment;
- skin lesions;
- conjunctivitis;
- glaucoma;
- ear infections;
- deformities;
- skin infections;
- lameness;
- coats extremely matted and dirty stained with urine and feces.

47. Mr. Robert Tamblyn was an Inspector at the time with the SPCA. He took photographs of the Galloro farm on November 21st, 2002. The photographs were admitted as Exhibit #7. Mr. Tamblyn testified that the barn itself was found to be in very poor condition. The photographs of the interior of the barn show the poor condition of the building, made worse by the dirt and debris within.

48. Photographs 2 and 3 show a large amount of debris piled up at the rear of the barn. The open pans containing what appeared to him to be uncooked pasta are shown in

photograph 8. Inspector Tamblyn testified that the dogs were not provided with potable water. Photograph #7 shows a greenish container in very poor condition that Mr. Tamblyn identified as one of the water containers.

49. Photograph #6 shows a smaller dog found tied just inside of the rear of the barn. He is surrounded by garbage and debris. The conditions are plainly filthy. The only food available to the dog is dried pasta and there is a red very dirty bowl which contained water.

50. Photograph #10 shows another small area with dried pasta and wet bread left out for the dogs, and a small metal container with dirty water. Photographs #19 and 20 show where one dog was found chained in front of a door as described by the SCPA witnesses. The floor in that area appears to be covered in a mixture of old dirty straw and newspaper or other paper.

51. Photographs 22, 23 and 24 show a large room in the barn with a mountain of bread and rolls of all descriptions scattered about in a large heap. In cross-examination, Mr. Tamblyn agreed there may have been some commercial dog food scattered in some of the feeding bowls as well.

52. The defence witnesses stated in Exhibit #8 that there was commercial food provided in addition to the bread and pasta shown in the photographs. There is some support for the presence of commercial food in the evidence of Inspector Tamblyn and the evidence of Paul Galloro. It is also reasonably possible that the dogs would eat the commercial food first leaving the dried pasta and various forms of bread uneaten as shown in the photographs. However, even if commercial food were available, the photographs of the bread in the barn show an enormous quantity which is consistent only with the use of bread as a central part of the food supply.

53. Failure to use commercial dog food is not necessarily a failure to provide adequate care. While there are no doubt many good reasons to use the commercial foods now available, there is no evidence before me to indicate that the use of other foods would necessarily endanger the health of a dog. In this case it is the condition of the food and water and amounts provided that are at issue, with the nature of the food being a lesser consideration.

54. Mr. Vincenzo Galloro's describes providing fresh food and water for the dogs and changing bedding regularly. The evidence of the witnesses as to the state of the barn and the photographs show a much different situation. The circumstances indicate that while food and water were provided, the water containers were very dirty and the water inside them was dirty. The odours in the barn and the condition of various animals showed that the straw was not being changed but merely placed over feces and urine creating an ammonia smell and an unhealthy condition for the animals.

55. Veterinary Doctor Poston testified for the defence as to her observations of the Galloro farm. She went to the farm on her own in May of 2000, July of 2001, and in

March and then April of 2002. She attended to the cattle and goats only. She did not address her attention to the smaller animals, but did not notice any difficulties with them. Her attendance in March of 2002 was in response to an SPCA visit to the farm. Dr. Poston's evidence is of very limited assistance in this case given the limited number of visits to the farm in the two years leading up to the date of the alleged offences. She did not attend the farm during the time of the alleged offences. Further, when she was at the farm her attention was upon the larger animals. She did not examine any of the dogs, nor could she provide many details as to their care.

56. I agree with the defence that the mere fact that farm animals are treated differently from house pets does not itself indicate neglect or abuse. However, the law requires that all owners provide adequate food, water, shelter and care for their animals. The dreadful condition of these 16 dogs, the history of non-compliance with OSPCA orders including the orders served in relation to these dogs, and all of the evidence as to the circumstances in which the dogs were kept shows beyond any doubt that the dogs had not been provided with adequate food or care as alleged. There was a marked departure from the standard of care reasonably expected of animal owners. The history of non-compliance with OSPCA orders and the non-compliance with the specific order issued with respect to these 16 dogs shows that the failure to provide suitable and adequate food, shelter and care was wilful.

57. Considering all of the evidence I find that the Crown has proved count #3 on Information 03-01109 beyond a reasonable doubt.

Conclusion

58. The accuseds will be found not guilty on counts #1,2,4 and 5 of Information #03-01109. I find that the Crown has proved count #3 on that Information beyond a reasonable doubt and there will a finding of guilt with respect to both accuseds on that count.

59. With respect to Information #03-01108, Mr. Galloro will be found not guilty on count #1, but guilty on count #2. Mrs. Galloro is found guilty on all three counts alleged.

Delivered at Newmarket,
April 7th, 2006

Hon. Justice Joseph F. Kenkel