

Case Name:

R. v. Talaga

**Between
Her Majesty the Queen, and
Leonard Cassidy Talaga, accused**

[2006] M.J. No. 145

Manitoba Provincial Court
Winnipeg, Manitoba

L.M. Giesbrecht Prov. Ct. J.

Oral judgment: March 16, 2006.

(102 paras.)

Sentencing -- Non-Criminal Code offences -- Cultivation or production -- Sentencing of the offender who was convicted of starving farm animals and failing to provide medical care to a calf with a broken leg -- One pig died from starvation -- Cattle was in various stages of starvation -- Another pig was starved -- The offender had an obligation to care for the animals if he was not going to sell or euthanize them -- Deterrence was important -- Sentencing: For failure to provide adequate food and water to the cattle, he was fined \$3,000 -- For failure to care for the pigs, he was fined \$3,500 - - For failure to provide medical attention to the calf, he was fined \$3,500 -- He was provided four years to pay the fines and was also prohibited from owning or possessing animals for five years.

Counsel:

Mr. S. Brennan, for the Crown

Mr. F. Lawrence, for the Accused

1 L.M. GIESBRECHT PROV. CT. J. (orally):-- Well, Mr. Talaga, certainly when you have animals, there is a responsibility that comes with that. It is somewhat different, I suppose, than if you farm land and sow grain. If you choose not to do anything about weeds or to take off a crop if it is not very good, then that is your problem, and that is fine, I suppose. As long as the weeds are not present to the point where they become a nuisance to other people, you can pretty much do as you

like. But when it comes to live things, and you have animals, either cows, or pigs, or horses, dogs or sheep, it does not much matter, people have a responsibility. I mean, animals, particularly if they are confined, are dependant, and certainly in winter months, where natural forage is missing. It might be different in summer if you have a lot of pasture, although again, if it is a dry year and there is no grass, there is no water, then you have an obligation to feed those animals appropriately.

2 Now, it may be that you put out some food, it may be that you put out water, but obviously the water was frozen. We had a relatively mild December. It may mean more than looking at an animal or trying to care for them once every now and again, when it is suitable. I mean, this is a daily kind of a thing. The pictures of the cows are relatively small, they are somewhat difficult to see, but the picture of this pig, for example, is quite a large picture, the live pig I am talking about now, the one that was alive when the veterinarian attended, and I think to call it emaciated and in poor shape is not a stretch of the imagination. I cannot imagine anybody who would be interested in buying that pig, no matter what their experience was of pigs, because we are looking at an animal that looks to be on its last legs, to put it mildly.

3 How does an animal get to that stage? It is a process. These animals do not starve overnight. The evidence before me suggests that a number of these animals were starving. The calf, the pigs - one of them already starved, and it is simply unacceptable.

4 Mr. Brennan was talking about deterrence. Lots of people have animals, and I particularly appreciate that in the last few years, for cattle farmers, it has been especially difficult because with the mad cow disease issue, and the border being closed, there were many, many months where people were feeding animals without any expectation that they would ever recoup their money. A lot of people sold animals, basically, they may have not even broken even, but there is a choice there, if you are going to be buying animals, then you have to look after them. The bottom line is, I suppose, you could have euthanized them. If you did not have enough food, if you did not have the time to properly care for them, then you could have killed them. There are rendering businesses that will come and pick them up for you. The bottom line, at the end of the day, is you need to look out for animals that you are responsible for. It is clear to me that you did not do that. With the years of experience you have farming, it would seem to me this is not something that was unknown to you, that is, you were not a novice, you were not a person that, through a lack of knowledge, did not provide the proper food and water. It strikes me that this was through carelessness on your part, and you certainly did not exercise due diligence to make sure these animals were properly cared for.

5 When you look at the calf, not only did it have a broken leg, it was starving. It had to be essentially killed because it could not survive. One pig starved, another one was in the process of starving. The cows were in different shapes, all 21 of them. Some of them were in worse shape than others but, ultimately, generally speaking, in a poor shape. I appreciate you might have sold some within a short period of time of these animals being seized, where you got some money, I do not know, maybe they received more of the inadequate food that you were putting out.

6 Ultimately, deterrence is important. That is, people need to understand that if they assume responsibility for an animal, they have an obligation to look after it. I appreciate people can be poor. You do not have a big income. I am prepared to accept that. Farming can be very difficult, and people may have no income for many months of the year sometimes but, ultimately, you obviously bought these animals, I am told, in September, then October, and November, so I presume you bought them in little lots. You did not --

7 THE ACCUSED TALAGA: Yes.

8 THE COURT: -- buy them all at the same time. So if, in September, you bought some cows and then you did not have enough money to buy the feed, or --

9 THE ACCUSED TALAGA: Well, they were on grass yet.

10 THE COURT: -- provide feed. Pardon me?

11 THE ACCUSED TALAGA: They were on grass yet.

12 THE COURT: All right. So in September they were still on grass, but even so, winter is coming, you know that grass is not going to feed an animal through the winter, you need either grain, or hay bales or something for them.

13 THE ACCUSED TALAGA: There's lots of hay bales left yet, but there --

14 THE COURT: Well, for whatever reason these animals were starving. The bottom line is if you purchase animals and you cannot take care of them, then you need to take care of them in some other way. Either you give them away, sell them, euthanize them, or in some way you have to get rid of them, because once you have an animal -- especially when you look at this pig, it was in a pen, it could not even forage for food, such as it was, in the dead of winter, in December. The responsibility is that of the person who has the ownership of the animal. That is why the fines that are being suggested are so high, because animals are for our purposes, we use them, we sell them, we eat them, we use their hide, what have you. Nobody is saying that it is not appropriate to do that, but while you have them and while they are alive, you have got to take care of them appropriately. These animals were not appropriately cared for by whatever standard there may be.

15 I am satisfied that the range of fines that counsel have worked out are appropriate in this case, and I am going to follow what is essentially a joint recommendation, I am told. As to the fines, I agree that you have no prior record, you are a person of limited means, that the fines in the amounts that are being suggested, we are talking about in excess of \$10,000, that is a lot of money, and for a person of limited means, that is a huge impact it will have on you. At the same time, it is important that people realize if you are going to be in the business of buying animals in order to sell them at some sort of profit, along the way you better make sure that they are properly taken care of or you are subject to quasi-criminal charges.

16 Dealing with the inadequate provision of food and water for the cows, which is count 1, I will impose a fine of \$3,000. There will be a victim surcharge of \$450 which is 15 percent of that amount. I am satisfied, having regard to the totality of the fines that are being suggested, that it is appropriate to waive the costs because, according to the legislation, usually 35 percent of the fine should be ordered by way of costs. I am prepared to waive that or cancel that. I also will not impose the Justice surcharge of \$35 that is ordinarily imposed.

17 On the charge relating to the pigs, I do agree that this is somewhat more aggravating because you just have to look at that pig to see that it was not in good shape, and anybody could see that, and one of them actually died of starvation. The fine in that regard I am imposing is a fine of \$3,500. Costs, in this case, in terms of a victim surcharge, is \$525, and the costs, as well as the Justice surcharge, I will waive. That means I am not imposing those costs, in view of the totality of the fines that are being imposed, and in view of the fact this is part of the joint recommendation.

18 Lastly, dealing with the calf, that is count 6, failure to provide medical attention for that animal, as well as the fact that that animal was starving, the fine I am imposing on that is a fine of \$3,500, and a victim surcharge of \$525, with a waiving of any costs or Justice services surcharge.

19 So the total fine and costs, or surcharges, comes to about 11,400 --

20 MR. BRENNAN: Eleven five.

21 THE COURT: Pardon me?

22 MR. BRENNAN: Eleven five.

23 THE COURT: 11,500? All right. Just roughly doing that calculation.

24 I am prepared to give you a lengthy period of time to pay that. Normally, the most lengthy time is probably in the one-year to two-year range, but it has been discussed, and I am satisfied, in these circumstances, four years to pay is reasonable, and I am prepared to give you four years to pay that. So time to pay on those fines will be four years from today. So that basically gives you until March of 2010 to pay. Within that period of time these fines have to be paid.

25 They can be paid in one lump sum, all at the same time, or you could pay them by installments, as you have money available, or whatever your choice is, but they must be paid on or before the 16th of March of 2010.

26 There will be a period of prohibition from the ownership or possession of animals. Now, I do not know what the wording is.

27 MR. BRENNAN: Ownership, possession or control.

28 THE COURT: And control. All right. So starting today, and for the next five years, you are prohibited from having ownership, possession or control of animals. And I take it -- is there a farm dog or anything like that?

29 THE ACCUSED TALAGA: No.

30 THE COURT: All right. So any cats?

31 THE ACCUSED TALAGA: No.

32 THE COURT: All right. So this includes all animals. Did you wish to say something?

33 MR. LAWRENCE: You can ask the judge about that.

34 THE COURT: Pardon me?

35 MR. LAWRENCE: I, I'm just asking my learned -- my, my client to ask you what the restrictions are regarding the prohibitions to what -- I know -- he knows he can't farm, he can't handle animals or have control.

36 But what did you, what did you want to ask about --

37 THE ACCUSED TALAGA: Oh, well, those seven horses.

38 MR. LAWRENCE: No, no, no. He's thinking of --

39 THE ACCUSED TALAGA: Oh.

40 MR. LAWRENCE: He would like to have some ties in with continuing to handle animals. Maybe he can eventually see his way in improving himself with the help of other people. And what I'm suggesting to him, that, well, can you get somebody else to look after whatever animals you have.

41 THE COURT: Well, if the order relates to ownership, that means he cannot own any animals.

42 MR. LAWRENCE: No, I agree.

43 THE COURT: So I do not know how he would have somebody else look after animals that he owns because he cannot have ownership.

44 MR. LAWRENCE: No.

45 THE COURT: He cannot have control of animals, so, essentially, he would not be in a position to, I suppose, be involved in the care of animals, essentially, because the prohibition involves ownership, possession or control of animals. Now, I do not know what you are getting at.

46 MR. LAWRENCE: Well --

47 THE COURT: In terms of him working for someone else? I do not know what you are talking about.

48 MR. LAWRENCE: Well, yeah.

49 THE ACCUSED TALAGA: Okay. I'll just -- okay. What about the pasture of the -- if I can't have those animals in the pasture, then I can't rent it out to nobody then.

50 THE COURT: Was this discussed at all?

51 MR. BRENNAN: No. It was not brought to my attention. My, my suggestion is if there is a renting out of the pasture, that the transaction be well documented, and Mr. Talaga have nothing to do with the animals that are situate on the property.

52 I can advise that in the puppy mill case that I dealt with there was a rental situation involved there, inasmuch as the, the people who were convicted were tenants, and of course once that was established, there was a focus on them as being in ownership, possession or control. So what, what Your Honour has to remember is that we are dealing with these legal ideas of possession, ownership and control, but what you must remember is that it is in the strict liability regime, so there is absolutely no hint of mens rea in construing the definitions of these concepts.

53 THE COURT: Yes.

54 MR. BRENNAN: So if it's -- animals are found on his property, he is in possession. So what I would suggest is if there's any transaction, that these are other people's animals or other people are caring for them, that this be spelled out, so that it could rebut any presumption that might take place.

55 MR. LAWRENCE: So --

56 THE COURT: I mean, The Act is not before me, and I do not know if you have the actual wording. Is there room for an exception, except possession where animals are on land rented to someone else, where Mr. Talaga has no --

57 MR. BRENNAN: If he has proven that there is a rental transaction in place, then my position would be that he is not in possession.

58 THE COURT: All right.

59 MR. BRENNAN: Okay. Because he's --

60 THE COURT: Because he would not be in control.

61 MR. BRENNAN: -- rented out the lands, he doesn't have rights over those lands.

62 THE COURT: Right.

63 MR. BRENNAN: He doesn't have ownership or control. Those are separate issues. But I'm assuming that. Okay. We're just talking about possession. So in that situation, Mr. Lawrence would be well suited to give advice about what kind of safeguards should be in place for his client, should he chose to --

64 THE COURT: To rent the pasture.

65 MR. BRENNAN: -- engage in those kinds of activities.

66 THE COURT: Basically, the prohibition is, as I have indicated, it is for a period of five years, starting today, and it is from the point of view of possession, ownership or control. Now, you mentioned you have this pasture land, a quarter section. If you want to rent that out, I suggest Mr. Lawrence speaks to you about how you go about doing that, to make sure you would not be offending this order. Ultimately, Mr. Brennan has made some suggestions, that is, if you had a rental contract with someone renting your pasture and they put cattle on it, as long as it was very clear that these were not under your control, you do not own them, you do not take care of them, you have nothing to do with them, except somebody else is renting your land. Mr. Lawrence can give you some advice as to how you protect yourself in that regard.

67 This order is in relation to your possession, your ownership, your control of animals of any kind.

68 There will be an order, as well, again, I understand this was part of the joint recommendation, of forfeiture of all animals that are in your possession at the present time --

69 MR. BRENNAN: Possession, ownership or control.

70 THE COURT: That are in your possession, that you own or are under your control. So whether they are on your property or somewhere else, if these animals are owned by you, are in your possession, or under your control at the present time, those animals will be forfeited as per the discussion between counsel, and I gather, once again, that involves some horses and some cows.

71 MR. LAWRENCE: Should there be a time limit or a time period when, when he --

72 THE COURT: Well, I guess Mr. Talaga does not have to do anything about that --

73 MR. LAWRENCE: No.

74 THE COURT: -- in the sense that they are forfeited. Obviously, the prohibition that I have imposed that is in effect as of today, he would not be charged with possession, ownership or control of these animals that are the subject of the forfeiture order.

75 MR. BRENNAN: Not on my watch.

76 THE COURT: All right. So what, what is a reasonable time for those to be seized? When do you expect --

77 MR. BRENNAN: My suggestion is that I'll be in contact with vet services upon my return to the office. I don't know what their schedule is, and I wouldn't bind them. I know the last time there was an order, security was posted overnight and they were taken immediately, so --

78 MR. LAWRENCE: Could he not have a week to --

79 THE ACCUSED TALAGA: Do stuff around the home?

80 MR. LAWRENCE: -- as soon as prohibition goes into effect on these animals, that he --

81 THE COURT: Well, I had assumed this was all discussed, but --

82 MR. LAWRENCE: Well, we, we discussed prohibition, but the time period is --

83 THE COURT: What is your position on that in terms of --

84 MR. BRENNAN: My position is, it was very clear in my letter outlining the Crown's position to Mr. Lawrence, that forfeiture of all animals in the possession was being sought. That was, in fact, discussed. And my view is that those animals are forfeit to the Crown as soon as Your Honour makes the order, and it's just a matter of vet services going and collecting them.

85 THE COURT: All right. So, again, I understood this was part of all the discussions that had taken place beforehand, but Mr. Brennan has said on the record, obviously, while this prohibition order is in place, as of now, and natural justice would dictate that if it takes the animal control people a day or so to seize the animals, Mr. Talaga is not going to be charged with being in breach of my prohibition order for animals that he currently owns, possesses or controls. That is, if he went out today and bought another cow or something, that would be different, but those animals that he now currently possesses, owns or controls, that are subject to the forfeiture order --

86 MR. LAWRENCE: They not --

87 THE COURT: -- would not lead to him being charged with being in breach of his prohibition of having ownership, control or possession of animals for the next five years, prior to them being seized.

88 Do you understand, Mr. Talaga?

89 THE ACCUSED TALAGA: Oh, so there -- I got to get rid of them, eh? I don't quite follow what you --

90 THE COURT: All right. What I am saying is I am making an order prohibiting. That means you cannot have in your possession, under your control, nor can you own any animals of any kind for the next five years. That starts today, that order. But I am told that you, right now, have some animals that are under your control, that you own, or are in your possession that are subject to forfeiture, which I have made an order of forfeiture of those animals. All right? But Mr. Brennan has said, and rules of natural justice would dictate that between right now and the time those animals are seized by the animal control people or the vet who will seize them, if that takes until tomorrow or this evening, you will not be charged with being in breach of the prohibition order. Do you understand?

91 THE ACCUSED TALAGA: Yeah, okay.

92 THE COURT: With respect to those animals.

93 MR. LAWRENCE: So if those animals are found on your property, they will be seized. Is that my understanding?

94 THE COURT: Yes. And in terms of the fine orders, the, the clerk will give you a paper that tells you where to send the money, and you have, as I say, until March the 16th of 2010 to pay those fines.

95 MR. BRENNAN: Stays on the balance, Your Honour.

96 THE COURT: All right. And the Crown is entering stays of proceedings on the other charges that were laid.

97 MR. BRENNAN: Including the Criminal Code charges.

98 THE COURT: All right. So that means those other charges that you did not plead guilty to are dropped. You understand?

99 THE ACCUSED TALAGA: Okay.

100 THE COURT: Do you have any other questions?

101 THE ACCUSED TALAGA: No.

102 THE COURT: All right. Madam Clerk, you have the paperwork for him? So once we break from court, the clerk will give you a piece of paper that tells you about the prohibition order, the forfeiture order and the fine. All right? That completes our matters.

qp/e/qw/qlrds

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