THE COURT OF APPEAL FOR SASKATCHEWAN

Citation: 2007 SKCA 107 Date: 20071004

Between: Docket: 1295

Ronald Loerzel, Donald Loerzel
and Trad Industries Ltd.

Appellants

- and -

Her Majesty the Queen

Respondent

Coram:
Klebuc C.J.S., Jackson & Richards JJ.A.

Counsel:
Ronald Loerzel in person on his own behalf as well as
Donald Loerzel's behalf
Beverly Klatt for the Respondent

Appeal:

From:	QBCA No. 55, 56 & 57/2004, J.C. of Saskatoon
Heard:	September 28, 2007
Disposition:	Dismissed
Written Reasons:	October 4, 2007
By:	The Honourable Mr. Justice Richards
In Concurrence:	The Honourable Chief Justice Klebuc

The Honourable Madam Justice Jackson

Richards J.A.

I. Introduction

[1] The appellants, Ronald Loerzel, Donald (Allan) Loerzel and Trad Industries Ltd. were each convicted in Provincial Court on one count of violating s. 4 of *The Animal Protection Act, 1999*, S.S. 1999, c. A-21.1 (the "*Act*"). They appealed unsuccessfully to the summary conviction appeal court and now undertake a further appeal to this Court.

[2] The appellants were not represented by counsel at either the trial or the summary conviction appeal. Submissions in this Court were made by Ronald Loerzel. After hearing from both Mr. Loerzel and the Crown, we reserved our decision.

II. Background

[3] I need not lay out the full details of the offences in issue to dispose of this appeal.

[4] It is enough to say that the appellants were involved in the operation of an elk farm in the Handel District of Saskatchewan. Visits to the farm in the fall of 2002 by officials of the Government and Saskatchewan Society for the Prevention of Cruelty to Animals led to charges being laid under the *Act*. Donald and Ronald Loerzel were both charged with causing or permitting elk to be or to continue to be in distress between June 2 and October 25, 2002,

contrary to s. 4 of the *Act*. Trad Industries Ltd. was charged with the same offence in relation to the period October 22 to October 25, 2002.

[5] The appellants were convicted after a lengthy trial. The trial judge found that s. 4 of the *Act* created a strict liability offence and that the appellants had not established a defence of due diligence. He fined each of them $3500.

[6] The convictions were upheld on appeal to the summary conviction appeal court but the fines were reduced to $1500.

III. Issues

[7] The appellants say there are four grounds on which their appeals should be allowed:

(a) Section 4 of the *Act* creates a *mens rea* offence and not a strict liability offence.

(b) If s. 4 does create a strict liability offence, they successfully established a defence of due diligence.

(c) The Crown did not meet its disclosure obligations.

(d) They have been subjected to cruel and unusual punishment.

IV. Analysis

[8] Before turning to the specifics of the arguments raised by the appellants, it is important to underline the basic constraints on the jurisdiction of the Court in an appeal of this kind. Two points merit emphasis in this regard.

[9] First, the appeal is brought pursuant to s. 839 of the *Criminal Code*. That provision makes the right of appeal contingent on the Court granting leave to appeal and limits the allowable grounds of appeal to questions of law. In other words, we are able to deal with the appellants' concerns only if they involve issues of law, as opposed, in particular, to issues of fact. As well, this Court is not in a position to substitute its view of the evidence for the trial judge's findings of fact or to make its own independent assessments of credibility.

[10] The second point to note with regard to jurisdiction is that this appeal is from the ruling of the summary conviction appeal court. We are entitled to examine that decision for errors but, unless they were carried over into the summary conviction appeal court decision, or reflected in that decision, errors made by the trial judge are not within the realm of our appellate authority.

[11] With these introductory comments, I turn to the arguments advanced by the appellants.

A. *Mens Rea* or Strict Liability

[12] Section 4 of the *Act* reads as follows:

> **4** No person responsible for an animal shall cause or permit the animal to be or to continue to be in distress.

[13] Both the trial judge and the summary conviction appeal judge found this to be a strict liability offence. They relied on authorities such as *R. v. Agpro Grain Inc. and Bielka* (1996), 142 Sask. R. 37 (Q.B.) and *R. v. Komarnicki*,

[1991] A.J. No. 329 (QL), (1991), 116 A.R. 268 (Alta. Prov. Ct.). Their determinations in this regard were clearly correct.

[14] Section 4 creates a public welfare offence which is *prima facie* a matter of strict liability. The section does not include words such as "willfully", "with intent", "knowingly" or "intentionally" that would import a requirement of full *mens rea*. See: *R. v. Sault Ste. Marie*, [1978] 2 S.C.R. 1299.

[15] In his submissions, Mr. Loerzel placed some emphasis on *Van Dongen v. Society for the Prevention of Cruelty to Animals* 2005 BCSC 548. However, that case is of no assistance in the resolution of this appeal. It concerns a provision of the British Columbia *Prevention of Cruelty to Animals Act* that empowers authorized agents to seize animals in distress. The case speaks to the preconditions that must be satisfied prior to a seizure. The conduct which is the subject of the offences under consideration in this appeal occurred in the time period ending October 25, 2002. The elk were not seized until December of 2002. The *Van Dongen* case might have some arguable relevance to the seizure itself. It does not bear on the question of whether the appellants breached s. 4 of the *Act* in the time period ending October 25, 2002.

B. Due Diligence

[16] The appellants' alternative argument is that, if s. 4 does create a strict liability offence, they acted with due diligence by taking all reasonable steps to avoid putting the elk in distress. Mr. Loerzel detailed a number of factors said to be relevant in this regard including the appellants' efforts to cope with

drought and secure additional feed, the sorting of the elk to provide better care for weaker animals, coyote problems, attempts to have money released from trust so that feed could be purchased, the availability of water supplies, veterinary consultations and so forth.

[17] The appellants' difficulty in advancing this line of argument is that they are effectively asking this Court to revisit the evidence and make its own findings of fact. As noted at the outset, we have no jurisdiction to proceed in that fashion.

[18] Despite the appellants' assertions, there was ample evidence before the trial judge and the summary conviction appeal judge to warrant a finding that at least some of the elk were in distress during the time period ending October 25, 2002. For example, Mr. Bakke testified that on October 22, 2002 there were a high number of thin animals and some severely thin animals, Mr. Trayhorne observed the elk on October 26, 2002 and noted numerous thin animals and was concerned about their feed. Dr. Waters examined a carcass on October 28, 2002 and determined the animal had died from starvation.

[19] Although the appellants might dispute the trial judge's findings in this regard, the evidence also allowed him and the summary conviction appeal judge to conclude the appellants had failed to establish a due diligence defence. The appellants' arguments with respect to due diligence are made more difficult, at least in this Court, because they turn on particular

characterizations of the evidence and assessments of the credibility of individual witnesses.

[20] The appellants were obviously sophisticated farmers. At a minimum, as the summary conviction appeal judge pointed out, they could have appealed for assistance to the SSPCA or a government agency or could have commenced legal proceedings to free up money to be used for purchasing better feed.

[21] In the end, I conclude that the appellants have not raised a question of law with respect to the due diligence issue.

C. Disclosure

[22] The appellants also contend the Crown failed to meet its disclosure obligations.

[23] It is true, of course, that the Crown has a duty, when prosecuting an offence, to disclose all relevant non-privileged material in its possession. See: *R. v. Stinchcombe,* [1991] 3 S.C.R. 326. However, mere failure to meet this obligation does not automatically result in a new trial. In order to obtain such relief, an accused must demonstrate that the failure to disclose affected either the outcome at trial or trial fairness. See: *R. v. Dixon*, [1998] 1 S.C.R. 244 at paras. 35-39 and *R. v. Taillefer*, [2003] 3 S.C.R. 307 at paras. 81-84.

[24] The appellants' principal difficulty on this aspect of their appeal is that key documents at the centre of their disclosure argument were in fact disclosed. For example, the series of e-mails involving Mr. Bakke were introduced, at trial, by the appellants and marked as Exhibit D-49. Other materials, such as a Department of Agriculture document commenting on Mr. Feist's report and certain photographic negatives, were also available to the appellants at trial.

[25] Overall, the appellants have failed to establish there was a failure to disclose on the part of the Crown which in any way affected the outcome of the trial or trial fairness.

D. Cruel and Unusual Punishment

[26] The appellants refer to a number of matters said to constitute cruel and unusual punishment. They comment, for instance, on both the alleged conduct of SSPCA and Government personnel in Donald Loerzel's living quarters and to those officials' treatment of the elk during the seizure. Mr. Loerzel also indicates that the events of 2002 have had a serious impact on his reputation and on his ability to earn a livelihood.

[27] Section 12 of the *Charter* concerns "punishment" imposed by the state as a sanction for the commission of an offence. The only punishment imposed in this case is a fine of $1500 for each appellant. The alleged conduct of officials which Mr. Loerzel has highlighted is not something that can be considered within the context of a "cruel and unusual punishment" analysis

under s. 12. There might, in appropriate circumstances, be arguable civil or other remedies for some of the sorts of behaviour Mr. Loerzel has described, but the points detailed in his written and oral argument do not operate to render either the convictions themselves unlawful or to invalidate the fines imposed on him and the other appellants.

V. Conclusion

[28] I have carefully reviewed the written arguments and the transcripts and considered the oral submissions made to the Court. I conclude the appellants have not established that the summary conviction appeal judge made an error of law in his handling of this matter. The appeals must be dismissed.

DATED at the City of Regina, in the Province of Saskatchewan, this 4th day of October, A.D. 2007.

"RICHARDS J.A."
RICHARDS J.A.

I concur "KLEBUC C.J.S."
KLEBUC C.J.S.

I concur "JACKSON J.A."
JACKSON J.A.