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R. v. Goisnard

Between
Her Majesty the Queen, and
Chris Goisnard

[1987] N.W.T.J. No. 137

Northwest Territories Territorial Court
Yellowknife, Northwest Territories

Bourassa Terr. Ct. J.

April 16, 1987

J. Sutton, for the Crown.
V. Foldats, for the Defence.

BOURASSA Terr. Ct. J.:-- The Defendant is charged with an offence under Section 402(1)(c) of the Criminal Code, and that has been particularized or detailed by the Crown Attorney in the information, alleging that the Defendant:

...being the owner or the person having custody or control of domestic animals, namely, horses, wilfully did fail to provide suitable and adequate food and care for them, contrary to Section 402(1)(c) of the Criminal Code.

There are other offences contemplated in Section 402(1)(c), but they are not referred to in the information, and obviously, then, not a concern of this Court.

In law, I am satisfied that each activity, as it were, that is to say, the provision of suitable and adequate food, care, water, shelter, can all sustain a conviction by themselves. It is not necessary, and statutory interpretation does not require, or even indicate, that all of those have to be proven together, in order to obtain or sustain a conviction under sub-paragraph (c). In this regard, I refer to *R. vs. Mangels*, 9 Sask. R. 45, Sask. C.A.

As well, I am satisfied in law that the use of the word "and" should be read as "or". In this regard, see *CloverlawnKobe Developments Ltd. vs. Tsogas*, [1979] 6 W.W.R. B.C.C.A.; *R. vs. Dagley*, 32 N.S.R. 421 N.S.S.C.

In this case, the Crown relies upon, as I have already said, the provision of food and care. Now, with respect to care, I will deal with that briefly. There are a number of disturbing elements that were raised in the evidence, throughout the period in issue between the 1st of April and the 30th of September, a number of occurrences that I think would cause any right-thinking individual to question what was going on. There was evidence of horses left tied in the sun, on short halters; there was evidence of a lack of water, on a noticeably regular basis; there was evidence of untreated and continuing saddle sores, and most unsatisfactory evidence on how those sores were treated; there was evidence of fighting, over and above that which apparently one would be led to expect among horses, evidence of a horse having a nail in his hoof and going three or four days untreated; evidence of amateur attempts to provide medical care for animals in need. Alone, or even together, this evidence may taint the scene, but in my view, alone or together they are insufficient to sustain a criminal conviction under the heading of the "failure to provide care".

In my view, the case turns upon the allegations in the information that the Defendant failed to provide suitable and adequate food, and the only evidence upon which I can make a decision is evidence in that regard. Other evidence that I have heard, while it may cause one to wonder, is not, in my view, anywhere near sufficient to sustain a conviction or even contemplate a conviction. And I accept Defence Counsel's arguments and submissions in that regard.

On the evidence, I confirm a number of arguments made by Defence Counsel that in many ways the Crown's case is less than perfect. Dr. Williams, a veterinarian qualified as an expert witness, was a man of few words. The investigation was cursory. There were no documents seized or introduced into Court with respect to the purchase of food, records that the Defendant might have had which would have shed light on exactly how much food was purchased, what medicines were purchased, documents that I suspect must be available.

I would point out that any case is a serious case. While this isn't a murder and, obviously the resources involved in that kind of a case were not allocated in this case, it is still serious for the Defendant. Any case is serious, particularly for the Defendant; and any case deserves, if it is to be prosecuted in Court, a full and proper investigation. The Defendant is in jeopardy of a criminal conviction and, therefore, in my view, every investigation should be a full and complete investigation of all the facts to be brought before the Court. The Crown runs the risk, of course, of being unable to prove its case in any other situation.

There are also problems with the evidence of both Defence and Crown witnesses. Many witnesses opined as to the good health and condition of the horses and gave forth extensively as to the "perkiness" and the "peppiness" of the horses. The Court was almost overwhelmed with unsolicited generalized opinion evidence from lay witnesses with respect to the condition of the horses, all of which was offered without any foundation. The Court accepts that expertise may come from training, as well as life experience, but most of the evidence the Court received with respect to the condition of the horses, what they needed, what was surplus, what is a balanced diet, what isn't, was, in my view, sheer speculation and sweeping generalization.

Compounding this problem in the evidence was the fact that with respect to the Defence witnesses, most of the questions were phrased and answered in the conditional. The questions were

phrased: "What would you observe", "What would the regular practice be", "What would you do?" Now, "would" is defined as a wish or desire or, perhaps in another context, custom or practice. It is very difficult for the Court to determine from responses to questions phrased in such a manner if the witnesses are testifying as to wish, desire, custom, practice, what they observed, what they felt happened, what they concluded happened. It is very difficult to give answers to that kind of question that are not full of suppositions, conclusions, and generalizations. In my view, that kind of evidence has to yield to evidence of specific events, specific situations, which, if there is enough of them, may make it open for the Court to make a conclusion that a pattern of conduct, or a fact, exists or doesn't exist. I think the Court has to weigh that kind of evidence very carefully.

I am mindful, in light of these evidentiary problems or difficulties that I have described briefly, that the Crown must prove its case and every element of its case beyond a reasonable doubt. More than that, the Court is not obliged to choose a version, to fill in the blanks, or to try and reconcile all of the circumstances. It is up to the Crown to prove its case, and I have already described what its case is.

Of all of the witnesses -- there are over a dozen of them, I believe -- two rise above in this Court's mind in terms of their credibility, their persuasiveness, their demeanour, and their honesty, or I should say, disinterest. I accept their evidence particularly. And where evidence conflicts with that of Mr. Carpenter and Miss Keogh, I prefer the latter. They both struck me as sincere, uncommitted to any side or version, and anxious to discharge the duty encompassed in their oath. They avoided conclusions; they avoided constructions, generalizations, that was characteristic of much of the other evidence.

On all of the evidence, the Court, I think, is left with the issue of the provision of adequate food with respect to four horses. The converse of what I am saying is that I don't believe there is an issue on the other ones; there is nothing there; it is insufficient for me to consider. Those four horses are the horses set out in Photograph 3, I believe it is Exhibit 1, which is owned outright by the Defendant, Double D, Lady, and Connie, privately owned horses but contractually under the care of the Defendant.

On the evidence, particularly the evidence of Mr. Goisnard, all these four horses, or, at least, all the horses were treated alike; however, these four have been identified and, in my view, are the only ones with respect to which there is enough proof to make any positive or affirmative findings.

With respect to the operation generally: the evidence discloses that the Defendant conceived and operated the ranch from some time in 1983 until today's date. Following an initial location in the City of Yellowknife, he moved out on the highway to what is now known as the Rocking Horse Ranch. It is important to note that the Defendant had virtually no previous experience with horses. He had no formal training, and only marginal exposure of an informal nature. In my view, notwithstanding his protestations to the contrary, he was, at the time this operation commenced, and was at the material times set out in the information, a novice in a highly developed and specialized field of equine husbandry. It is a field or an occupation that has been around as long as man has been on the face of the earth. There are libraries full of texts, authorities with respect to equine husbandry. There are experts across the country with respect to this field of conduct. The Defendant is not one of them.

I would observe that the Defendant was solely responsible for managing and operating the ranch, which at the very least had 17 horses. In my view, the operation was out of control; by that, I mean,

without control. The Defendant had no employees. He relied upon people who would float in and float out. He relied upon people who were willing to help for one or two weeks, a couple of hours a day, on a completely irregular basis. No person would be in a position, with 17 horses, operating the rides that this Defendant was operating, taking care of the public customers and all those aspects of the operation, it would be, in my view, impossible for him to concern himself with the feeding of each and every individual horse. Indeed, that is confirmed in his evidence when he stated on a number of occasions that he does not know to this date, and is unable to determine how much food his horses received. It would seem to me that that would be a fundamental element to the whole operation. If one doesn't know one's costs, how can he determine the rates, the revenue required? I don't question the sincerity or the desire or the good intentions of those that were helping out, but that is all they were, helpers. They had no responsibility. And in circumstances like that, it is impossible -- and the evidence in this case demonstrates that -- to determine exactly, and to control, what is going on with the animals.

I would also observe that at 62 degrees North latitude, the Rocking Horse Ranch is one of the most northerly horse ranches in Canada, if not the most northerly, and that the conditions in Yellowknife are notably different than conditions in southern Alberta, Ontario, or anywhere else in Canada, in terms of the whole environment, the composition of the ground, the temperature, the flies, the indigenous plants that can be available for graze. I believe that in light of that, it is incumbent in discharging one's duty that the special needs of the environment as they relate to horses have to be investigated. There is a duty, in my view. It would seem to me that common sense would indicate that any advice, even expert advice from southern operators, would have to be tempered with well found and expert advice on northern conditions and the requirements dictated by these conditions. The southern experience, in my view, cannot simply be transported here, without some difficulty, especially for a novice. Some such advice was available and, indeed, some advice of that nature was given by Mr. Carpenter. By virtue of both training and experience, he was qualified as an expert in the care of animals. In a brief memo, which has been marked as Exhibit 2, he recommended to the Defendant back on the 4th of October, 1983, the minimal care or minimal feeding required for horses.

Winter feeding: based on a 1,000 pound horse, therefore, a 500 pound horse would get one-half as much as, a 750 pound horse, three-quarters of these amounts: oats per day, one gallon, preferably chopped; hay per day, three-quarters of a bale of good quality Timothy and Alfalfa. Shelter from wind and snow is also advised.

There are further recommendations with respect to worming and provision of veterinarian services.

Now what is the evidence of these horses' needs, as it comes to food? And, again, I speak of these four horses. As I have already indicated, Dr. Williams and Mr. Carpenter, the two experts so qualified, gave evidence in that regard. Dr. Williams, a veterinarian, an expert in equine husbandry with extensive experience with horses, testified that all the horses were "thin, underfed," but for two big horses that appeared to be on top of the pecking order. None of them had good coats. Two or three, in fact, were in "terrible condition", and he inquired whether or not they survived. He observed that there was not much feed at the site when he was there, for 17 horses, and he observed, as well, that the 17 horses that he saw were not prepared to go into winter.

With respect to the bites and wounds that the horses exhibited -- and they are amply demonstrated or reflected in the photographs -- he categorized them as "outstanding"; he had never seen so many. With respect to horse number 3, in Exhibit 1, I believe it is, that horse was described by Dr. Williams as "emaciated from the lack of feed". He described all of the horses as hungry, and their behaviour, in his mind, based upon his expertise, confirmed their hunger, both their behaviour, as evidenced by the wounds of fighting and biting, and their behaviour as the horses came up to him when he went into the corral. He observed there was not enough food. He testified as to the requirements of horses at this ranch, that they each would require one-half to three-quarters of a bale of hay a day, one-half gallon of sweet meal and water on demand, and he qualified that further by saying that if this ration was not maintaining the horse's weight, then the ration had to be increased. He stated further, one can't feed a horse from a mathematical table.

Mr. Carpenter, with perhaps more expertise in the area of feeding and caring programs, than in veterinary medicine, gave the memo that I have also described. He received the three horses, Double D, Lady and Connie, the day they left the ranch, at the end of September, 1986. First of all, in his evidence he said and confirmed what Dr. Williams observed, that you have to look at the flesh and body fat to determine the proper feed rate, and that the quantity and quality are dependent upon the condition of the horse. He described Double D, when it was received at his clinic, as "exceedingly thin". He described Eagle's horse -- I believe that was Connie -- as "exceedingly thin". And he described the pinto, Tees' horse, I believe, as emaciated. He went on to describe all three as "ravenous" -- signs of starvation. All three ate non-stop for one to two weeks. All recovered within four months and were in good shape after four months. He advised that the horses, those three horses I referred to, in his care, received two to three and a half pounds of sweet meal a day, twice a day, and a half a bale of hay every day. He concluded that all three were underfed to the point of starving.

The owners of these three horses, Mrs. Brown, Miss Tees, and Mr. Eagle, confirmed the condition, but more importantly, confirmed the deterioration of the horses over the summer, while under the care of Mr. Goisnard. They have all confirmed that their horses are far better since they have been removed from the control and care of the Defendant. Specifically, I refer to Brown. She was an impressive, dispassionate witness. She observed the want of readily available food, the lack of hay, and the thinning of her horse during the summer months while at the Rocking Horse Ranch. She was a good witness and I accept her evidence without difficulty.

What specific evidence does the Court then have of the practice of the ranch, or specific evidence of what was going on, in terms of feeding these horses? As I have already indicated, Miss Keogh was a most impressive witness. She actually worked there on a regular basis. She lived there. She was the only one, other than the Defendant, who was in a position to appreciate and observe on a day-to-day basis the whole operation; and I mean observe, from the point of view of doing the work, not observe from the point of view of driving a car in or out in the morning, as one goes to another job in Yellowknife, or observing in between rides. She related the feeding and the feed plan in detail on a day-to-day basis. She related the use of alfalfa cubes or hay and beet pulp. In fact, she finally left, because of a personal dissatisfaction with the conditions on the ranch vis-a-vis the animals. She was cross-examined carefully, and she came out of the cross-examination with her credibility only reinforced. Her evidence is that she only saw salt once. She tried to clean hooves at least once a day, and she was told by the Defendant to clean them no more than once a day. She saw a lot of fighting over feed. She saw two loads of hay come in in June, which was the only load that came in for the month of June to July.

She would feed one bale of hay for five or six horses. Her evidence on the whole indicated a disorganized operation which I have already alluded to, where the horses' care and feeding was dependent upon who was volunteering to do the work from time to time, and that there was little or no control by the Defendant, certainly, no plan. The feeding was haphazard; the horses were always hungry. She testified that the horses were fed hay twice a day when she was there. She was told to feed them beet pulp and some sweet meal mixed in, or alfalfa cubes or hay, on a daily basis. One was the replacement for the other. She was instructed and fed two three-quarter-full five gallon pails, for six horses, four times a day. Her evidence is entirely consistent with the worsening and deteriorating condition of the horses. Her evidence is entirely consistent with a ration for the horses that is less than that recommended by Mr. Carpenter and is less than that indicated as required by Dr. Williams.

The condition of starvation observed by Dr. Williams and Mr. Carpenter in horse number 3, Double D, Connie and Lady, is confirmed by evidence of an inadequate and irregular supply of food.

Now, there was extensive evidence from the Defendant and witnesses which were called on behalf of the Defendant, and I, in fairness, must address their evidence.

First of all, dealing with the evidence of the Defendant: it was not persuasive nor supportive of the proposition that adequate food was provided. His testimony was characterized by broad generalizations, conclusions and unsubstantiated observations and generalizations. I had great difficulty, even having the benefit of his evidence transcribed, in finding the pith and substance of his evidence and the answers to the questions that were put to him. I found him evasive.

He testified to giving six bales of hay in the morning and the afternoon, for 25 horses, when all of the evidence and advice indicates that at least 12 bales of hay per day would be required. It is clear to me that he was a novice, trying to commence a commercial undertaking with virtually no background and virtually no guidance. I don't criticize him for trying to start an enterprise. I would note that in other jurisdictions, such as in Ontario, such as in Alberta, that there is legislation in place -- there is the Riding Establishments Act in Ontario; there is the Animal Protection Act in Alberta; a number of other provinces have riding establishment acts or riding school acts, which set out in detail the conditions that are required, the inspections that are necessary, the guidance that is available. I look at these acts, rather than being an interference in our lives, as guidance, something that is useful and needed to protect both the operator and the people that enjoy the use of the animals, and the animals themselves. There is no such legislative regime in the Northwest Territories, so the Defendant is completely on his own. In my view, being on his own, such as that, there are perils and pitfalls, and he had no one to assist him around them.

In the face of Mr. Carpenter's evidence, in the face of Dr. Williams' evidence, the evidence of the individuals owning the horses that I am dealing with, as well as the evidence on horse number 3, I cannot accept the Defendant's assessment that Connie, in his words, was in "super shape, fat" in August of 1986, that horse number 3 is "fine", that Double Diamond is "not thin". I cannot believe him when he states on cross-examination that he does not know and has no idea or records with respect to how much food or feed he'd purchased. I found him evasive on cross-examination and he did not fare well. I would note, on his own evidence, he paid between six dollars and fifty cents and seven dollars and fifty cents per bale of hay. At one-half bale of hay a day, per horse, plus the other basics that would be required to feed the horses on a sustenance level, Mr. Goisnard would be los-

ing money on the private horses he was boarding. He is a businessman, and I credit him with more ability than to lose money in arriving at a boarding rate.

His evidence furthermore, confirmed and he admitted that he used 40 bales of hay in August. He had 17 horses. That works out -- and I am being generous -- to a little bit less than three bales of hay per horse per month. The Defendant simply, when it came to evidence about feeding, was unconvincing.

Defence made strong arguments about the length of the visit by Dr. Williams. Dr. Williams attended voluntarily to assess, in his words, the shape of the horses, in particular, their shape as it relates to feeding. He said he was there approximately an hour; other witnesses said, approximately ten minutes. No one was keeping track of the time. He may have been there for ten minutes, he may have been there longer, he may have been there at any point along the continuum. I don't think it's critical. No one timed him. How long does it take for an experienced expert in equine husbandry to conclude that a horse is starving? I agree, extensive medical tests could be taken: bone marrow, fat content could be analyzed, skin fat could be measured, blood tests could be taken, but the eye can also come to a valid conclusion; and for an expert to look at a horse and come to a conclusion such as Dr. Williams came to, I don't think is untoward, beyond his qualifications as an expert and, indeed, I am prepared to accept it. Common sense would indicate that from a qualified person, an observation, as far as it goes, with respect to whether a horse is in poor shape because of a lack of feed, is sufficient.

The other horses were described as emaciated, or at least number 3 was described as emaciated, and that is the only horse that turns on Dr. Williams' evidence. To me, that is going beyond thin, that is going beyond lean, that is to the point of starvation.

The other defence witnesses that were called, I don't question for a moment that they were well-meaning. I believe they testified and responded honestly from their perspective and based on what they observed. However, I would note that none of them are experts in equine husbandry; in fact, none of them are experts or even close to being qualified to give an opinion as to whether or not a horse is being provided adequate food. All responded to questions with "would". As I have already indicated, would is akin to wished or desired or intentioned, perhaps to a different extent, custom or practice. And in the face of specific evidence, the specific evidence I have that these four horses were starving, the detailed evidence I have from expert witnesses, their evidence must yield. I don't doubt their bona fides or willingness to help the accused, but I don't think much weight can be attributed to their conclusions with respect to the condition of the horses.

The Court is therefore left with the following facts: expert testimony that horse number 3 was emaciated; the photograph and common sense confirms that. Double Diamond, owned by Brown, Connie, owned by Eagle, and Lady, the pinto, owned by Tees, I believe, were starving, confirmed by Mr. Carpenter. Each of these four horses were under the control of the Defendant, actual contractual control, in the case of the three. Each of them deteriorated over the time in question. All three recovered with the provision of more food -- not less riding, more riding or anything else -- they recovered with the provision of more food. In my view, the actus reus is present; that is to say, the guilty act.

In dealing with the word "adequate", adequate by dictionary definition means "barely sufficient" or "satisfactory". "Sufficient" is a synonym, a close synonym, suggesting a close meeting of a need. In my view, common sense indicates that the "need" is survival, a nutritional balance leading to

good health. These four horses were starving, slowly and insidiously. They were dying under that regime. That is not to say they would have died, but at that point, their survival was in question. In my view, there can be no question, in light of that evidence, that the provision of food was not adequate as required by law.

Defence argues strongly and persuasively, that the Court has to consider, as well, the mental element. This is a specific intent section. The willfulness is required, although willfulness is defined and extended in Section 387. The Section reads that:

S.387 Anyone being the owner or the person having custody or control willfully neglects or fails to provide adequate food.

With respect to the willfulness and the intent, Section 386(1) states:

S.386(1) Everyone who causes the occurrence of an event by doing an act or omitting to do an act that it is his duty to do, knowing that the act or omission will probably cause the occurrence of the event, and being reckless whether the event occurs or not, shall be deemed for the purpose of this part, willfully to have caused the occurrence or the event.

I am satisfied that Mr. Goisnard was under a duty to know what was required and how to feed his animals and, in fact, to ensure that his animals were adequately fed. Any reasonable person can determine a condition of emaciation by simple observation. That condition was readily apparent in these four horses, to any reasonable observer and he should have observed the animals in a dispassionate light and been informed himself; The inadequate food and condition of the horses is readily apparent. I find that he was reckless, whether the event occurred or not, he was reckless in the provision of adequate food for his horses, for the horses under his control.

On his own, by himself, he was unable, on his own evidence, to determine how much food his horses were getting. No employees involved. There was no plan or regime. There was no system of feeding these animals; it was just on an ad hoc basis. There was no system for bringing food in. One was substituted for another, depending on what was available.

In my view, on all of the evidence with respect to the feeding of these horses, the Defendant was reckless. In my mind, the requisite intent is present, and with the intent and the act, I am led to the conclusion that the Defendant is guilty of the offence as alleged.

BOURASSA Terr. Ct. J.

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