

**File No: 35084-1  
Registry: Penticton**

**In the Provincial Court of British Columbia**

**REGINA**

**v.**

**CELIA EVELYN HARFMAN  
RUDOLPH NICK HARFMAN**

**REASONS FOR JUDGMENT  
OF  
THE HONOURABLE JUDGE G. SINCLAIR**

**COPY**

**Crown Counsel:**

**N. Devji; A. Janse**

**Counsel for the Accused Celia  
Harfman:**

**J. Stowell**

**Counsel for the Accused Rudolph  
Harfman:**

**J. Pennington**

**Place of Hearing:**

**Penticton, B.C.**

**Date of Judgment:**

**February 3, 2011**

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[1] THE COURT: The trial of this matter took up all or part of eight days of precious court time, and as I alluded to at the luncheon break, I shall be brief.

[2] Mr. and Mrs. Harfman are charged jointly with two counts, one under the *Prevention of Cruelty to Animals Act*; one under the *Criminal Code*. Count 1, is under the *Prevention of Cruelty to Animals Act*; charges them with being persons responsible for animals, did cause or permit the animals to be or to continue to be in distress. Count 2, alleges that being the owners of the animals in question, they did wilfully permit or cause unnecessary pain or suffering or injury to the animals.

[3] I have little to say about the evidence which proceeded the last couple of days. Suffice it to say that in late March and early April of 2006, complaints were received from a neighbour of the Harfman's, about a dead cow or cows on the property. SPCA personnel attended in the area of the Harfman property in early April 2006; saw what they thought to be, at the distance they were at, a dead cow or cows and some cows that appeared to be obviously underweight. Based on what they had seen and other information, they applied for and obtained a search warrant, which was executed on April 15th, 2006. At that time the Harfman animals, consisting of a hundred plus

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cattle, a donkey, some sheep, were seized. One or more of the animals was put down or euthanized immediately, being assessed by the veterinarian Dr. Jacobson, as being in critical distress such that they could not be saved. A few others were put down within a short time of the warrant being executed and the others, I assume were, and hope were, nursed back to health, although I did not really hear any evidence about that.

[4] Three or four days was taken up in determining the validity of the search warrant, and I decided at an earlier date, about a year ago I think if memory serves, that the warrant was valid. The last few days were taken up with the merits of the matter so to speak.

[5] I am a firm believer in keeping things simple. These animals were obviously emaciated and in distress due to having an inadequate food supply, some more so than others, as I have alluded to. Some were in critical distress, meaning that veterinarian care could not save them. Others were obviously in distress and others were not the subject of proper husbandry. I refer to the donkey whose nails were far too long; matted wool on sheep interfering with the proper workings of their bowels and in the case of one cow, horns growing, if not into the head, very close to being into the

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head.

[6] One hardly needed the evidence of Dr. Jacobson to come to the conclusion that these animals were in distress. Her evidence obviously provided more detail and is detailed in her report, which I think was Exhibit 14. If I am wrong, it is her report in any event.

[7] With regard to Count 1, the person responsible for the animals I am satisfied, caused or permitted them to be in distress by not providing sufficient food over a relatively lengthy period of time. The only defence to that charge, it being a strict liability offence, is that of due diligence.

[8] Regarding Count 2, the owner or owners, wilfully permitted or caused unnecessary pain, suffering or injury, again by not feeding. Wilfulness according to the law includes recklessness or wilful blindness.

[9] The issue becomes, as between the two accused as to who was responsible in law; him, her or both. Regarding Mrs. Harfman first, she was asked by, I believe, Officer McLennan of the SPCA, who owned the animals, and her answer was, "Rudy and me, but Rudy mostly takes care of them." Ms. Woodward of the SPCA, who was the affiant on the information to obtain the search warrant, testified that she put Mrs. Harfman's name on

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the warrant because she lived there too. It is to be noted that their son Michael Harfman was also named on the warrant. Ms. Woodward had no note of Mrs. Harfman saying who owned the cows, but she thought Mrs. Harfman had said that they both did.

[10] Mrs. Harfman's evidence was that since 1993 when they got into this ranching venture, Rudy was primarily responsible for the animals. She said, "I'm not a farmer. I helped with the branding sometimes."

[11] Mr. Harfman's evidence was that he was responsible for the animals. She helped out from time to time. She told him specifically that he did not marry a farmer and that he should not expect her to be a farmer.

[12] I have a reasonable doubt on the evidence as to Mrs. Harfman being responsible for the animals and that reasonable doubt is resolved in her favour. She is found not guilty on Count 1.

[13] With regard to Count 2, the evidence obviously establishes that she was an owner, but the issue is, did she wilfully permit or cause pain, suffering or injury. She was there, she lived there, but she was working another job according to the evidence. These animals were roaming over

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seventy plus acres. I am not satisfied beyond a reasonable doubt that she was aware of the situation which pertained, nor am I satisfied beyond a reasonable doubt that she aided or abetted in the offence, thereby being a party as defined by s. 21 of the *Criminal Code*; thus she is found not guilty on Count 2.

[14] I turn now to Mr. Harfman. His evidence basically was one of tough times. He told me about drought conditions; starting in 2003 the mad cow scare and embargo on Canadian beef which pertained from time to time; thus there was no market or a very depressed market for cattle. He told me about other's cows coming on to his range land to access water and staying there, feeding on the grass and thereby over-grazing the grass that was available. Thus he says, he had less food for his cows.

[15] He then came to 2005 fall and 2006 winter; he had no money to buy hay. He says there was little or no local hay available. To get hay he would have to purchase an entire liner load from Alberta or Saskatchewan for five thousand to seven thousand dollars. The grass on his property did not grow to its usual degree in the early spring of 2006. Not using his words but mine, he says he found himself in the quintessential catch-22 situation. He says, "I couldn't sell

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my cows in order to get money, in order to buy hay." He has testified that his plan was to take the cattle to range on the very day that the warrant was executed, that is April 15th, 2006. I contrast that with his wife's evidence that that was going to happen within the following weeks.

[16] There is no real or pressing need for me, at this time, to rule on the credibility of most of Mr. Harfman's evidence, even assuming for purposes of my decision that most of it was true, I agree with the Crown that he did not proffer a defence. His evidence was, with respect, a lengthy submission on sentence. He did not exercise due diligence. He was duty bound not to let the condition of his animals be such that they were in distress. He permitted or caused unnecessary pain, suffering or injury to them. What he ought to have done is to ensure the animals had adequate food and care. He did not. How he should have done that is not for me to say, given the situation which he outlined. To say, "I couldn't afford it," does not afford him a defence. I find Mr. Harfman guilty on both counts in the information.

[17] I assume because of the facts and figures and whatnot that is needed counsel, you will have to do the sentencing hearing later, will you?

[18] MS. JANSE: Your Honour, we're ready to proceed with

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sentencing. We're not seeking any restitution order.

[19] THE COURT: Good, because practically speaking --

[20] MS. JANSE: Exactly.

[21] THE COURT: -- probably you would not collect it.

[22] MS. JANSE: Yes, and I --

[23] THE COURT: Given that Mr. Pennington, are you?

[24] MR. PENNINGTON: Yes, sure.

[25] THE COURT: Okay.

[26] MS. JANSE: And, Your Honour, I -- obviously I think Your Honour has found in the past, and I certainly agree the two charges are *Kienapple'd*.

[27] THE COURT: Yes.

[28] MS. JANSE: And Crown would be seeking a conviction on the *Criminal Code* Count 2 be entered, and the judicial stay be entered on Count 1, the *Prevention of Cruelty to Animals Act*.

[29] THE COURT: Any comment on that, Mr. Pennington?

[30] MR. PENNINGTON: No, that's fine.

[31] THE COURT: That is usually the way it goes; judicial



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stay Count 1, conviction Count 2.

(REASONS FOR JUDGMENT CONCLUDED)

**File No: 35084-1  
Registry: Penticton**

**In the Provincial Court of British Columbia**

**REGINA**

**v.**

**CELIA EVELYN HARFMAN  
RUDOLPH NICK HARFMAN**

**REASONS FOR SENTENCE  
OF  
THE HONOURABLE JUDGE G. SINCLAIR  
(Re Accused Rudolph Harfman)**

**COPY**

<b>Crown Counsel:</b>	<b>N. Devji; A. Janse</b>
<b>Counsel for the Accused Celia Harfman:</b>	<b>J. Stowell</b>
<b>Counsel for the Accused Rudolph Harfman:</b>	<b>J. Pennington</b>
<b>Place of Hearing:</b>	<b>Penticton, B.C.</b>
<b>Date of Judgment:</b>	<b>February 3, 2011</b>

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[1] THE COURT: The principles which do come to the fore here are deterrence and denunciation. People have to take care of animals properly whether they are pets or whether it is a commercial ranching operation.

[2] I agree, and defence counsel does not disagree, that some jail is required, but it can be served in the community. The issue is how long. Pendleton gave Mr. Vieira four months. I gave Mr. Materi six, because if it was real jail, Rudy, it would be probably three or four months.

[3] So you are getting a six month jail order which you serve in the community. You have got to follow certain conditions and those conditions are these; you keep the peace and be of good behaviour; you appear before the court if required to do so; you report in person to a conditional sentence supervisor at the Penticton probation office at 105 Martin Street, Penticton, British Columbia, within two working days of now, because you might not get there today; you have got to wait for your paperwork. So within two working days, that means -- what is today, Thursday?

[4] MR. PENNINGTON: Yeah.

[5] THE COURT: Either tomorrow or Monday, right?  
Thereafter, report when required by your supervisor and in the

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manner directed by your supervisor; remain within the Province of British Columbia, that is the jurisdiction of the court unless you have written permission from your supervisor to leave the province; notify your supervisor in advance of any change in name or address promptly, of any change in employment or occupation.

[6] The Supreme Court of Canada says there should be either house arrest and or curfew. I do not see the need for house arrest because this is not a drug trafficking case or a break and enter or something like that.

[7] It involves animals and there is going to be a curfew. You have a curfew, sir, from nine o'clock at night till six o'clock in the morning daily. During those hours you have to be in the house. There are only two exceptions; 1)if you are going directly to or from a place of employment or working at it, and that is not ranching because you will hear about that in a minute; or, 2)if you need to attend to the hospital or doctor for an immediate medical emergency. For all other absences during that nine hour period daily, you must have the prior written approval of your supervisor to be out.

[8] You must present yourself at the door of your residence when requested by staff or corrections branch or police officers to confirm your compliance with the curfew.

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[9] If you have a permission letter from your supervisor to be out between nine at night and six in the morning, you have to carry it with you and produce it if you are checked by corrections branch or police.

[10] Because you are in jail, you must not consume alcoholic beverages, non-prescription drugs or drugs not prescribed for you, because when you are in jail you do not do that; supposedly.

[11] You must not enter any premises such as a bar, pub or liquor store where the primary commodity offered for sale is alcohol.

[12] You are prohibited from owning, having the custody of, or control of, or residing in the same premises as an animal or a bird during the period of your sentence, and you shall have 30 days within which to dispose of any animals which you now own, have custody of, or reside on the same premises as you.

[13] That six months jail is followed by 30 months probation, so we have you tied up for three years total; six months jail in the community; 30 months probation. The probation comes into effect when your jail sentence ends. Again, within two working days of your jail sentence ending, you must report in person to a probation officer. It will probably be the same

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person who is your supervisor, 105 Martin, Penticton, B.C., thereafter when directed by and in the manner directed by your probation officer; keep the peace and be of good behaviour; appear before the court if required to do so; notify your probation officer in advance of any change in name or address promptly, of any change in employment or occupation.

[14] There is no curfew. There is no, no alcohol clause, but there is the clause that, for that 30 month period you are prohibited from owning, having custody of, or control of, or residing in the same premises as any animal or bird for that 30 months, so in effect for three years you cannot have any animals or birds. You have got 30 days within which to dispose of any you have now.

[15] Surcharge is waived. Anything else?

[16] MR. PENNINGTON: If he doesn't have an animal, what about Mrs. Harfman?

[17] THE COURT: Well, if she has got him living with her, I guess she cannot have any either because he cannot live in any premises where there are any, right?

[18] MR. PENNINGTON: Well --

[19] THE COURT: Yes?

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[20] THE ACCUSED RUDOLPH HARFMAN: Well how -- how do -- how do I make my living in --

[21] THE COURT: That is just what Mr. Vieira asked the court. I guess you change occupations or something, sir. That is just the way it is. You know, I do not give legal advice.

[22] THE ACCUSED RUDOLPH HARFMAN: Okay, well this -- this --

[23] THE COURT: If Mrs. Harfman wants to ranch on some other premise and you are not there, I guess she can do that, right? She is not guilty

[24] THE ACCUSED RUDOLPH HARFMAN: This means that I lose my home and my farm and everything. I -- how much do I have to --

[25] THE COURT: Well you treated those animals terribly, right?

[26] THE ACCUSED RUDOLPH HARFMAN: I lose my -- I lose my farm and my home.

[27] THE COURT: You get some advice. I do not give legal advice. That is the order. We are done I think.

(PROCEEDINGS CONCLUDED)