

IN THE MAGISTRATE'S COURT OF THE FALKLAND ISLANDS

Case reference: MC/CRIM/02/16

THE QUEEN

v

MICHAEL DAVID TRIGGS

Defendant

Date of hearing: 4th, 5th and 6th October 2016

Representation:

Damian Sabino for Defendant
Stuart Walker for the Crown

DECISION WITH REASONS

Issued pursuant to section 54, Administration of Justice Ordinance

Introduction

1. The Defendant has been charged with what are generally described as animal cruelty offences. He has pleaded not guilty to all the charges. There are three offences under section 1(10(a) Protection of Animals Act 1911 as applied in the Falkland Islands. Section 1(1)(a) provides:

*"If any person shall cruelly beat, kick, ill-treat, over-ride, over-drive, over-load, torture, infuriate, or terrify any animal, or shall cause or procure, or, being the owner, permit any animal to be so used, or shall, by wantonly or unreasonably doing or omitting to do any act, or causing or procuring the commission or omission of any act, cause any unnecessary suffering, or, being the owner, permit any unnecessary suffering to be so caused to any animal;
....such person shall be guilty of an offence of cruelty within the meaning of this Act"*

"Wantonly" is not a word that is in general use so I shall refer to the definition in a legal dictionary. In context of animal welfare the meaning is given as "purposeless cruelty" and the skilful dis-horning of cattle is given as an example. Even if the dis-horning process causes pain to the cattle, it has been held by the courts that dis-horning is not a wanton act when it is done for the purpose of improving the value of the cattle or preventing injury to other cattle. "Unreasonably" is a word that is more commonplace today and readily understood.

2. There are also three charges relating to improvement notices issued on 16th July 2015 under the Livestock and Meat Products (Welfare of Livestock) Regulations 2011.

3. I must consider the test that I must apply when deciding if the charges are proved. First of all, I emphasise that there is no obligation on the Defendant to persuade court of anything. The obligation is on the Crown to persuade me as the judge, sitting in this court and hearing these charges, that the offences have been committed by the Defendant. Each of the six charges stands to be considered separately. As Mr Walker has acknowledged, it is for the Crown to prove all the elements of the offences.

4. I have noted the decision of the Divisional Court in *NSPCA v Hudson* [143 NLJ 34] where, on hearing an appeal from Uxbridge Magistrates' Court in respect of a charge under s1(1)(a) Protection of Animals Act 1911, it was held that the court must apply an objective test so that even if a defendant appreciated no risk of an animal suffering, it was enough that a reasonable person would have done so. In other words, a defendant's mistaken but genuine belief does not afford him a defence.

3 Charges under Protection of Animals Act 1911

5. The charges under the Protection of Animals Act 1911 all relate to the period between 23rd May 2015 and 26th February 2016.

6. In respect of charge 1, I am satisfied beyond any doubt that there were double and triple fleeced sheep on Rodeo Farm that belonged to the Defendant. I would add, in passing, that I believe that there were also some sheep there that belonged to others. I must consider whether there are issues from sheep becoming double or triple fleeced. Are there issues from the Defendant omitting to shear sheep? I have heard evidence from two qualified veterinary surgeons, Stephen Pointing and Claudia Glatzmeier, at the Department of Agriculture and an experienced farmer, James McGhie, who have relevant knowledge or experience. I rely on their expertise. I watched the video in court and it was apparent to me that some of sheep had much longer and woollier coats than others. I heard evidence from Mr Pointing, not denied by the Defendant, that he had heard that the Defendant had decided not to shear his sheep. The Defendant himself said that he decided to treat them as wild sheep and not to shear them any more. He was not looking for commercial wool crop and the flock was not a commercial one.

7. The question then arises as to whether the decision that the Defendant made was a wanton or unreasonable one and caused unnecessary suffering. As owner of the sheep he was at liberty to make whatever decisions he wanted to about their care. The question is whether by making the choice he did, was he acting wantonly or unreasonably and did it result in unnecessary suffering? The Defendant explained his reasoning: that it is not a natural thing for sheep to be shorn all the time and he wanted to let them be wild. I contrast that with the evidence from the two vets and James McGhie. The vets inspected the sheep and Mr McGhie went to assist in gathering the sheep and taking wool samples. I want to make clear I take no account at all as to whether the omission to shear had an effect on the farm as a commercial enterprise. If the Defendant did not want to farm commercially, that was up to him. If he wanted to, he could be unusual and not pursue commercial value of wool. I look at the effect of the choice not to shear - does it cause any suffering and is it unnecessary? There are times when, as I have indicated when referring to the definition of "wanton", actions are taken in the care of animal which may cause them to suffer pain temporarily,

such as docking lambs' tails and cutting a notch in an ear as a mark of identification. For a short time there will be discomfort to the animals, which in its extreme form could be considered suffering but it is also considered reasonably necessary and justified because of its purpose. Shearing may be thought to cause discomfort (suffering) to the animal which then raises the question of whether it was necessary or unnecessary for the Defendant to shear his sheep.

8. I have heard evidence from witnesses that with sheep that are not shorn the wool - the double fleece or even triple fleece - can become long and heavy. I have also heard evidence that some of the Defendant's sheep were very strong and fit. I was directed by defence Counsel to parts of the video showing the sheep bouncing over something as they were released from a pen and those sheep had every appearance to me of being strong enough to carry the weight of their wool. But I was also told by the vets that when a ewe with heavy wool lies down to give birth she may find it more difficult to get to her feet afterwards and that the lamb will find it more difficult to get to teat to suckle. If it does not suckle quickly it will die. I also heard that a dirty fleece can be a risk during the birthing process and increase likelihood of flystrike. I have evaluated the evidence, in particular from the vets, whose concern is not commercial and who are not in office to promote a better quality of wool or a higher price but whose job is to promote the welfare of animals. I am satisfied that, in their professional opinion, shearing is necessary and the omission to shear caused suffering that was not necessary. I add to that the evidence of James McGhie, who gave a farmer's perspective, that animals that are double fleeced are more likely to weighed down in rain or snow or to suffer during lambing or, if they fall, they are more likely to get stuck on their backs.

9. I am satisfied that there is a need to shear and that by omitting to shear the sheep there was a risk that the sheep would suffer. I have then looked for specific evidence of unshorn sheep belonging to the Defendant actually suffering. I am satisfied that there were not large numbers. However, there was evidence of a small number, two or three, that were double fleeced and for whom the difficulties of the double fleecing proved fatal. This was observed by the vets during their inspection and recorded in the photographs produced to the Court.

10. As I have noted at paragraph 4 above, the court must apply an objective test when considering the reasonableness of the Defendant's decision not to shear and the effect it had on the welfare of his sheep. I do not doubt that the Defendant held a genuine belief that there was no risk of his sheep suffering because he had decided not to shear but that does not afford him a defence. I am satisfied that a reasonable person would have appreciated that the sheep could suffer. I am also satisfied that a small number of sheep did suffer. Therefore, I can come to no other decision than to find that Charge 1 is proved and the Defendant is guilty.

11. Charge 2 is not framed to relate to the separation of different ages or sexes of sheep or their general management at breeding time but specifically refers to "wantonly or unreasonably allowing ewes to lamb without adequate supervision". The question of what is adequate supervision is difficult in context of Falkland Islands. This is not an area where intensive farming is practised. This is an area where farming takes place over large areas, on hillsides, with animals spread over considerable distances on difficult and inaccessible terrain. That being said, I heard no evidence that the Defendant had a regular system for checking on animals and I was told by Dr Glatzmeier that to allow animals to be put out as wild animals when they are actually domestic animals, of long

domesticated breeds kept for the production of wool, means they require supervision. She said domestic breeds of sheep need to have human intervention. There was no compelling evidence that that the Defendant's ewes had suffered during lambing because of lack of adequate supervision. I find myself at a cross roads and am not entirely satisfied that, in the context of the Falkland Islands and the remoteness of Rodeo Farm, the Defendant was unreasonable in allowing ewes to lamb on their own. As I am not entirely satisfied, I must find in favour of the Defendant. He is acquitted on charge 2.

12. Charge 3 relates to allowing cattle to calve without adequate supervision. This charge is fairly similar to charge 2 in that it relates to the same remote countryside and cattle farming practice in Falkland Islands is rarely intensive. I did not hear any evidence that the Defendant had a system for supervision of the cattle in place. I was shown a photograph which was identified to me as one of a young cow, described as either small or not yet fully grown, who had died while giving birth to a substantial calf. The picture showed the dead cow, tagged with the Defendant's identifying mark, with the dead calf still partially expelled from the birth canal. In respect of that cow and calf, clearly there was a need for supervision. I have also taken account of the way that the Defendant ran his cattle. This has led me to believe that they were less supervised than the sheep had been before the Defendant took the decision not to shear any more. I heard nothing of any annual practice comparable with the checks that had been made on sheep at shearing. I have formed a different view (from that relating to charge 2) regarding the supervision of the cattle. On the evidence provided by the small dead cow and her dead calf, the inadequacy of the supervision is proved beyond doubt. I find charge 3 proved.

3 Charges under Livestock and Meat Products (Welfare of Livestock) Regulations 2011

13. The three charges under the Livestock and Meat Products (Welfare of Livestock) Regulations 2011 relate to three improvement notices issued on 16th July 2015. The notices respectively required the Defendant to take all reasonable steps to improve shearing of sheep, to improve mating of sheep and to improve the supervision of sheep.

14. In the course of the trial much was made of a lack of warning to the Defendant that improvement notices would be served. The officials from the Department of Agriculture acknowledged they had had a meeting with the Defendant shortly before he was known to be going away for medical treatment. The meeting was described as not an easy one, something of a rollercoaster, sometimes with signs of a good outcome, sometimes not. Those at meeting were left with the genuine impression that improvement notices would be the consequence if the Defendant did not come up with a plan to address concerns of the Department. Whether or not the Defendant was warned that improvement notices would be issued is not, in my view, the most important feature. The fact that three improvement notices (dated 16th July 2016 and addressed to the Defendant) were sent was not disputed and the Defendant did not deny that he received them. The Defendant was vague as to when he first saw notices. I have no doubt that the three improvement notices were sent and the Defendant was aware of them. I consider it appropriate to ask myself firstly, if the notices gave the Defendant reasonable time to take the specified actions and, secondly, did he fail to take all reasonable steps to take the specified actions?

15. Applying this to the question of compliance with the notice to improve the shearing of sheep and requiring action to be taken within the period 15th October 2015 (shearing or disposal of double fleeced males and females except heavily pregnant females or those in heavy lactation) and 15th December 2015 (shearing or disposal any remaining unshorn animals other than lambs). I note that the period given for shearing the double fleeced sheep was within the normal shearing period and, in the event, an extension was requested and was granted by Mr Pointing. It was contended that the notice did not give the Defendant long from when he came back to the Falkland Islands. When questioned on this point, Mr Pointing said that he felt the Defendant's absence was not the most important thing to think about. His primary concern had been welfare of sheep. Mr Pointing was aware that the Defendant was away in July 2015 but, in Mr Pointing's view, it was for the Defendant to arrange for others to deal with the animals if he could not do it himself. The Department of Agriculture was apparently willing to co-operate and offer some assistance and, after the meeting on 17th June 2015, the officials were waiting for the Defendant to come back with a plan but that did not happen. It is not disputed that Mr and Mrs Henry started shearing the sheep from Rodeo Farm and following their communications with Mr Pointing, he granted them an extension of time for the shearing. The Defendant, however, never came forward with a fixed plan. The charge is that the Defendant failed to take all reasonable steps. Whilst I accept some steps were taken to improve within the specified period, I am not satisfied that the Defendant took all reasonable steps. I find charge 4 proved.

16. Charge 5 relates to the mating of sheep. I have heard evidence that visits were made to Rodeo Farm by officials from the Department of Agriculture. I have heard nothing to convince me that within the period specified in the notice (by 15th October 2015) all reasonable steps were taken to separate uncastrated rams from ewes or young ewes from older rams. I have heard that several generations of sheep were together and male and female were unseparated. The action required by the notice was not taken. Charge 5 is proved.

17. Charge 6 relates to the improvement of supervision of sheep. I have received (and accept) evidence that the primary way of supervising the sheep on this kind of farm is by submitting the sheep to inspection at the time they are gathered for drafting and marking and again for shearing. Referring to the photographs produced and the evidence Dr Glatzmeier, I have concluded that if not supervised the sheep with the abnormal horn would have had horn growth poking into its eye. The horn should have been removed or the animal culled. Similarly, the sheep with a misshapen hoof with one very overgrown claw needed attention, probably culling. There was also a sheep with a large, untreated growth on its leg. There was a lack separation of animals with the result that there was no supervision of the age groups or sexes and consequent inappropriate mating. I have already referred to welfare matters which can be attended to at shearing, e.g. cleaning the back end of sheep for health reasons. I note that Dr Glatzmeier acknowledged that fly strike problems were unusual in flocks in the Falkland Islands and fly strike levels were low in the Rodeo Farm area so that the primary reason for docking sheep tails would have been to keep the sheep's back ends clean and healthy and free from urine stains and faecal matter when it came to lambing. I am satisfied that a number of issues relating to that side of supervision were not actioned. I heard nothing which indicated all reasonable steps had been taken to improve supervision of sheep. Charge 6 is proved.

Sentencing Remarks

18. A number of mitigating features became apparent during the trial. The Defendant was labouring under the mistaken belief that he could opt out of ordinary farming practice without adversely affecting the welfare of his livestock. He did not take advice and persuaded himself to act on his own beliefs. These offences are instances of breach of the legal duty not to be cruel to animals which I categorise under the heading of as committed because of ignorance of appropriate care. I accept that the Defendant was genuine in his belief and never intended to cause suffering to his animals. His decision to cease commercial farming and to leave his sheep to go wild was made without understanding the welfare implications for his animals.

19. In reaching my decision as to sentence I have taken into account that the numbers of animals potentially at risk may have been high but the numbers proved to be affected and to which the cruelty offences relate were very low. I have also taken into account all that Mr Sabino has said about the Defendant's personal circumstances, including his mental health and the toll the proceedings have taken on him. His reputation is now damaged and he has lost his livestock. He has said some lambs were hand reared pets. During the course of the trial I noted that Mr Pointing complemented the Defendant on his hard work and the care he took of sheep he was transporting when he was running his haulier business. It was put to me, and I accept, that his farming dream has become a nightmare. Although it is not sufficient to discharge his duty to care for his animals (if not caring for them himself, then by arranging for someone else to do so) and to comply with the improvement notices, I have taken into account that the Defendant was away receiving medical treatment at the time the improvement notices were issued. The Defendant is a man of previous good character.

20. In all the circumstances of the case and notwithstanding that the five offences are serious – cruelty to animals is a serious matter - I feel that justice will be done by imposing a conditional discharge combined with an order to pay costs of £4000. The conditional discharge will be for a period of 12 months and, observing the totality principle, will apply to all the five offences of which he has been convicted.

6th October 2016

Senior Magistrate

Note: These written reasons are based on the recording of the Senior Magistrate's pronouncements at the hearing but have been expanded to include further detail.