

Citation: ☀ R. v. Keefer, Vandyk and Visser
2017 BCPC 142

Date: ☀ 20170518
File No: 63894-2-C
Registry: Surrey

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
Criminal

REGINA

v.

TRAVIS KEEFER, CHRIS VANDYK and JAMIE VISSER

**REASONS FOR SENTENCE
OF
HONOURABLE JUDGE J.G. COHEN**

Counsel for the Crown:
Counsel for the Defendant:
Place of Hearing:
Date of Hearing:
Date of Judgment:

J. MacAulay
C. Sicotte
Chilliwack, B.C.
April 13, 2017
May 18, 2017

Introduction:

[1] The three defendants before me have all pleaded guilty to the same charges.

The three charges are, in plain language:

1. causing animals to be in distress;
2. permitting animals to be or to continue to be in distress (basically failing to protect animals from the harm of others) (both contrary to Section 24(1) of the *Prevention of Cruelty to Animals Act*);
and
3. molesting a bird (contrary to Section 34(a) of the *Wildlife Act*).

[2] It now falls to this court to sentence these defendants on those charges.

Background:

[3] By way of background, these offences came to light when an employee of Mercy for Animals Canada worked for Chilliwack Cattle Sales Ltd. from April 30 to May 30, 2014. This person wore a hidden camera and recorded many reportable incidents, some of which were presented to the court in the form of short video clips.

Evidence:

[4] The court was given three discs of video clips; one for each defendant as well as a formal 'Admission of Facts' document by which each defendant admitted his wrongful acts for sentencing purposes.

[5] The video clips show that Mr. Keefer caused cattle to be in distress on May 6, 12, 13, 15, 16, 23 & 28 (count 1); that he permitted cattle to be or to continue to be in distress on May 2, 7, 8, 14, 16 & 28 (count 2); and that the *Wildlife Act* charge arose out

of the molestation of a pigeon on May 7 (count 3). The video clips shown to the court that included him totalled just over 3.5 minutes.

[6] The video clips show that Mr. Visser caused cattle to be in distress on May 13, 16 & 28 (count 7); that he permitted cattle to be or to continue to be in distress on May 2, 16 & 28 (count 8) and the *Wildlife Act* charge of molesting a pigeon which occurred on May 21 (count 9). The video clips shown to the court that included him totalled just over 2.5 minutes.

[7] The video clips show that Mr. Vandyk caused cattle to be in distress on May 2, 7, 9, 13, 16, 20, 21, 22, 23, 24, 28 (count 10); that he permitted cattle to be or to continue to be in distress on May 2, 6, 14, 16, 21, 22, 23 & 28 (count 11); and show the molestation of a pigeon on May 21 (count 11). The video clips shown to the court that included him totalled about 8.5 minutes.

[8] The actions of each of these three defendants shown in the video clips are difficult to watch. The treatment of the cattle and the pigeons is often very cruel. Clearly the court would likely have found that many of the acts shown in the video clips were breaches of the *Prevention of Cruelty to Animals Act* and of the *Wildlife Act* had the defendants denied that.

[9] However, the defendants did not deny that, rather they admitted these offences.

Applicable Law

[10] Both the federal government (in the *Criminal Code*) and the provincial government (in the *Prevention of Cruelty to Animals Act* and in the *Wildlife Act*) protect domestic and wild animals by the imposition of sanctions on those who molest wildlife

as well as on those who cause animals to be, or permit animals to continue to be, in distress.

[11] These defendants have not been charged under the *Criminal Code* and so the sentence imposed will be governed by provincial legislation not by federal criminal law. However, that does not change the fact that these defendants face the possibility of fines and/or jail sentences.

Submissions on sentencing:

[12] The prosecutor argued that the nature and extent of the cruelty in this case requires the court to impose jail sentences of 4 months plus a ban on having custody or control of animals for 3 years each for Mr. Keefer and Mr. Visser, while the greater violence of Mr. Vandyk calls for a sentence of 6 months in jail and a 5-year ban on having custody or control of animals.

[13] Defence counsel argued that there have been no cases like this one in Canada and that the court is therefore not constrained to impose any specific penalty. He pointed out that similar video and similar charges did arise in Wisconsin, that the penalties handed out there were minimal, and thereby argued that the court could and should consider imposing a fine or a suspended sentence rather than any time in jail.

[14] He also pleaded that, should the court accept that a jail sentence is appropriate, no sentence imposed should exceed three months so that it could be served intermittently (in the vernacular, on weekends) so that the defendants remained employable.

Considerations on sentencing:

[15] The court must consider many factors before sentencing a defendant, including: any applicable law; all mitigating and aggravating factors; the personal circumstances of the defendant including any criminal record; and the case law.

[16] The mitigating factors as I find them are that: none of the defendants has a criminal record; they pleaded guilty at an early stage; they are still young; they were, on occasion, acting on misguided principles of corporate efficiency; no animals died; there was an admission that the defendants “caused pain and distress to the cattle” but there was no admission and no evidence that the defendants caused physical injuries to cattle; and, the videos which the court saw were also posted to the internet resulting in the defendants being internationally vilified in the media and on social media.

[17] The aggravating factors as I find them are that: the examples of the cruelty committed by these men were both numerous and significant; the violence was, at times, gratuitous (unnecessary, unwarranted, unjustified); and these defendants were in a position of trust and breached that trust.

[18] The court must also consider the personal circumstances of these defendants. Again, as mentioned above, they have no criminal records. Therefore, the only information about their personal circumstances comes from them through their counsel.

[19] Defence counsel told me that: the defendants were young when hired and they were not properly trained or supervised at work; they got bonuses for improved production but got fired when these actions intended to increase production came to light; they often acted out of frustration as they needed to get thousands of cows through the milking carousel every shift; Mr. Visser and Mr. Vandyk both have significant community support (Mr. Visser provided 9 letters of reference and Mr.

Vandyk provided 8); the defendants do charity work; all are remorseful (Mr. Keefer and Mr. Vandyk wrote letters of apology); these acts of cruelty appear to be out-of-character for all of the defendants; the defendants have learned a lesson in a very hard way; and, because of social media, this will follow them their whole lives.

[20] The court must consider the principles of sentencing and this particular case brings the following principles into play: general and specific deterrence; denunciation; rehabilitation; reparation to society; promoting a sense of responsibility; proportionality; and, obviously, punishment.

[21] I have also considered the case law put before me, but I find that the great majority of it is not very helpful as there have not been any cases like this one that have been previously reported in Canada; at least none that were brought to my attention.

[22] In the prosecutor's casebook, I found the case of *R. v. Labonte*, 2014 ABPC 153 to be partially relevant because the defendant in that case was in a position of trust. However, its relevance was lessened by the fact that it was a *Criminal Code* charge and that the animal suffered significant physical injuries.

[23] I also found the case of *R. v. Bastarache*, Kamloops Registry 82388, to be partially relevant due to the fact that it is a case in which an animal was the victim of significant cruelty but that cruelty was stopped by public intervention and there were no long-term injuries to the animal. That was, however, a case of only one act of cruelty so that makes it different than the case at bar as does the fact that it was brought under the *Criminal Code*. Also, the defendant absconded before sentencing, and so the sentence was imposed in his absence and in the absence of further input from him.

[24] I also found the case of *R. v. Paulson*, 2015 BCPC 0045, to be partially relevant as it was decided under the *Prevention of Cruelty to Animals Act*, but Ms. Paulson was charged not only with cruelty to animals but also with falsely reporting that an offence had been committed. In that case, the defendant, a dog care provider, left a number of dogs in a vehicle on a sunny day for an extended period of time and they all died. When she realized what she had done, she dumped the bodies in a remote location and then falsely claimed that the dogs had been stolen or had gone missing. She was given a global sentence of 6 months in jail for those two offences. The relevance of this case was lessened by the fact that the dogs in Ms. Paulson's care died as a result of her actions and by the fact that she also gave false information to police.

[25] I found that the rest of the case law in the prosecutor's casebook was not very helpful as, most often, the facts were simply too different to assist me in this sentencing.

[26] Other than *R. v. Voon*, 2015 BCCA 285, I found the defendants' book of authorities not to be very helpful either in that the cases in it were too old or were based on facts that were very different from those before me, or, in the case of the decisions from Wisconsin, based on considerations which were simply too different to be applicable in the case before me.

[27] The *Voon* case was included as it exemplifies a case in which a court may impose a sentence that appears to be less than fit and proper so long as it is fit and proper for a particular defendant having committed a particular offence in a particular way. Defence counsel included this case to support an argument that, in case the court found that a lengthy jail sentence was the fit and proper sentence, the court could still impose a lesser sanction in the circumstances of this case.

[28] While the great majority of the cases provided by counsel were not very helpful, that collection of cases, when read as a group, gave the court a good sense of the appropriate range of sentences for people who abuse animals, and it is clear that a jail sentence for this sort of maltreatment of animals is consistent with existing case law.

Application of sentencing principles to this case:

[29] Earlier in these reasons I commented on mitigating and aggravating factors and I will continue that here. I will start with the mitigating factors which had the greatest impact on the court.

[30] In that regard I will start with a comment about the reasons of my brother, Judge Gunnell, in which he sentenced the employer of the defendants before me. In those reasons, he imposed the maximum fine possible because the employer did not properly supervise or train the employees. I accept as a mitigating factor the fact that these defendants had little to no training or supervision.

[31] I also agree with Judge Gunnell when he stated at paragraph 9 of those reasons that specific deterrence is not an issue, considering the significant media attention this case garnered.

[32] It is mitigating that these defendants, in most aspects of their lives, are good people, from good homes, who come before the court without criminal records. They have also been responsible enough to admit to the charges before me and to own up to their mistakes.

[33] Unfortunately, notwithstanding their general good nature, each of the defendants has committed some level of violence and I must assess the part each played and the level of violence each demonstrated if I am to impose a fit sentence.

[34] I find the brevity of the evidence against both Mr. Keefer and Mr. Visser to be a mitigating factor.

[35] The court was not told how many hours of video were gathered in this investigation. However, the evidence is clear that, during a month of shifts, through many hours of work, through the milking of many, many thousands of cows (2,800 per shift); the court will be sentencing Mr. Keefer based on 3.5 minutes of video.

[36] There are 6 video clips (totaling about 2 minutes) which show him failing to protect cattle (count 2) by failing to stop other employees from hitting, punching, and kicking cows as well as by standing by when a cow is lifted by a chain around its neck. He has admitted that, for those 2 minutes, he stood by and did not intervene.

[37] He admits that he threw a live pigeon across the parlour at other employees and we see that in a video clip that lasts 16 seconds (count 3). He holds the bird for most of that time but does eventually throw it.

[38] The remaining five video clips (one of which is a clip of 4 differently dated events all strung together in one video) show Mr. Keefer committing acts which cause an animal to be in distress (count 1). In the video of May 6, I see him strike a cow three times in the hocks apparently to get it to move and, likewise, on May 13, I see him twice strike a cow in the hocks apparently for the same purpose. Mr. Keefer admits to having

placed the chain around the cow's neck on May 28 but did not operate the tractor that lifted the cow, and on May 16 he kicked a 'downed' cow.

[39] In the single video clip which includes events from May 12, 13, 15 & 23, the images are difficult to follow. The Admission of Facts sets out that these clips show Mr. Keefer grabbing and pulling a cow's udder, punching a cow, jabbing a cow in face with metal pole and twisting the tail of a cow until a popping sound is heard.

[40] These acts are reprehensible but they last just one minute out of an entire month of shifts.

[41] Similarly, this court will sentence Mr. Visser based on 14 video clips that last just 2.5 minutes altogether.

[42] In support of the charge of molesting wildlife (count 9) against Mr. Visser, the court was shown one video clip that was just 4 seconds in length. In it, Mr. Visser is shown throwing the bird.

[43] In support of count 8 (failing to protect animals), there are about 2 minutes of video clips in which we see him stand by and fail to protect cows in a number of circumstances including failing to protect cows: from employees who are repeatedly hitting a cow; from an employee who is punching a cow; from an employee who stomps on a cow; and from an employee who kicks a 'downed' cow.

[44] In support of count 7, the count of actually causing animals to be in distress, there are six clips of Mr. Visser which span three dates. Altogether they total about one minute and 10 seconds.

[45] They show him: swinging a chain on a 'downed' cow; repeatedly kicking 'downed' cows in the face; lifting a cow by its tail; and placing a chain around a cow's neck on one date as well as driving the tractor that lifted the cow by the neck on another date (this is by far one of the most difficult images to watch).

[46] These acts, especially swinging of the chain on the cow's back (in effect chain whipping the cow) and hoisting of the cow by its neck, are violent and abusive acts that caused obvious pain and distress to the animals but, once again, all of these acts altogether last just one minute and ten seconds.

[47] I understand that the employee of Mercy for Animals Canada could not spend all of his time filming his co-workers as he had to be working otherwise he would get fired and lose any ability to continue his investigation; but that does not change the fact that I am sentencing these 2 defendants for acts of violence that last about a minute each.

[48] I do not ignore the fact that a great deal of violence can be perpetrated and a great deal of damage done in just one minute, however, based on basic sentencing principles, I am treating the brevity of the evidence against these two defendants as a mitigating factor.

[49] I note that Mr. Vandyk is not alleged to have used a tractor to lift a cow by its neck and I treat that as a mitigating factor.

[50] I will now comment on the aggravating factors that had the greatest impact on this decision.

[51] Still dealing with Mr. Visser, I find that the acts of repeatedly kicking a 'downed' cow in the face, of chain whipping a cow, and of hoisting a cow by its neck, to be significant aggravating factors in his sentencing.

[52] With regard to Mr. Vandyk, I note that there are 28 video clips of him of which, 17 show him committing acts against cattle, 10 show him failing to protect cattle, and 1 shows him molesting a pigeon.

[53] The 17 clips cover 11 different dates and they show him committing many wrongful acts including: repeatedly hitting a cow including jamming a cane into the cow's genitalia and saying "I just fuckin hit that cow at least 50 times"; kicking a cow repeatedly in the face; punching a cow in the face while it is being lifted by a tractor; hitting a cow in the leg causing it to lose its footing; turning a shocker on a trapped cow; repeatedly kicking a 'downed' cow; giving cows injections by jumping into the air and jabbing them with hypodermic needles as best he could before landing and jumping again to inject the next one; kicking a cow in the udder; pulling out cows' tail hairs; throwing feces at the cows; squeezing wounds on one cow and prodding and squeezing another cow's swollen joints; as well as punching a bull in the testicles.

[54] These video clips are almost 6 minutes in length and so are of significantly greater duration than those of the other 2 defendants. These clips also show examples of violence that have no obvious explanation and so appear to be nothing less than examples of wanton cruelty.

[55] Another aggravating circumstance is the fact that Mr. Visser and Mr. Vandyk had experience working in farming. Of particular concern is the fact that Mr. Visser specifically had dairy farm experience starting as early as 2011.

[56] Moving now from mitigating and aggravating factors to general sentencing principles, I find that the goals of specific deterrence, rehabilitation and promoting a sense of responsibility have already been met as a result of the wide-spread public condemnation these defendants have received (perhaps I should say 'been the brunt of') since the videos were made public.

[57] While I find that these men have already been significantly punished through public denunciation, I still also find that the court must craft a sentence that publicly denounces this type of behavior and helps deter others from similar actions. The sentence must be proportionate to the offence committed while yet being appropriate considering the offender's personal circumstances.

[58] I have taken all of these things into account.

Decision:

[59] I find that Mr. Keefer's level of violence was the lowest of the three and I also find that his actions can more often be attributed to an effort to meet job obligations than to wanton disregard for the well-being of the animals in his care.

[60] I have decided that the appropriate and fit sentence for Mr. Keefer includes jail time in order properly publicly to denounce these behaviours and in order to help deter others from acting similarly. However, based on the less serious nature of his actions, the brevity of his actions, and his personal circumstances, I find that the fit sentence for him is 7 days in jail.

[61] I order that he not have custody or control of animals for a period of one year.

[62] When I review all of the evidence and all of the personal circumstances, I find that I must sentence both Mr. Visser and Mr. Vandyk in common.

[63] I find that both of these defendants committed acts that were more aggressive and more cavalier than those of Mr. Keefer. I find that both demonstrated considerable disregard for the animals placed in their care as I have set out above.

[64] I find that Mr. Visser should have known better than to use a tractor to lift a cow by the neck based on the fact that he has been part of the dairy farming industry since 2011. Further, I find his chain whipping of a cow to be another significantly aggravating circumstance in his sentencing.

[65] Mr. Vandyk never used a tractor to lift a cow by its neck but he was caught committing significant numbers of gratuitous violence. The clearest examples of this are the videos that show him constantly kicking a 'downed' animal in the head and face area as well as the ones that show him caning cows in the hocks for no reason at all (especially the time shown in the video of May 2).

[66] All three defendants stood by and allowed cows to be abused by others but only Mr. Vandyk is shown permitting cows to be in distress not only by ignoring their health need but also by abusing their existing injuries/infections.

[67] When I review all of the evidence and all of the circumstances of the offenders, I find it difficult to distinguish the severity of these offences as committed by Mr. Visser from those as committed by Mr. Vandyk. Therefore, I have chosen to impose the same sentence for both.

[68] Based on all of the evidence and on all of the personal circumstances of Mr. Visser and Mr. Vandyk, I sentence each of these defendants to 60 days in jail and I permit both of them to serve those sentences intermittently.

[69] I order that both of these two defendants not have custody or control of animals for a period of three years.

[70] For the purposes of facilitating the intermittent sentence, I place Mr. Visser and Mr. Vandyk on probation for a period of 6 months; the terms of which are: to keep the peace and be of good behaviour; to report to a probation officer by no later than 3:00 p.m. on May 19, 2017 and thereafter as when and where directed; and to provide all contact information to the probation officer on the first reporting and not to change any of that information without first advising the probation officer.

[71] For the purposes of facilitating the intermittent sentence I order that you, Mr. Visser and Mr. Vandyk, be immediately arrested, processed and then released. This will count as your first day in jail. Upon release you will be given a direction to report to a prison and you will report to that prison by no later than 7:00 p.m. on Friday, May 19, 2017 and remain in prison until Sunday, May 21, 2017 at 6:00 p.m. and you will report to prison each and every consecutive weekend thereafter for a like period of time, until the jail term has been served and you will, at all times, report in a sober condition free from the influence of drugs and medications for which you have no prescription.

[72] These sentences are global sentences on the three charges for which each defendant entered a guilty plea.

By the Court

Judge JG Cohen