

Citation: ☀R. v. Vieira
2006 BCPC 675

Date: ☀ 20060410
File No: 75337-1
Registry: Kamloops

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REGINA

v.

JOHN VIEIRA

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE PENDLETON**

Counsel for the Crown:

A. Janse

Counsel for the Defendant:

J. Gnitt

Place of Hearing:

Kamloops, B.C.

Date of Hearing:

April 10, 2006

Date of Judgment:

April 10, 2006

INTRODUCTION

[1] The accused John Vieira is charged in Information 75337 that between the 23rd of March, 2004, and the 26th of March, 2004, at or near Little Fort British Columbia, he wilfully neglected or failed to provide suitable and adequate food, water, shelter and care for horses, dogs, pigs and rabbits, contrary to Section 446(2) of the *Criminal Code*.

[2] The accused entered a not guilty plea and testified he was away from his farm for approximately two weeks in March and left a neighbour to care for his animals. The accused disputes the Crown's contention that he wilfully neglected or failed to provide suitable and adequate food, water, shelter and care for his animals. He says he left sufficient food for the animals and expected his neighbour to feed them.

THE LAW

[3] Crown and defence counsel were most helpful in providing the court with Admissions of Fact. In this document, Exhibit 1, the accused admits being the beneficial owner and occupant of the farm property in Little Fort in March 2004. Mr. Vieira acknowledges being responsible for the care of the animals on the farm during that period of time. Mr. Vieira also admits the opinion evidence of Dr. Colin Mikkelsen, a doctor of veterinary medicine, and the opinion evidence of Dr. Terry McKay, a doctor of veterinary medicine, that the animals examined by the two veterinarians were in very poor physical condition. The court heard evidence from Dr. Mikkelsen and Kent Kokaska, an animal protection officer employed by the Society for the Prevention of Cruelty to Animals. The court also heard from John Vieira and viewed a videotape and a number of photographs depicting the farm and the condition of the animals in question.

[4] The court has considered the authorities provided by counsel including the decisions *R. v. Fernandez*, [2001] O.J. No. 5668, *R. v. Sudweeks*, [2003] B.C.S.C. 1960, *R. v. J.S.*, [2003], N.S.J. No. 225, and *R. v. Menard*, 43 C.C.C. (2d) at 458.

[5] I agree with counsel that the issue in this case is whether the Crown has proven beyond a reasonable doubt the accused wilfully neglected his animals.

[6] Section 429 of *Criminal Code* defines wilfulness as follows:

Every one who causes the occurrence of an event by doing an act or by omitting to do an act that it is his duty to do, knowing that the act or the omission will probably cause the occurrence of the event and being reckless whether the event occurs or not, shall be deemed, for the purposes of this Part, wilfully to have caused the occurrence of the event.

DISCUSSION OF THE EVIDENCE

[7] Dr. Mikkelsen attended the farm on March the 26th, 2004, in the company of SPCA officers. He observed and later examined nine of the ten dogs that were at the property. The tenth dog was caught later as it was running free on the farm. In his report he refers to a body condition score (BCS) he assigned to each animal after an examination. This rating from one to nine, zero being completely emaciated and nine being obese, describes the physical condition including the fat covering and muscling of the animal. He said of the nine dogs he examined, only one was normal. He assigned that dog a BCS of four out of nine. The rest of the dogs were thin to very thin. He said one older male dog was 30 or 40 pounds underweight. He explained it would take approximately 60 days of no food intake for that animal to lose this weight. He also observed none of the dogs had access to food or shelter and only one dog had a small amount of water available to it.

[8] Dr. Mikkelsen also examined five horses. One black mare had a BCS of four out of nine, while the rest of the horses had very low BCS scores of one out of nine or two out of nine. He described these horses as a breed of draft horse that would normally weigh between 1100 and 1200 pounds at a BCS of five out of nine. He explained that when he examined the animals they weighed about 800 pounds and were between 300 and 400 pounds underweight. He testified that these horses would lose two to three pounds per day without food. His opinion was that the horses would have been without food for approximately 100 days to have lost this weight. He said the two studs fell while being loaded into the trailer because they lacked the strength and muscle tone to remain standing. He described the condition of the horses in reference to the photographs and the videotape. He said a number of the horses showed dramatic

muscle loss and wasting along the backbone, ribs and tail head. He also said the mare's hoof had a large crack in it and, although she was not lame at the time, this condition was something an owner should have taken care of. He said this crack would have been at least a year old. Dr. Mikkelsen went on to say that the horses were in discomfort. He also added the dogs were in discomfort. Some of the dogs were tethered by chains weighing as much as 20 pounds and some had collars that weighed five pounds.

[9] Kent Kokaska confirmed much of what Dr. Mikkelsen said. He said one dog had access to a bucket of water, although none had any food. He also said the horses had no food or water available to them. In cross-examination he agreed there was a vehicle in the driveway pulling a trailer loaded with a large round bale of hay. He did not see Mr. Vieira at the farm on March 26th. Mr. Kokaska also said the pigs did not have access to food or water in their pen and the rabbits, with the exception of one rabbit, did not have food or water available.

[10] Dr. Terry McKay did not testify, but her report formed part of the admissions of fact. Dr. McKay examined 11 pigs and 10 dogs some five days after they were removed from the farm. The pigs were in relatively good condition although slightly thin some five days after their seizure. The dogs on the other hand were undernourished and varied from thin to severely emaciated. Her conclusion was that the condition of the dogs was consistent with not having received even the bare minimum of animal care.

[11] Mr. Vieira testified at this trial. He is a 45 year old divorced father of six children. He and his former wife lived in Little Fort on the farm property until they separated in 2000. Mr. Vieira's wife and children moved to the Kootenays and he has remained on the property which he described as a mixed organic farm. He testified he used the draft horses to log and he raised the dogs, which are a breed of Turkish sheepdog, to sell to ranchers who use the dogs to protect their herds. Mr. Vieira said he has been visiting his children in the Kootenays for the past few years. He goes to the Kootenays every second or third weekend, leaving Friday and returning to Little Fort on Monday. During

the four days he is gone, he has had other people look after his animals and he has never, he said, had any problems prior to March 2004. He said on the occasion in March he planned to be away ten days, but stayed fourteen days in the Kootenays while he looked for property to purchase as he intended to move himself and the farm closer to his children. He said that when he left the animals were not in the best condition, but they were in reasonable condition. He said they were "a little skinny."

[12] In cross-examination, he acknowledged giving the animals minimal care prior to March. By that he meant that they were getting less food than he would have liked.

[13] He suggested that the family separation had been costly and it was expensive for him to go to the Kootenays. It is clear Mr. Vieira was having financial difficulties in the time leading up to March 2004. It is also clear he was not providing suitable and adequate food and care for his animals. I say this because I accept the evidence of Dr. Mikkelsen that the horses and dogs were not receiving adequate food to maintain their physical condition. Most of the horses and dogs were very thin and emaciated and had suffered significant weight loss over a much longer period of time than could be attributed to the 14 day period that Mr. Vieira says he was away from his farm.

[14] Mr. Vieira testified his draft horses were not the full sized animals of that breed which he said normally weighed 2000 pounds. He said his horses weighed between 1600 and 1700 pounds. Dr. Mikkelsen's evidence was that he believed the horses would have weighed 1100 to 1200 and had lost between 300 and 400 pounds, but Mr. Vieira's evidence proves his horses suffered a greater weight loss than Dr. Mikkelsen had concluded. Mr. Vieira's testimony establishes that some of these horses would have lost nearly one-half of their body weight and I find this could only have occurred over an extended period beyond that which Dr. Mikkelsen testified to.

[15] The court is satisfied that the Crown has proven beyond a reasonable doubt that the horses, dogs, pigs, and rabbits were neglected in the time period leading up to March 26, 2004, and that the owner, Mr. Vieira, who was responsible for their care neglected to provide suitable and adequate water, food, shelter and care for them. The animals, and particularly the horses and dogs, were in very poor physical condition.

[16] Mr. Vieira testified that he left Leon Eustache in charge of his animals when he left for the Kootenays in mid-March. He said Mr. Eustache was a neighbour who had helped him in the past feeding and caring for the animals. Mr. Vieira said he left bags of food for the dogs, pigs, and rabbits in the house and that Mr. Eustache had access to the house. He said he left a thousand pound round bale of hay for the horses and that the horses roamed the property and had access to water at a spring. He also testified there were smaller bales of hay around the property Mr. Eustache had access to. Mr. Vieira said there was tap water available at the house for the pigs, dogs, and rabbits. He said he had made arrangements with Leon Eustache to have the animals fed and he maintains he left enough food for the animals. He said when he returned late in the evening of March 25th he did not feed the animals. He did discover a note on the door of his residence from the SPCA advising that the officers had attended the property earlier. He fed his dogs, pigs and rabbits the next morning. He testified the hay on the trailer was purchased on March 26th and that he was in the process of delivering it to the animals when the vehicle overheated. He left it there and had gone off to chase some of his cattle that had gotten off the property. He said he was gone for sometime and when he came back the SPCA officials had been there and removed the animals from his farm. He said the officers had left a note on his door advising that they were seizing the animals. Mr. Vieira has seen the videotape and the photographs and agreed that his animals were not in very good condition. He said the animals were not in that condition when he left two weeks earlier and he was ashamed to see the condition that they were in on March 25th.

DECISION

[17] Mr. Vieira testified he did not wilfully neglect his animals and he maintains he made appropriate arrangements to have a neighbour care for them in his absence. Mr. Vieira did not call Leon Eustache to testify at his trial. He said he went looking for Mr. Eustache in the week before the trial, but could not find him. This charge has been outstanding for some time and Mr. Vieira has known that Mr. Eustache would be an important witness for him and yet he says he only made very recent efforts to locate his neighbour. Given the jeopardy Mr. Vieira is in the court would have thought that he

would have made more of an effort to locate this witness. The accused, of course, is not obliged to call any witnesses nor does he have to testify. The Crown has the onus of proving the allegation beyond a reasonable doubt. In this case, Mr. Vieira did testify. He said when he left Little Fort his animals were a little skinny.

[18] When the court considers the expert evidence and the photographs, it is clear Mr. Vieira's horses and dogs had not received food for many, many days prior to Mr. Vieira's departure from Little Fort. The animals were in very poor condition, and their condition would have been obvious to Mr. Vieira. The court does not believe him when he says that they were simply a little skinny.

[19] As well, Mr. Vieira testified that when he arrived home on March 25th he was devastated by the animals' condition, but he simply went to bed and did not feed the animals. I do believe Mr. Vieira when he says that he was devastated.

[20] The court has listened carefully to the evidence of John Vieira, I did not find him to be an impressive witness and his evidence was not credible nor does it raise a reasonable doubt. I reject his evidence that he left anyone in charge of his animals and I am satisfied they were left to fend for themselves when he went to the Kootenays. His animals had not been adequately fed for a number of weeks prior to the SPCA being involved in March 2004. Certainly when the SPCA officials and Dr. Mikkelsen attended the farm on March 26th, Mr. Vieira had not provided suitable and adequate food, water, shelter and care for the animals.

[21] The court is satisfied the Crown has proven beyond a reasonable doubt the accused wilfully neglected his animals in the time leading up to and between March 23rd and March 26th, 2004. I find the accused guilty on Count 1.

[REASONS CONCLUDED]