

In the Provincial Court of Alberta

Citation: R. v. Carter, 2006 ABPC 341

Date: 20061130
Docket: 051374734P1
Registry: Vegreville

Between:

Her Majesty The Queen

- and -

Haeli Carter

Judgment of The Honourable Judge P. Ayotte

[1] The Crown alleges that:

Between October 24, 2005 and November 16, 2005 both dates inclusive, at or near Tofield, in the Province of Alberta, that Haeli CARTER, being the owner or person ordinarily in charge, did cause or permit animals: to wit: horses to be or continue to be in distress, contrary to the provisions of the *Animal Protection Act of Alberta*, Section 2(1).

[2] The prosecution stems from the execution of a search warrant on two properties near Tofield on November 17th of that year. The validity of that warrant was not challenged at the trial. The evidence satisfies me to the necessary standard that, whether or not she was the owner of the searched properties or of the animals found thereon, Ms. Carter was at all material times the person ordinarily in charge of those animals. There remains then the question whether the animals were in distress and if they were, whether Ms. Carter was responsible in law for that condition. Even if the answer to those two questions is “yes”, this being a strict liability offence, the Defendant might still avoid conviction by showing that she used due diligence in an attempt to avoid that result.

[3] Section 1(2) of the *Animal Protection Act* (“the Act”) defines the word “distress” in these terms:

1 (2) For the purposes of this Act, an animal is in distress if it is

- (a) deprived of adequate shelter, ventilation, space, food, water or veterinary care or reasonable protection from injurious heat or cold,
- (b) injured, sick, in pain or suffering, or
- (c) abused or subjected to undue hardship, privation or neglect.

[4] The Crown relies on the evidence of the six people involved in executing the aforementioned search warrant to establish that some of the animals under Ms. Carter's care came within that definition. In assessing the reliability of their evidence, I note in passing that Ms. Carter, as was her right, chose not to give evidence at the trial. In the result, then, the descriptions given by those witnesses of what they saw that day and of what Ms. Carter said and did that day remain uncontradicted by any evidence emanating from her. She did call four witnesses, three of whom attempted to paint a glowing picture of the care these animals had received in the days leading up to the search and to explain the condition of the barn at the time of the search. I will deal with their evidence in due course.

[5] Speaking generally, all of the Crown witnesses were credible even though some were clearly more thorough than others in recording their observations. I attribute that anomaly to the different tasks to which they were assigned during the execution of the warrant. For example, Special Constable Lozinski was directed to focus her efforts on creating a sketch of the areas searched on each property. As a result, while she did make some observations of the conditions she observed, it was clear from her testimony that she was not concentrating on the animals themselves to the same extent as other members of the search team, especially Dr. Santarossa, Special Constable Dodds, who had originally obtained the warrant, and Cst. Dungey, the RCMP officer assigned to make sure the search was conducted properly and without incident. The same can be said of the evidence of Special Constable Dean, who played a subsidiary role largely devoted to taking photographs. Those differing roles adequately explain what Ms. Carter claimed was "conflicting evidence" among them regarding the condition of the stalls, the animals and the presence of food and water. Contrary to what she suggests, the evidence of the five witnesses who searched the home property, when looked at as a whole, is remarkably consistent about the condition of that property and of the animals found thereon, in differing detail for the reasons just given, but consistent nonetheless.

[6] I have also taken into account Ms. Carter's position that at least two of the Crown witnesses, Cst. Dungey and Beaver County Special Constable Ells, were biased against her on account of their prior dealings with her and concluded that those factors, even if they were present, do not significantly affect the weight I give to their evidence. Special Constable Ells showed no observable bias while he testified and in any event had little to do with the search itself. His sole job was to keep the second property under surveillance while the home property was being searched. He described in a very general way the things he saw while discharging that

task. Those observations were corroborated by other witnesses who cannot be accused of bias against Ms. Carter.

[7] Cst. Dungey's case is slightly different. There was a palpable, if restrained, antagonism between the two women when Ms. Carter cross-examined the constable. However, I am quite unable to say that her hostility to the Defendant would cause Cst. Dungey, under oath, to attempt to mislead me. To the contrary, her antagonism seemed more rooted in her disapproval of what she saw that day and in her feeling, from prior dealings with Ms. Carter, that the latter was not providing a proper standard of care to the animals under her control. What is more important from the point of view of credibility is that her evidence is largely corroborated by Dr. Santarossa, a completely reliable and unbiased witness who had never even met Ms. Carter before that day. As for what Cst. Dungey said she saw Ms. Carter attempt to do in the barn and the actions she took to stop it, that evidence was not contradicted by any defence evidence although it was clearly open to the Defendant to attempt to do so.

[8] Against that background, the question becomes whether the evidence given by the Crown witnesses shows that some of the animals under the Defendant's care were in distress. The answer to that question must be yes. In saying that, I recognize and accept that some of the animals on the two properties were, as Crown counsel conceded, not in distress. That does not matter. It is sufficient for conviction if only one animal was in distress. That others were not may go to the due diligence issue, but what is significant in the application of the definition in the Act is the condition of the animal or animals which are the subject of the charge.

[9] Mr. Marchant points to a total of nine horses which he says were in distress. I agree. The strongest case involves the four foals found in a small pen in the barn, one of which had died, and the most persuasive evidence of their condition is that of Dr. Santarossa, the veterinarian who accompanied the SPCA officers to the property. Remembering that she did not know Ms. Carter at the time and that since 2002 she has been an "equine-only practitioner of veterinary medicine" (see Exhibit #2), her description of what she saw in that barn was compelling. She was first asked to give her overall impression of what she saw at the home property. This is what she said:

I guess I'm still kind of somewhat haunted by what Haeli's farm looked like. It kind of looked like it was built on a dump. It's a collection of debris and decay and old vehicles and appliances and wood. It's a disaster. It's a hazard zone. Like bits of garbage and debris and rottingness just penetrating the entire property.

When she was then asked to focus more on the condition of the animals, Dr. Santarossa began this way:

I'm still haunted very much also by some of the conditions of the animals I saw on Haeli Carter's farm. Um. I can't even describe to you the severe neglect, abuse, emaciation, sickness, disease, rot,

stench that permeated especially out of that barn. It was atrocious. It was absolutely brutal.

[10] The doctor opined that the barn "... housed ... the most heinous part of neglect that was on this entire farm." There was debris, junk and faeces strewn everywhere. In her words, "... when you went in that barn it just smelled like death." As it turns out there was death there. There were corpses of a dog, a chicken and four dead rabbits. According to Dr. Santarossa all of the stalls were filled with faeces and in one stall it was "... literally a metre high, literally." Photographs 7 through 14 of Exhibit #4 bear witness, at least one dimensionally, to the accuracy of her description. At one point in her tour of the barn she came upon a stall with four foals. This is her description of what she saw:

The worst pen in the barn consisted of four foals which Haeli told me were bought two weeks previously at the Innisfail auction. The pen they were in was about the size of the judge's desk and back. It was quite small. It was just like someone had pumped the sewage in there. It was a cesspool. It was water and pooh and rotting bedding. And in the corner curled up was a dead foal. One foal was lying down in front and two of the others were kind of mingling around. And there was an old pallet or door in the stall with wire on it that they were walking on. Each of the foals was just caked in manure, just caked ... from head to toe. I mean they had knots of crap stuck in them. And they were the most pathetic animals I have ever seen. And they were so skinny and they had horrific skin condition. They were just covered in flakes and scales. One foal that was down, when we got it up you could see that it had a lameness in its left hind leg. No evidence of food in there; no evidence of water. Nothing. And they were coughing; they had snotty noses, runny eyes. They were just ... disgusting.

The doctor's observations were confirmed by both Cst. Dungey and Special Constable Dodds, not as graphically or with as much emotion, but sufficiently enough to convince me that they accurately describe the condition in which these foals were found on November 17th.

[11] All four animals were removed from the farm that day. The three still alive were placed under Dr. Santarossa's care. In uncontradicted evidence which I accept, the doctor testified that one of those ultimately had to be put down because a cut to its leg had become so infected from being in urine and manure that the animal could not be saved. She was also asked whether, assuming they were in poor condition when they were purchased, the foals would still have been so sickly two weeks later had they been properly fed, watered and cared for. She said they would not have been and in support of that position she later explained that the two surviving foals, given those things, responded within two days and after an appropriate period of time were placed with new owners. I accept that evidence and the veterinarian's opinion in that regard, which leads to the inescapable conclusion that even if Ms. Carter's statement to the doctor

regarding the time of purchase is true, these animals were not properly cared for while they were in her care.

[12] That conclusion is supported by Dr. Santarossa's testimony that she conducted an initial necropsy on the dead foal that same evening and found no evidence of fat storage in the usual places, but did find evidence of pneumonia in the lungs. She subsequently sent the carcass to a pathology lab for analysis. The report confirmed her initial findings with the added information that the fat in the foal's bone marrow was also depleted, indicating chronic starvation. When asked if she could tell how long it would take for the foal to starve to death, Dr. Santarossa said she could not, but added this observation:

No, but the fact that there's no fat in the bone marrow makes this a chronic condition, meaning that it had not had any food for not just a period of days but probably a period of weeks. It had not had sufficient nutrition. Literally there was not even a blade of hay in its intestinal tract. And the transit time is, at least for most horses, at least 24 to 48 hours. It hadn't had a stitch of food.

I accept that evidence and the opinion which is based on it. There can be no more incontrovertible or compelling evidence of continuing distress in an animal than evidence that it died of chronic starvation. I am also satisfied beyond a reasonable doubt on the evidence I have reviewed above that the other foals in that pen also met, at a minimum, the criteria set out in s. 1(2)(a) and (b) of the Act.

[13] In reaching that conclusion I have considered Ms. Carter's cross-examination respecting the photographs depicting food and water in the foals' pen. Photographs 8 and 9 of Exhibit #4 are examples. They raise no doubt in my mind. On the evidence, Special Constable Dean, who took those photographs, was not among those who first entered the barn. Cst. Dungey was and she also took photographs of that pen. In *her* photographs there is no food or water (see Exhibit #5; photographs 2 and 4). There *is* food shown in photograph 5, but that was explained by the constable early on in her testimony when she said that Ms. Carter, when they first entered the barn, attempted to put food in the stall. Cst. Dungey told her to "cease and desist" and not to obstruct the search any further. Ms. Carter drew the constable's attention to photograph 5 during cross-examination and the following exchange took place between the two:

- Q. What's in the green bin?
A. There was nothing there that day. Until you put food in.
There was nothing there when I first saw it.
Q. There's two different places there where there's --- and ---
whatever . O.K., I'll just leave it at that.

As was the case throughout, Cst. Dungey's stance was never contradicted by any evidence coming from Ms. Carter, although her right to give evidence and the possible consequences of not doing so were clearly explained to her at the beginning of the trial.

[14] While I do not intend to go into the same detail with respect to the other horses which are the subject of this charge, suffice it to say that I am satisfied beyond a reasonable doubt that each of them was in distress within the meaning of the Act, not to the same degree as the foals, but in distress nonetheless. Again I rely primarily on the unbiased, uncontradicted observations of Dr. Santarossa and the essentially unchallenged opinions she gave as a result thereof, supported by the corroborative observations of the other non-expert witnesses.

[15] Dealing first with an older horse called "Blindy", the doctor discovered an eye disease common to her breed, painful and untreated. The horse was essentially blind, so much so that Ms. Carter herself told the doctor that she had recently fallen into a hole and had to be pulled out by a dump truck. She also conceded at that time that no treatment had been sought as a result. Dr. Santarossa noted that the horse was very skinny, a score of three on the body condition scale she uses. She indicated that what is acceptable varies depending on what the horse is bred for, but that a score of three "isn't acceptable for anything". She also opined that an old blind horse should not be kept in a pasture strewn with debris as this one was nor with a group of younger, sighted horses who would inevitably consume most of the food before the blind horse had a chance to get a sufficient share.

[16] Although Ms. Carter pointed to slightly differing opinions on body condition score expressed by the SPCA officers, I prefer the opinion of Dr. Santarossa, an expert in veterinary medicine specializing in horses, and one who examined the horse more closely than those other witnesses. While Ms. Carter did tell the doctor that she had taken Blindy for treatment to another veterinarian, no evidence was called by her to support that statement. The receipts which she presented as Exhibit #11 in the trial are by and large for food and supplies, not treatment, and the only mention of Blindy refers to treatment on December 13th, 2005, well after this event and after Dr. Santarossa had herself given preliminary treatment to the horse and recommended a further course of care.

[17] Among other things, the Act specifies that an animal is in distress if it is deprived of adequate "space", "food" or "veterinary care". The evidence I accept convinces me to the necessary standard that Blindy was, by reason of her condition and pasturing, deprived of all three.

[18] The horse "Leona" had apparently been purchased by Ms. Carter eight weeks before Dr. Santarossa saw her. She had a wound on her back leg which caused "significant lameness at a walk you could see". There was much granulation tissue on a previous wound which had not been dealt with and a swelling going up the leg. Although Ms. Carter told her she was following the instructions of another veterinarian to treat the wound, which she said was there when she bought the horse, that was not apparent to the doctor. She told me granulation tissue needs constant attention to keep it flush with the wound. Otherwise it bulges out "like a mushroom"

making it difficult to walk and ensuring that the wound will not heal. That was the condition in which she found Leona. There was no bandage on the wound and it was extremely dirty. The horse's condition was bad enough that Dr. Santarossa ordered that immediate veterinary attention be provided. If Ms. Carter was indeed following the directions of another veterinarian in treating Leona, no evidence to support that was provided. Accordingly, I find this animal was also in distress by reason of having been deprived of adequate veterinary care.

[19] A brown mare identified to the doctor as "Sparky" also caused her some concern. Another horse with a body condition score of "three", Ms. Carter told the doctor she was in foal. Given that information, Dr. Santarossa made this observation:

This mare, if she was bred, would have nothing to give to that foal. She just had nothing. So I was concerned in that sense that her body condition was so poor and that she may be pregnant. In addition she just had paronoss [phonetic] around her eyes ... crusting. She had a greenish-yellow nasal discharge. She just. She just looked awful. She just looked unthrifty and dull and had just a very poor coat to her as well.

Once again the doctor ordered that this horse be given immediate veterinary attention and she was taken to her clinic that day. It turned out that she was not pregnant. Her condition, in an opinion which I accept, was attributable to malnutrition. Accordingly, I find that "Sparky" also was an animal in distress within the meaning of the Act.

[20] The last animal which the Crown alleges fits that category was a paint stallion who was unable to retract his penis. This animal, first seen by Special Constable Ells on the home property on October 21st, was found on the second property during the search. In fact he was one of the horses which prompted Ells to contact the SPCA. As a result of that call, on October 24th he and SPCA Constable Dodds went to the property to view the animals from the road only to find no sign of the paint stallion. While there they were confronted by Ms. Carter. When they asked her about the paint stallion, she said it had been returned to its owner in Cremona, which statement I find to be an outright lie, as the animal was found on her second property during the November 17th search. The explanation for that offered by Ms. Carter's daughter, Ruth, was so completely confused and unbelievable that I do not accept it.

[21] In any event, Dr. Santarossa said this when she was asked about that horse's condition:

"You could see that the skin on his penis was very traumatized. It was scabbed and cut and swollen and had been exposed to the elements."

When asked about the effect such a condition would have on the horse, her response was "That horse was in distress". When asked how long the condition had been present, her response was that on the basis of what she saw the condition was chronic, that is that it had been present for an

extended period of time; in her opinion, for weeks. I accept those observations and those opinions and find once again that this horse was in distress within the meaning of that term in the Act.

[22] There remains only to consider the evidence offered by the defence. It was not impressive. While Ms. Carter chose not to give evidence herself, she was quite content to have her two daughters do so. Aged 13 and 15, they were in my view, if not coached, clearly subservient to their mother. Both girls tried to blame the dead rabbits and the mess in the barn on two dogs they found there on the very morning of the search and chased away. They had never seen the dogs before, didn't know who they belonged to and couldn't say where they went. In short, and by inference, they were suggesting that it was therefore impossible to get any corroboration of their story from the dogs' owners. Apart from the sheer implausibility of such a coincidence, it defies belief that these dogs, if they existed, could have made the mess and created the unsanitary conditions observed by the Crown witnesses and pictured in part in photograph 7 of Exhibit #4.

[23] Sarah, the youngest, told me that the pen the foals were in was cleaned every second day and that the animals were fed and watered every single day. That evidence flies in the face of the condition the foals were in when the search was conducted and the condition of their stall at the time, all of which was supported by the photographs taken by Cst. Dungey and Special Constable Dean. Nor is it supported by the result of the autopsy conducted on the foal which had died. I simply do not accept it.

[24] The evidence of Ruth, the older daughter, suffers from the same frailties. Her description of having treated the paint stallion with the result that the swelling in its penis went down is irreconcilable with the description of the stallion's condition given by Dr. Santarossa, whose unbiased evidence I accept. Her explanation of how that horse came back into their possession injured after it had been sold in perfectly good condition is simply not believable. Nor is it corroborated as it could have been by the original purchasers in Cremona. Finally, her attribution of the redness in Blindy's eyes to a wind storm the day before is, like the story of the dogs, too coincidental to be believed nor does it explain the overall condition of the horse described by Dr. Santarossa. Once again I simply do not accept Ruth Carter's evidence.

[25] Another of Ms. Carter's witnesses was Elizabeth Tjostheim, a friend of the family, who was apparently a frequent visitor at the farm. She was called to attest to the fact that all the animals were well-cared-for and fed, watered and cleaned regularly. If that was so, she was unable to explain how the animals which are the subject of this charge were in such poor condition when six independent witnesses saw them on November 17th. I found that her cross-examination was replete with "I don't remembers", "I don't knows" and glances over to Ms. Carter for assistance. At one point she admitted to having talked with the latter in preparation for trial and getting from her the information about the dates when things happened. In short I am unable to give her evidence much weight at all.

[26] The last defence witness was Daniel Tolliver, the owner of the second property, who testified about feed he hauled to the Carter property and to the presence of hay and a water source on his own property. While I am sure he was an honest witness and that he did from time to time haul feed for Ms. Carter, the fact remains that he was only told he would be testifying a very short time before the trial itself. He was thus being asked to recall for the first time and totally from his memory events which occurred a full calendar year, virtually to the day, before the trial.

Against that background, the dates and exact sequence of the events he describes must be problematic. In any event, the question is not whether feed was delivered and water available to the animals under Ms. Carter's care, but whether the animals which are the subject of this charge were given access to it. His evidence was of little assistance in that regard and unable to cast any doubt on the descriptions I was given by the Crown witnesses of what they saw on November 17th.

[27] In summary, then, I am satisfied that the horses which I have discussed were all in distress on November 17th, 2005; that Ms. Carter was the person who was in charge of those horses during the period immediately prior to that day and that they could have reached that condition only by having been deprived of adequate food, water, space or veterinary care as discussed above. I am also satisfied that there is no credible evidence that Ms. Carter used due diligence to ensure either that they were not in distress or that they not continue to be in distress. That being the case, whether or not she was the original cause of that distress, she is shown beyond a reasonable doubt to have permitted that distress to continue. Accordingly, I find her guilty as charged.

Heard on the 16th and 17th days of November, 2006.

Dated at the Town of Vegreville, Alberta this 30th day of November, 2006.

P. Ayotte
A Judge of the Provincial Court of Alberta

Appearances:

Mr. G. Marchant,
for the Crown

Haeli Carter,
on her own behalf

