

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Jackson, 2011 NSPC 108

Date: June 2, 2011

Docket: 2271453

Registry: Shubenacadie

Her Majesty the Queen

v.

James Jackson

Judge: The Honourable Judge Timothy Gabriel

Heard: June 2, 2011, at Shubenacadie, Nova Scotia

Oral decision: June 2, 2011

Charges: Owner of animal /permit animal to be in distress contrary to section 21(1) and 21(2) of the Animal Protection Act

Counsel: Jillian Ryan- Crown Attorney
James Jackson - (self represented)

[1] **GABRIEL, JPC (ORALLY):** This is the case of James Jackson. He is facing a two count Information. The first count under Section 21(1) of the *Animal Protection Act* alleges that he caused certain animals to wit: seven ducks and three chickens, to be in distress. The second count alleges that he at the same time and place aforesaid, while being the owner of animals or person in charge

of animals to wit: seven ducks and three chickens, did permit the animals to be in distress contrary to Section 21(2) of the *Animal Protection Act*.

Facts

[2] On November 15, 2010, Dr. Leighann Hartnett, a veterinarian employed with the Department of Agriculture in Truro, Nova Scotia, was engaged in visiting one of Mr. Jackson's neighbours and, in the course of that visit, happened to notice a cage in the accused's backyard (at 1868 Coldstream Road, in St. Andrew's, Colchester County) which appeared to house a significant amount of poultry. When she attended to make a closer inspection, she observed that there were in fact two dead birds in the cage (one chicken, and one duck) and that there were approximately eight other birds in the cage still alive but in apparent ill health. There was no bedding in the cage. There was no evidence of any water or food available for the birds.

[3] Accordingly, Dr. Hartnett posted, on the door of the trailer situate on the property (which appeared to be where Mr. Jackson resided), a notice to the effect that the accused should contact her. She returned to her work premises, consulted with several of her colleagues, and a decision was made to return to Mr. Jackson's premises the following day to observe whether there had been any attempt to remediate the conditions that she'd observed, and also to discuss these concerns with him.

[4] When Dr. Hartnett and her colleague, Mr. Kittleson, attended the property the next day, they discovered the conditions to be unchanged. Moreover, there was no evidence of Mr. Jackson on the property, and he had not gotten in contact with Dr. Hartnett pursuant to the notice that she had posted on his door. Accordingly, she decided to take the eight live birds into care.

[5] A further notice was posted on Mr. Jackson's trailer door indicating that the fowl had been taken. The photographs in Exhibit 1 show the property at 1868 Coldstream Road and environs, including the trailer habited by Mr. Jackson. They also show the "cage" in question, which appears to consist of an open wire mesh cage joined in the back a small dog pen. In the latter, one can see the dead fowl.

[6] A pathologist, Dr. Spearman, testified as to the complete absence of muscle mass in the tissue of the dead birds that had been necropsied. The evidence is clear from both himself and Dr. Genderall that muscle tissue would be the last resort the body could call upon in order to generate the glucose needed to keep the birds' metabolism functioning. Dr. Genderall further indicated poultry such as these would starve in approximately five to six days without food. She also described how the absence of water would exacerbate the process. Finally, her evidence was that there had been a woefully inadequate amount of space allocated to these animals, and that this would have been true even if they had been all of the same species. The fact that the different species were mixed together would have created a need for even more separation space, not less, within which to move around and forage. She also spoke to the significant distress that would have been occasioned to the living birds by virtue of their proximity to the dead ones.

[7] As noted previously, there's no evidence of any bedding ever having been provided to these birds, all of whom are nesting species. It's also clear from the alacrity with which they attacked the food (when they were taken into care by Dr. Hartnett and Mr. Kittleman) that they were in fact starving. Indeed, any doubt on the point is instantly resolved by viewing the pictures at Exhibit 1 (page 5), in particular, the one showing the duck being held by Mr. Kittleman, and the degree of emaciation that it had attained. Further, from the picture of the cage appearing on page 5, it 's very clear that these birds were literally left to wallow in their own filth.

[8] In sum, there's no question that these fowl were neglected, they weren't fed, they weren't provided with any water, they weren't provided an area within which to forage, they were exposed to the cold, and had no shelter worthy of the name. I could go on. The necropsy performed on the dead birds showed that they had been reduced to eating gravel. They were that hungry. That is what the Court is left with on the basis of the very telling and graphic evidence provided by the photographs in Exhibit 1 and the commentary of the two experts who testified and provided opinion evidence today.

The Law and Analysis

[9] Section 21(1) of the legislation says that " no person shall cause an animal to be in distress".

Section 21(2) goes on to say that no owner of an animal or person in charge of an animal shall permit the animal to be in distress. The *Animal Protection Act*, in section 2(2) tells us that an animal is "in distress" for the purposes of this *Act* where that animal is (a) in need of adequate food, water or shelter or in need of reasonable protection from injurious heat or cold or (b) injured, sick, in pain or suffering undue hardship.

[10] As I said earlier, for the reasons I've just indicated, these animals were in distress within the meaning of the definition contained in Section 2(2) of the legislation, and therefore, within the meaning of Sections 21(1) and (2). The causes of the distress to these animals were myriad.

[11] Mr. Jackson has taken the position that he was not the person who caused that distress. He says that he purchased the birds (who were already in this condition) approximately one week before they were discovered by Dr. Hartnett. Even if I were to accept his contention that he was not responsible for the health condition of these birds, this would still not get him out from under the charge in 21(2), because that subsection would be contravened if he is merely the person in charge of the animals at the relevant time, and permits them to be in distress.

[12] Therefore, even giving Mr. Jackson the benefit of the doubt on 21(1), I am left in absolutely no doubt that he was in charge of those animals within the meaning of 21(2) of the legislation. If these birds were to receive any help at all with respect to their condition, it was he who would have had to provide it, and he didn't.

[13] The comments of Bryson J.(as he was then) in *R. v. Benoit*, 2010 NSSC 97, aff'd 2011 NSCA 99, are apposite:

[29] With respect to the "due diligence" argument relative to the period of time the puppies were in the appellants' charge – s. 11(3) negates an offence under ss. 2 if:

... the person in charge ... takes appropriate steps to relieve the distress.

[30] The first problem with this argument for the appellants is that they do not accept that the puppies were in distress in the first place. They asserted that they had provided proper food and water to the puppies. They claimed that their distended bellies resulted from overfeeding. Therefore, there was no "distress" to

"relieve." This evidence was rejected by the trial judge.

[31] The judge recognized that the appellants may establish a defence of mistake of fact or due diligence, on a balance of probabilities, with the ultimate burden of proof always resting with the Crown to prove its case beyond a reasonable doubt. The judge rejected the defence of mistake of fact because the puppies' distressed state should have been apparent to any informed observer. This should have been obvious to the appellants who should have treated the puppies, but did not. Moreover, the judge rejected the evidence of Mr. Bailey on the state of the puppy kennels/cages. He found that the photographs introduced into evidence by Mr. Bailey were not the condition of the kennels and cages at the time of the officers' visit to the appellants' property. The judge noted the contrast in care and condition of the appellants' own dogs with the condition of those they were selling. He found that the appellants did not provide the same quality of care. He held that they ignored the "obvious signs," alluding to lack of care.

[32] The evidence accepted by the judge of the unsanitary conditions in which the puppies were kept, clearly could have and should have been addressed immediately by the appellants. Moreover, the distressed state of the puppies was not a sudden occurrence. It developed over time. Even if the appellants' control of the puppies had been brief – a matter of days – there was ample time and opportunity to relieve their then obvious distress, or to begin doing so.

[14] There's no question in my mind these birds were treated deplorably and suffered terribly. In light of the Crown evidence presented (which I fully accept), I have significant concern with respect to Mr. Jackson's contention that he fed them the day before Dr. Hartnett's visit, and provided them with full pans of food, and also when he suggests or implies that he wasn't the one who put the roosters and the ducks all in the same cage. If he didn't put them there, there's no evidence before me as to who possibly could have done so. The accused lives by himself.

[15] In light of the findings that I have made, I find Mr. Jackson guilty under Section 21(2). Giving him (a very liberal) benefit of the doubt as I have, I find him not guilty under the first count of Section 21(1). That's my decision.

Judge Timothy Gabriel
Judge of the Provincial Court of Nova Scotia