



IN THE PROVINCIAL COURT OF SASKATCHEWAN

Citation: 2014 SKPC 075

Date: May 9, 2014
Informations: 7568951 & 24402630
Location: Yorkton

Between:

Her Majesty the Queen

- and -

Murray Andres

Appearing:

Andrew Wyatt
Self-represented

For the Crown
For the Accused

DECISION ON APPLICATION UNDER S. 24(2) OF THE *CHARTER* R. GREEN, J

I. INTRODUCTION

[1] On February 8, 2012, the home and yard of Murray Andres, in MacNutt, and his farm property just outside of MacNutt, were searched by animal protection officers employed by the Saskatchewan Society for the Prevention of Cruelty to Animals (SSPCA). These officers had a search warrant obtained that day under s. 7 of *The Animal Protection Act*. They were accompanied by two police officers from the Esterhazy RCMP.

[2] After entering onto the properties, the animal protection officers contacted Dr. Anique McCrae-Spence, a veterinarian in Yorkton, and asked her to attend to these properties. Dr. McCrae-Spence did so, and following her examination of animals at both locations - dogs, horses and cattle -

one cow was euthanised and a number of dogs were seized.

[3] As a result of this search and seizure, Mr. Andres was charged: (1) under s. 4(2) of *The Animal Protection Act* of Saskatchewan, with, being a person responsible for an animal, causing or permitting the animal to be, or to continue to be, in distress; and (2) under subsection 446(1)(b) of the *Criminal Code*, with, being the owner or the person having the custody or control of animals (cattle, horses and dogs), wilfully neglecting or failing to provide suitable and adequate food, water, shelter and care for the animals. The evidence on both charges is being heard together.

[4] By a preliminary *Notice of Charter Application*, Mr. Andres raised a number of *Charter* issues. He as well raised an issue under s. 52 of *The Constitution Act, 1982*, about the constitutional validity of parts of *The Animal Protection Act*.

[5] On January 24, 2014, I dismissed Mr. Andres' application under s. 24(1) of the *Charter*, which claimed a violation of his right to be tried within a reasonable time under s. 11(b) of the *Charter*. While there were complaints by Mr. Andres about a lack of disclosure from the Crown, I was satisfied that these had been satisfactorily dealt with, and the trial proceeded.

[6] The application made by Mr. Andres under s. 24(2) of the *Charter* raised two questions:

1. Was Mr. Andres' right to be secure from unreasonable search and seizure, under s. 8 of the *Charter*, violated because: (1) the warrant authorizing the search of his properties, and the seizure of his animals, was not lawfully obtained; and (2) the search of his properties was not conducted in a reasonable fashion?

2. Did any actions by the animal protection officers or a police officer, in telling Mr. Andres to stay inside his house during the search of his MacNutt property, constitute a breach of his right: (1) not to be arbitrarily detained or imprisoned under s. 9 of the *Charter*; and (2) on arrest or detention, to be informed promptly of the reasons therefor and to retain and instruct counsel without delay and to be

informed of that right, all under s. 10(a) and (b) of the *Charter*?¹

[7] If any or all of these breaches are established, the next question becomes whether admission of evidence obtained as a result of the breach(es) would bring the administration of justice into disrepute so that it should be excluded under s. 24(2) of the *Charter*. In effect, Mr. Andres is seeking to exclude the evidence obtained during the search of his properties.

[8] The evidence on these *Charter* issues was heard during a *voir dire* which began on March 27, 2014 in Esterhazy and continued the next day in Yorkton. The Crown called two animal protection officers involved with the search of Mr. Andres' home and farm property this day - Jaelyn Hofseth and Kaley Pugh, Cst. Eddy, who attended during the search at Mr. Andres' MacNutt property and laid the charges in this case and Dr. McCrae-Spence, the veterinarian who travelled to MacNutt this day. Mr. Andres did not testify or present any other evidence at the *voir dire*.

[9] The evidence given by these witnesses will be applied to the trial proper, at the conclusion of the *voir dire*. Although Mr. Andres objected to this procedure, I ruled it was proper, as three of the four Crown witnesses came from Saskatoon to testify, and in my view it made absolutely no sense to force them to return to repeat their evidence a second time.

[10] As noted above, Mr. Andres as well raised an issue under s. 52 of *The Constitution Act, 1982*. That issue is:

Whether sections 4 and 6 of *The Animal Protection Act* of Saskatchewan, and other related sections, are of no force and effect, because s. 2 of that act is over-broad and vague and, as a result, violates Mr. Andres' right not to be deprived of his right to life, liberty and security of the person except in accordance with the

¹ In his *Charter* notice, Mr. Andres as well claimed a breach of his rights under s. 7 of the *Charter*, regarding his allegation that he was told to stay inside his house. He did not pursue this in argument, and I am not satisfied that any such breach was demonstrated.

principles of fundamental justice under s. 7 of the *Charter*.

[11] I will determine that application at the conclusion of this trial, assuming Mr. Andres gives the notice required for such an application by *The Constitutional Questions Act* of Saskatchewan.

II. WAS MR. ANDRES' RIGHT TO BE SECURE FROM UNREASONABLE SEARCH AND SEIZURE, UNDER S. 8 OF THE *CHARTER*, VIOLATED ON FEBRUARY 8, 2012?

[12] Mr. Andres claimed that his right to be secure from unreasonable search and seizure, under s. 8 of the *Charter*, was violated because: (1) the warrant authorizing the search of his properties, and the seizure of his animals, was not lawfully obtained; and (2) the search of his properties was not conducted in a reasonable fashion. For the reasons that follow, I disagree.

Was the warrant lawful?

[13] The warrant in this case was issued by a Justice of the Peace on February 8, 2012 (Exhibit P-5). The scope of review of this warrant by me, as the trial judge in this case, is limited. That standard of review - respecting a judicial authorization such as this warrant - was summarised by Justice Sopinka of the Supreme Court of Canada in *R. v. Garofoli*²:

The reviewing judge does not substitute his or her view for that of the authorizing judge. If, based on the record which was before the authorizing judge as amplified on the review, the reviewing judge concludes that the authorizing judge could have granted the authorization, then he or she should not interfere. In this process, the existence of fraud, non-disclosure, misleading evidence and new evidence are all relevant, but, rather than being a prerequisite to review, their sole impact is to determine whether there continues to be any basis for the decision of the authorizing judge.³

² [1990] 2 S.C.R. 1421.

³ At para. 56.

[14] To be clear, this warrant is presumed to be valid, and my focus, in reviewing it, is to decide whether there remains a sufficient basis for its issuance.⁴

[15] Section 7 of *The Animal Protection Act*, allows a Justice of the Peace to issue a warrant to search any place or premises, if based on an Information to Obtain a Search Warrant (ITO) sworn by an animal protection officer, there are reasonable grounds to believe:

(a) that an animal is in distress in any place, premises or vehicle; or

(b) that an offence against this Part has occurred and evidence of that offence is likely to be found in the place, premises or vehicle to be searched.

[16] The ITO in this case (Exhibit P-1), sworn by Jaclyn Hofseth on February 8, 2012, together with Appendices A through I attached to it (Exhibit P-2), sets out the following grounds:

The Informant is an Animal Protection Officer with the Saskatchewan SPCA.

On June 7, A.D. 2010 the Saskatchewan SPCA received a complaint regarding the lack of adequate care for the dogs on the Murray Andres' premises.

On June 8, A.D. 2010 a Saskatchewan SPCA Animal Protection Officer attended the Murray Andres' premises, and found little to no shelter for the dogs.

On June 16, A.D. 2010 the Saskatchewan SPCA received a complaint regarding the lack of adequate care for the horses on the Murray Andres' premises.

On June 24, A.D. 2010 a Saskatchewan SPCA Animal Protection Officer attended the Murray Andres' premises, and found little to no shelter for some of the dogs and some horses in poor body condition.

⁴ *R. v. Pires; R. v. Lising*, [2005] 3 S.C.R. 343 at para. 30.

On July 14, A.D. 2010 the Saskatchewan SPCA received a complaint regarding the lack of adequate care for the horses on the Murray Andres' premises.

On July 22, A.D. 2010 a Saskatchewan SPCA Animal Protection Officer attended the Murray Andres' premises, and that some of the dogs were still without adequate shelter.

On December 13, A.D. 2010 the Saskatchewan SPCA received a complaint regarding the lack of adequate care for the dogs on the Murray Andres' premises.

On February 16, A.D. 2011 a Saskatchewan SPCA Animal Protection Officer attended the Murray Andres' premises and found that the dogs were still without adequate shelter. The Animal Protection Officer required that all of the dogs have adequate shelter by February 28, A.D. 2011.

On May 25, A.D. 2011 the Saskatchewan SPCA received a complaint from an employee of the Ministry of Agriculture who had attended the Murray Andres' premises, that there were numerous carcasses of deceased cattle on the premises, and that the horses and dogs on the premises appeared to be in poor condition.

On May 25, A.D. 2011 the Saskatchewan SPCA received photographs, from an employee of the Ministry of Agriculture who had attended the Murray Andres' premises, showing the carcasses of several deceased cattle on the premises.

On May 25, A.D. 2011 the Saskatchewan SPCA received a complaint about the care of the dogs, cattle and horses on the Murray Andres' premises, and stated that there were a large number of deceased cattle on the premises.

On May 26, A.D. 2011 the Informant attended the Murray Andres' premises and observed numerous carcasses of deceased cattle, numerous horses in poor body condition, and approximately 50 dogs with inadequate shelter and no water available.

On May 30, A.D. 2011 the Informant attended the Murray Andres' premises under the authority of a search warrant. Appendix A.

On May 30, A.D. 2011 the Informant had a vet assess the dogs and in her expert opinion all the dogs were in distress and recommended removing the dogs from the premises. Appendix B and Appendix C.

On May 30, A.D. 2011 all the dogs found on the Andres' premises

were seized and removed from the property. Charges have been laid in relation to the care of Andres' dogs. Appendix D.

On June 1, A.D. 2011 the Informant met with Andres and he relinquished two of the puppies that he had removed during the seizure of May 30, A.D. 2011.

On July 12, A.D. 2011 the Informant attended the Andres' premises and observed approximately 50 horses in various locations, in good body condition but most had overgrown and badly cracked hooves. The majority had access to food, water and shelter. One horse was tied in amongst barbed wire with no access to water. Three miniature horses were in a pen with no access to food, water or shelter. Appendix E.

On July 12, A.D. 2011 the Informant also observed approximately 13 cattle that appeared to be in various body conditions. One red and white faced cow suffered from an eye injury and a black cow was severely lame and required to be assessed by a DVM.

On July 12, A.D. 2011 the Informant observed approximately 12 dogs, seven of which were tied at a different location and the remainder were loose on Andres' property. All had access to water and only a few had access to raw meat. Appendix E.

On July 12, A.D. 2011 the Informant observed a llama which appeared to be in adequate body condition but required to be sheared immediately as it had a very heavy fleece.

On July 12, A.D. 2011 the Informant left a follow-up report stating her observations and made the appropriate recommendations. Appendix F.

Between August 8, A.D. 2011 and September 28, A.D. 2011 the Saskatchewan SPCA received several calls in regard to 46 dogs running loose that allegedly belonged to Andres. They allegedly had attacked the neighbour's dogs.

On August 18, A.D. 2011 the Informant attended the premises and found eight dogs in adequate body condition, no food present and only six had access to water. All had adequate summer shelter. Appendix G.

On August 18, A.D. 2011 the Informant saw three horses that needed their hooves trimmed.

On August 18, A.D. 2011 the Informant left a follow-up report with

her observations and the appropriate recommendations. Appendix H.

On September 28, A.D. 2011 the Informant attended the premises with RCMP and a DVM as well as another Animal Protection Officer for a follow-up and to try to capture some of the dogs running loose; the Informant did not see any loose dogs.

On September 28, A.D. 2011 the Informant left a note stating that Andres is responsible for all of his dogs and their actions. Appendix I.

On February 2, A.D. 2012 the Saskatchewan SPCA received a complaint regarding the care of Andres' dogs, stating that the dogs are tied to tires and have inadequate shelter; these conditions are reminiscent of those found on previous inspections and at the time of the dog seizure in May 2011.

[17] Mr. Andres argued this warrant was not lawfully obtained because:

1. The ITO contained information that was used to secure a previous search warrant of Mr. Andres' property (issued on May 30, 2011), and this was not conveyed to the Justice of the Peace in this case;
2. The ITO does not say that unwarranted searches by the SSPCA at his property, or adjacent properties - which Mr. Andres views each to have been a trespass - occurred on June 1, 2011, July 12, 2011, August 18, 2011 and September 28, 2011;
3. The ITO does not: (1) name the complainant on February 2, 2012; (2) provide any information about the reliability of the complaint or the complainant; or (3) state that this complaint had not been investigated at the time the ITO was being sworn; and
4. The ITO contains no information about a search being conducted at the Land Titles Office to prove ownership of the properties to be searched.

[18] Jaclyn Hofseth testified about the basis of each of the paragraphs in her ITO. She acknowledged that a number of her entries on to the properties of Mr. Andres were done without a warrant. She did not, however, agree with the suggestion by Mr. Andres, in cross-examination, that

she was trespassing on these occasions. It was clear she believed her entrance was lawful, I take it through the provisions of *The Animal Protection Act*.

[19] Ms. Hofseth said she believed Mr. Andres was involved in the selling of animals, as she had met with Mr. Andres at a Yorkton livestock auction on June 1, 2011, when Mr. Andres was trying to sell a cow and a calf. As well, she said she was aware that Mr. Andres had advertised the sale of puppies in the *Western Producer* on February 9, 2012, with his phone number in MacNutt listed .

[20] I will disregard the latter disclosure, given the date of the newspaper relative to the search in this case. Nevertheless, I am satisfied that her entries without a warrant onto Mr. Andres' yard in MacNutt or his farmyard or adjacent yards where his animals were kept on July 12, 2011, August 18, 2011 and September 28, 2011⁵ were authorized by s. 5(1) of *The Animal Protection Act*, which provides that:

5(1) Any animal protection officer, without a warrant, during ordinary business hours, may enter any premises, other than a private dwelling, where animals are kept for sale, hire or exhibition for the purpose of enforcing this Part and the regulations.

[21] That is because, I am satisfied that: (1) these were not in my view entries into a private dwelling, which I interpret to mean his house; (2) Ms. Hofseth had reasonable grounds to believe there were animals in these yards belonging to Mr. Andres which were being kept for sale; and (3) she entered during ordinary business hours to follow-up on whether Mr. Andres had made changes in his how he was caring for his animals and hence to determine whether any animals in his care remained or were in distress.

⁵ I do not include the date of June 1, 2011 which Mr. Andres listed, as I am satisfied Ms. Hofseth met with Mr. Andres that day in Yorkton and not MacNutt. Ms. Hofseth said, as well, on this day Mr. Andres relinquished to her two puppies he had taken away from his property on May 30, 2011 during the warranted search by the officers.

[22] Regarding what Ms. Hofseth described at the start of her ITO as the Murray Andres' properties - five quarters of land in Township 24, Range 30 W1 and five lots in MacNutt - she said she took these from a previous ITO regarding Mr. Andres sworn by Animal Protection Officer Lloyd Howden. She believed that his animals were being kept on these properties, whether or not he personally owned all of the properties.

[23] It is obvious that the SSPCA has had extensive involvement dealing with Mr. Andres since June of 2010, and that in preparing her grounds for the warrant, Ms. Hofseth, in acting reasonably, had to summarise the dealings of the SSPCA with Mr. Andres in some fashion. To include every detail of every contact or concern with him would in my view be untenable, and lead to an ITO which would be unnecessarily long. I am satisfied, based on the testimony of Jaclyn Hofseth, and her cross-examination, that she acted in good faith in composing and then swearing the ITO. I am satisfied she did not intentionally leave out material or intentionally include misleading information.

[24] Ms. Hofseth did admit that she was mistaken about one date in her ITO; that the day she attended the Andres' premises with the RCMP, a veterinarian and another animal protection officer for a follow-up should have been August 18, 2011 and not September 28, 2011 as stated in the ITO.

[25] Returning to the standard set by the Supreme Court in *Garofoli*, I must determine, after considering the contents of the ITO and the evidence of Ms. Hofseth, whether the Justice of the Peace in this case could have issued the warrant, or put another way, whether there continues to be any basis for that issuance.

[26] I am satisfied, based on the ITO sworn by Ms. Hofseth, that the Justice of the Peace in this case could have issued the warrant and, after considering the evidence of Ms. Hofseth, that there continues to be a basis for that issuance. In particular:

- (1) In my view this ITO gave a full overview of the dealings of the SSPCA with Mr. Andres, whether or not it was used in a previous

warrant application. The ITO makes clear that a warranted search of his premises was conducted on May 30, 2011, and a copy of that warrant was appended to the ITO as Appendix A.

(2) The logical inference from the inclusion of this previous warrant, and that there was no other reference to a warrant on other dates in the ITO, was that the other entries onto Mr. Andres' property were done without a warrant. As a result, I find nothing on this point in the ITO to have been misleading, and, as noted above, I am satisfied these entries were authorized by *The Animal Protection Act*.

(3) Regarding the complaint received by the SSPCA on the winter date of February 2, 2012 - that Mr. Andres' dogs were tied to tires and had inadequate shelter - Ms. Hofseth said the complaint was given by a named person, although she did not look at the name. While the ITO does not state the name of the complainant, or information about the reliability of the complainant, I nevertheless am satisfied that the complaint raised legitimate concerns about whether there was an animal belonging to Mr. Andres which was in distress and whether an offence against *The Animal Protection Act* had occurred. That is so considering the history of the SSPCA with Mr. Andres and that the note left for Mr. Andres on September 28, 2011 (Appendix I to the ITO) required that he ensure that all the dog houses were insulated by the end of fall.

(4) In my view, Ms. Hofseth gave a satisfactory explanation for how she came to believe that Mr. Andres' animals were on the stated properties; based on information from Animal Protection Officer Lloyd Howden.

[27] In total, I am satisfied that the warrant in this case was lawful.

Was the search reasonable?

[28] The search warrant (Exhibit P-5) authorized the search and recovery (seizure) of animals in distress and carcasses of deceased animals or other relevant things or items, upon a series of properties legally described in the warrant. I am satisfied the properties listed included those searched this day: Mr. Andres' home property in MacNutt and his farm property just outside of

MacNutt.

[29] In his argument on April 15, 2014, Mr. Andres claimed the search was unreasonable because Dr. McCrae-Spence did not perform sufficient medical tests on his animals before seizing them. In particular, he claimed the Body Content Scores assigned by Dr. McCrae-Spence were subjective and inaccurate given later scores, for some of the animals, done later when the animals were in the custody of the SSPCA.

[30] Dr. McCrae-Spence was qualified by me as an expert in two areas: (1) the assessment and treatment of the medical condition of animals; and (2) the adequacy of food, shelter and water for animals. She described in detail the assessments she made this day, both at the MacNutt property and at Mr. Andres' farm property. While she acknowledged that there is subjectivity in an assessment such as the Body Content Score of animals, I am satisfied that Dr. McCrae-Spence fully explained the assessments she conducted this day, that she was qualified to do these, and that she acted reasonably in doing so.

[31] In the absence of evidence from Mr. Andres at the *voir dire*, and after considering the evidence of Jaclyn Hofseth, Kaley Pugh, Cst. Eddy and Dr. McCrae-Spence, together with the video of the search of both properties (Exhibit P-8) and the pictures of the search tendered through the evidence of Ms. Hofseth and Ms. Pugh (Exhibit P-4), I have no hesitation in finding this search, as authorized by the warrant, was done in a reasonable fashion.

III. WERE MR. ANDRES' RIGHTS UNDER SECTION 9 AND 10 OF THE *CHARTER* VIOLATED DURING THE SEARCH PROCESS?

[32] Mr. Andres further claimed that, on this day, the animal protection officers or a police officer told him to stay inside his house at MacNutt, during the search of his property. He argued this constituted a breach of his right: (1) not to be arbitrarily detained or imprisoned under s. 9 of the *Charter*; and (2) on arrest or detention, to be informed promptly of the reasons therefor and to retain

and instruct counsel without delay and to be informed of that right, all under s. 10(a) and (b) of the *Charter*. For the reasons that follow, I disagree.

[33] As Mr. Andres did not testify or present any evidence at the *voir dire*, the only evidence on this *Charter* issue is as follows:

(1) Jaclyn Hofseth denied that she or anyone else with her that day arrested Mr. Andres or told him not to leave his house or prevented him from making telephone calls. She did tell him not to go to his farm property before Dr. McCrae-Spence had viewed the animals, because on a previous occasion Mr. Andres had removed animals during a similar search and because she wanted the veterinarian to see the true state of the animals without any intervention by Mr. Andres before the doctor arrived.

(2) Cst. Eddy denied that he detained or arrested Mr. Andres this day, nor did he ever tell Mr. Andres to remain on his MacNutt property.

(3) Kaley Pugh denied arresting or detaining Mr. Andres this day, or telling him he had to remain in his house. Similar to Ms. Hofseth's testimony, she said Mr. Andres was told not to go to his farm.

(4) In a video of the search of Mr. Andres' MacNutt property this day (Exhibit P-8), in Video Clip #5, Mr. Andres arrives at his MacNutt property and speaks to Ms. Pugh. He claims his dogs are not undernourished and says: "I will be back in fifteen minutes". Ms. Pugh tells Mr. Andres that they want to see the animals in their current condition and that he should not go to the farm and change those conditions. Mr. Andres says he is going to phone someone to be witness, and Ms. Pugh asks him if he has any dogs in the house. In Video Clip #6, Mr. Andres is heard entering his house, and Ms. Pugh comments on the video that she is concerned that Mr. Andres will send someone to the farm before the veterinarian arrives.

[34] The Supreme Court of Canada has defined detention, under ss. 9 and 10 of the *Charter*, as being "a suspension of the individual's liberty interest by a significant physical or psychological

restraint”⁶.

[35] Having considered the evidence above, I am not satisfied on a balance of probabilities that Mr. Andres was detained at any time this day by the animal protection officers or by a police officer. These officers entered his properties with a lawful search warrant and I am satisfied that none told Mr. Andres to enter or stay in his house, nor am I satisfied that Mr. Andres could reasonably have believed he was to do so. While he was told not to go to his farm - given the reasonable concerns of the officers that the condition or circumstances of the animals not be changed before the veterinarian arrived - nothing in the evidence satisfies me that there was a physical or psychological detention of Mr. Andres at his MacNutt property.

[36] As I am not satisfied Mr. Andres was detained this day, I am not satisfied that there was a breach of his right to be free from arbitrary detention under s. 9 of the *Charter*, nor am I satisfied that there was any obligation on the officers to comply with s. 10 of the *Charter*.

IV. CONCLUSION

[37] For the reasons set out above, I dismiss Mr. Andres’ application under s. 24(2) of the *Charter*. The evidence from the *voir dire* is applied to the trial, and we will continue with the Crown’s case, if further evidence is to be called, at a date to be arranged upon consultation with the parties. At the conclusion of the Crown’s case, Mr. Andres will elect whether he wishes to call evidence.

R. Green, J

⁶ *R. v. Grant*, [2009] SCR No. 32 at para. 44.