

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
 :
 vs. : No. SA 016-2016
 :
 CLYDE R. SHOOP. :
 :
 Defendant :
 :
 Brian B. Gazo, Esquire Counsel for the Commonwealth
 Asst. District Attorney
 Armin Feldman, Esquire Counsel for Defendant

MEMORANDUM OPINION

Serfass, J. - June 23, 2017

Defendant, Clyde R. Shoop (hereinafter "Defendant") has appealed the summary criminal convictions entered in Magisterial District Court 56-3-02 on April 19, 2016, pursuant to which he was found guilty of ten (10) counts of cruelty to animals in violation of 18 Pa.C.S.A. §5511(c)(1). Defendant appealed these convictions in accordance with Pennsylvania Rule of Criminal Procedure 462(A), and a trial de novo was held before this Court on January 9-11, 2017.

FACTUAL AND PROCEDURAL HISTORY

On September 9, 2002, prior to the events surrounding this case, Defendant was divorced from his then-wife, Kimberly Shoop. As a result of the divorce, Defendant remained the sole owner of the real property involved in this proceeding, but allowed Kimberly Shoop to maintain a residence on that property. At all times relevant to this case, Kimberly Shoop lived in a modular home on the property with

Defendant's son, Bradley Shoop. In the interim between the divorce and the events leading up to this matter, Kimberly Shoop acquired a number of horses which were allowed to freely roam, forage and breed on the seventy-five (75) acre tract (hereinafter "the farm") owned by Defendant.

In August of 2013, Defendant entered the farm property, sedated two of the horses, and took them to breed with a donkey owned by Michael O'Brien. One of these horses, Cinder, is one of the eight (8) horses at issue in this case. The two horses removed by Defendant remained with Mr. O'Brien for approximately three (3) months and were then returned to the farm.

In October of 2013, Defendant stopped providing veterinary services to the horses on the farm. He was still able to access the farm and continued to provide veterinary services to dogs and cats on the farm.

In May of 2015, Defendant purchased a calf ("Jeffrey") from one of his clients and brought it to live on the farm. On July 15, 2015, Defendant brought a pig ("Chester") to the farm. Shortly before arriving on the farm, the pig suffered a laceration to his left inside front foot making it difficult for him to walk.

In late November, 2015, Defendant's office assistant, Jessica Szoke, alerted Donna Crum, a Carbon County Animal Cruelty Officer, to the fact that the horses on the Shoop farm were becoming very thin.

Sometime between November 2015 and January 21, 2016, Jessica Szoke also contacted the Pennsylvania State Police to notify them that the horses on the farm were thin and were not likely receiving proper nourishment.

On January 13, 2016, the calf suffered an injury to his left front leg. On January 20, 2016, the Pennsylvania State Police received a report, at the Lehigh Barracks, of suspected animal cruelty occurring on the farm. The following day, Trooper Erin Cawley and others entered the farm and seized twelve (12) animals.

The Commonwealth alleges that on January 22, 2016, Defendant neglected eight (8) horses, one (1) pig, and one (1) calf by failing to provide those animals with necessary sustenance and drink, as well as failing to provide adequate shelter to preserve the animals' body heat and to keep them dry. On February 3, 2016, Trooper Cawley filed ten (10) separate citations against Defendant for animal cruelty, pursuant to 18 Pa.C.S.A. §5511(c)(1).

On April 19, 2016, Defendant was found guilty of all ten (10) counts of animal cruelty by Magisterial District Judge William J. Kissner. Pursuant to Pennsylvania Rule of Criminal Procedure 462(A), Defendant filed the instant summary appeals on May 9, 2016 and pursuant to Pa.R.Crim.P. 462(A), a *de novo* trial was held before this Court on January 9-11, 2017. The requirements of Pennsylvania Rule of Criminal Procedure 462(F) were waived by the parties and post-trial briefs were filed by counsel for the Commonwealth and

counsel for Defendant on January 27, 2017 and January 31, 2017, respectively.

DISCUSSION

In this case, the Commonwealth has the burden of proving not only that Defendant had a duty of care for the animals at issue, but must also prove that Defendant wantonly or cruelly neglected those animals. Immediately prior to the commencement of trial in this matter, the parties stipulated that Defendant had a duty of care relative to the pig and the calf at issue, and that the horses were neglected. Therefore, the two remaining issues to be determined by the Court are whether Defendant had a duty of care relative to the horses and whether the pig and the calf were wantonly or cruelly neglected.

I. Whether Defendant had a duty to care for the horses

As a general rule, criminal liability may be based on either an affirmative act or a failure to perform a duty imposed by law. 18 Pa.C.S.A. § 301. There are four situations in which an individual's failure to act may constitute the breach of a legal duty: (1) where a statute imposes a duty to care for another; (2) where one stands in a certain status relationship to another; (3) where one has assumed a contractual duty to care for another; and (4) where one has voluntarily assumed the care of another and secluded the helpless individual so as to prevent others from rendering aid. Commonwealth v. Pestinikas, 617 A.2d 1339, 1343 (Pa. Super. 1992).

First, in applying the facts of this case, we find that Defendant did not have a duty of care for the eight (8) horses at issue based upon a statutory obligation. A veterinarian's ethical duties are detailed in The Rule of Professional Conduct for Veterinarians, 49 Pa. Code §31.21, which specifically provides that a veterinarian who engages in unprofessional or unethical conduct may be subject to disciplinary action if he abuses or neglects any animal, whether or not the animal is a patient of that veterinarian. Even if this rule is read to include Defendant, professional disciplinary measures are left to the Pennsylvania State Board of Veterinary Medicine, and this Court does not have jurisdiction over such matters unless appeals are taken from decisions of the board. As a result, this statute cannot be read to create a legal duty of care. Moreover, no other Pennsylvania statute creates a duty of care which requires or encourages a veterinarian to act or report animal abuse or neglect.

Secondly, although 49 Pa. Code §31.21, Principle 7, could be read to create a veterinarian-patient relationship, Pennsylvania courts have not yet addressed whether the veterinarian-patient relationship is included in the type of status relationships addressed in Pestnikas. Specifically, 49 Pa. Code §31.21, Principle 7(a) states as follows: "Except as provided in this subsection, veterinarians may choose whom they will serve, but may not neglect an animal with which the veterinarian has an established

veterinarian-client-patient relationship". Since Defendant previously cared for the horses and kept records of their medical history, it is safe to say that a veterinarian-client-patient relationship existed between Defendant, his ex-wife, and the horses at the time Defendant cared for the horses in 2013. To terminate that relationship, Defendant was required to provide his ex-wife with written notice of his clear intention to withdraw and provide her reasonable time to find alternative veterinary medical services. See 49 Pa. Code §31.21, Principle 7(a)(2). Neither attorney addressed this issue during the trial or in his brief, so it is unknown whether Defendant terminated his professional relationship with his ex-wife in this manner. Even though Defendant testified that he used Ms. Szoke as a backchannel to report the horses' neglect because he believed that he was barred from doing so based upon his ongoing veterinarian-client relationship with his ex-wife, Defendant did not have such a relationship with regard to the horses. As Defendant testified, his professional relationship with his ex-wife stemmed from his treatment of various cats and dogs on the farm. Since the question of whether a duty of care is created by 49 Pa. Code §31.21, Principle 7, has not been addressed by Pennsylvania appellate courts, this Court is not willing to expand the duty of care, if any, created by that statute based upon Defendant's failure to advise his ex-wife, in writing, that he would no longer be caring for the horses. Given the three (3) year period between the time

that Defendant last cared for the horses and when he was issued the citations by Trooper Cawley, we are convinced that no veterinarian-client-patient relationship existed between Defendant, his ex-wife, and the subject horses on January 21, 2016 based on 49 Pa. Code §31.21, Principle 7.

Third, we have no evidence that a contract ever existed between Defendant and his ex-wife obligating him to care for the horses. Therefore, Defendant's testimony that he refused to provide ongoing veterinary care for the horses in 2013 is sufficient to terminate any understanding his ex-wife may have had that Defendant would provide veterinary care for the horses.

Fourth, Defendant and Ms. Szoke each testified that they attempted to contact the Carbon County Friends of Animals. It is clear, based on Defendant's actions, that he did not prevent others from providing aid to the horses, but rather tried to alert the appropriate authorities about the declining condition of the horses.

The Commonwealth would have this Court believe that Defendant had a duty of care for the horses based on alternate criteria. In this regard, two additional arguments are asserted. The Commonwealth argues that Defendant had a duty to care for the horses because he tossed leftover hay into the area where the horses were fenced.¹ Pennsylvania courts have not addressed the issue of whether

¹ Defendant testified that when he delivered hay to feed other animals for which he had a duty of care, he would gather the remaining pieces of hay that had fallen to the bed of his truck and toss them into the horses' area.

irregularly feeding animals creates a duty to care for those animals. Ultimately, this Court is not convinced that sporadically providing an animal with scraps of hay gives rise to a duty of care as it is far removed from the other situations listed hereinabove that are recognized as creating such a duty. Next, the Commonwealth argues that by exerting control over one of the horses (Cinder) in 2013, Defendant now owes a duty of care to that horse. Even though exerting control is an established element of creating a duty of care, (See Beil v. Telesis Construction, Inc., 11 A.3d 456, 467 [Pa. 2011]), the Commonwealth overlooks the fact that when this event occurred in 2013, Defendant struggled in wrangling Cinder because he was a wild horse, and that Defendant's ex-wife contacted the police to alert them that Defendant had stolen the horse. During the three months that Cinder was mating with Mr. O'Brien's donkey, Defendant certainly owed a duty of care to the horse because he prevented his ex-wife from caring for the animal. However, once he returned Cinder, Defendant's duty of care ended and his ex-wife's duty was reinstated. The fact that Cinder survived for at least two years after being returned to the farm without Defendant caring for the animal is proof that the duty of care had returned to the status quo.

Since Defendant did not fall into one of the four categories outlined in Pestnikas, and because the Commonwealth's arguments regarding alternate theories under which the prosecution asserts that Defendant had a duty of care for the horses, are insufficient

to prove the same, it is clear that Defendant did not have a duty of care for the horses and cannot be held criminally liable for their neglect.

II. Whether Defendant wantonly or cruelly neglected the other animals

Turning to the issue of neglect of the pig and the calf, the Pennsylvania Superior Court in Commonwealth v. Simpson, 832 A.2d 496 (Pa. Super. 2003), performed a statutory construction analysis of 18 Pa. C.S.A. §5511(c) and determined that adverbs, such as wantonly and cruelly, modify all of the verbs which immediately follow. In the case of §5511(c), wantonly and cruelly applies to illtreats, overloads, beats, otherwise abuses any animal, and neglects. Then, in Commonwealth v. Tomey, 884 A.2d 291, 294 (Pa. Super. 2005), the Superior Court determined that the Commonwealth's burden of proof is to show that the defendant acted wantonly **or** cruelly, not wantonly **and** cruelly. Since the Commonwealth in the case at bar is pursuing its case against Defendant on the grounds of neglect, the prosecution must prove beyond a reasonable doubt that Defendant wantonly or cruelly neglected the pig and the calf.

It is also important to note that the standard for criminal negligence is much higher than that for civil negligence because it includes the mens rea component of the criminal offense. Commonwealth v. O'Hanlon, 653 A.2d 616, 618 (Pa. S.Ct. 1995). In the instant matter, the Commonwealth must prove that Defendant cruelly or wantonly neglected the animals. "Wantonly" in this context means

unreasonably or maliciously risking harm while being utterly indifferent to the consequences. Commonwealth v. Shickora, 116 A.3d 1150, 1157 (Pa. Super. 2015). Here, the Commonwealth has not shown that Defendant unreasonably or maliciously risked the welfare of the animals, nor that he was indifferent to the consequences of doing so.

With regard to the pig, through testimony of both the Commonwealth's and Defendant's experts, on January 21, 2016, the animal was rated a 2 out of 5 on the Henneke scale.² Considering the fact that the pig was still recovering from an injury to his front foot, it is understandable that he was slightly underweight at the time. Both experts testified that an injury to a pig's foot would alter its eating habits. Defendant's expert, Dr. Robert Munson, testified that a 2.5 is considered the ideal score on the scale because an overweight pig is not only unhealthy, but also does not breed as well. Additionally, Defendant provided adequate temporary housing for the pig in the form of a horse trailer. While the pig was recovering, he lived in the trailer with rubber matting on the floor and was regularly fed and watered by Defendant's son. Defendant's actions in providing adequate shelter and ensuring that his son fed and watered the pig regularly show that Defendant did not neglect the pig and that he certainly did not do so maliciously

² The Henneke scale is a body condition scoring system used to evaluate the amount of fat on an animal's body.

or in a manner that shows he was indifferent to the well-being of the animal.

As for the calf, the Commonwealth did not provide expert testimony as to his well-being. Rather, the Commonwealth called both Donna Crum and Trooper Cawley who testified that they had each observed the calf on January 21, 2016, and that they found him to be thin. Conversely, Defendant's veterinary partner, Dr. Shauna Brown, testified that she had cared for the calf since it was born. In her testimony, she indicated that at birth the calf had an abscess on its jaw and persistent diarrhea which likely affected his eating and growth. A week prior to January 21, 2016, the calf also suffered an injury to his front leg when he was attacked by two dogs. Again, Defendant's expert testified that an injury of this nature would likely affect the calf's eating habits. Dr. Brown also testified that every time she examined the calf his rumen was full which indicates that he was receiving sufficient food. As a result, Trooper Cawley's testimony that she believed the calf to be thin and malnourished is well rebutted. Here again, it cannot be said that Defendant unreasonably or maliciously risked harm to the animal while being utterly indifferent to the consequences.

Overall, even though the pig and the calf were underweight, the Commonwealth failed to prove beyond a reasonable doubt that Defendant cruelly or wantonly neglected these animals.

CONCLUSION

Although we are greatly disturbed by the deplorable conditions in which the horses were found and while we recognize that there is a very understandable desire on the part of many of our fellow citizens to hold someone accountable for situations such as the one presented in this case where defenseless animals are neglected and made to suffer as a consequence, justice nevertheless demands that the Commonwealth meet its burden of proof in establishing Defendant's guilt beyond a reasonable doubt before he may be convicted of these offenses. Because we find, based upon the foregoing reasons, that the Commonwealth has failed to prove Defendant's guilt beyond a reasonable doubt, we are constrained to enter verdicts of not guilty on all counts.

BY THE COURT:



Steven R. Serfass, J.

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CLERK OF COURTS
JAN C. MCGINLEY