



JUDICIARY OF
ENGLAND AND WALES

Northamptonshire Magistrates' Court sitting at Northamptonshire Crown Court

23 November 2012

Before:
District Judge (Magistrates' Court) David Chinery

Regina
-v-
Bobby Roberts (1st Defendant)
and
Moira Roberts (2nd Defendant)

The defendants face the following joint charges :-

Count 1

Causing unnecessary suffering contrary to section 4(1) of the Animal Welfare Act 2006

The particulars are:- Between 21 January 2011 and 15 February 2011 at Bobby Roberts Super Circus, Polebrook, Cambridgeshire, Bobby Roberts and Moira Roberts caused a protected animal for which they were responsible, namely an Asian elephant known as Anne, to suffer unnecessarily by requiring it to be chained to the ground by one front and one hind leg at all times, when they knew or ought reasonably to have known that doing so would cause it to suffer unnecessarily, contrary to section 4(1) of the Animal Welfare Act 2006.

Count 2

Failing to prevent unnecessary suffering contrary to section 4(2) of the Animal Welfare Act 2006

The particulars are:- Between 21 January 2011 and 15 February 2011 at Bobby Roberts Super Circus, Polebrook, Cambridgeshire, Bobby Roberts and Moira Roberts failed to take reasonable steps (including provision of adequate training, equipment and supervision) to prevent their employee, Nicolai Nitu, from causing unnecessary suffering to a protected animal for which they were responsible, namely an Asian elephant known as Anne, by repeatedly beating it, contrary to section 4(2) of the Animal Welfare Act 2006.

Count 3

Failure to take reasonable steps to ensure welfare contrary to section 9 of the Animal Welfare Act 2006

The particulars are:- Between 21 January 2011 and 15 February 2011 at Bobby Roberts Super Circus, Polebrook, Cambridgeshire, Bobby Roberts and Moira Roberts failed to take reasonable steps to ensure that the needs of a protected animal for which they were responsible namely an

Asian elephant known as Anne, were met to the extent required by good practice, in particular by failing to ensure that it :

- (1) was kept in a suitable environment, including with :
 - sufficient space and ability to move and exhibit normal behaviour patterns;
- (2) received adequate and appropriate care and treatment to prevent or alleviate injury or disease, including medication and care for arthritis, contrary to section 9 of the Animal Welfare Act 2006.

Count three was amended by consent at the start of the trial.

This case has attracted a great deal of publicity both locally and nationally. Proceedings were originally commenced by the Animal Defenders International (ADI) as a private prosecution.

ADI is a global animal welfare organisation working for the protection of animals worldwide. The organisation produces studies and reports on the use of and treatment of animals and this information is routinely used by various organisations for education and other purposes.

In November of 2011 the Crown Prosecution Service (CPS) agreed to take over the responsibility for prosecuting the defendants in the light of the level of public concern over the alleged treatment of Anne the Elephant.

There have been a number of case management hearings and significant delay in bringing this matter to trial, some of it caused by personal difficulties within the defence team of which I am not critical.

I have previously ruled on applications to stay the proceedings on the ground that the continuation of the prosecution would be an abuse of the process of the court and on an application to exclude the evidence of the CCTV footage under section 78 PACE.

The Parties

The prosecution is represented by Miss Helen Law of counsel who has been a constant figure throughout these proceedings.

Mr Bobby Roberts is represented by Miss Claire Howell of counsel who has also been involved almost from the outset initially representing both accused until it was decided that Mrs Roberts should have separate representation.

Mrs Moira Roberts has recently instructed alternative solicitors who in turn have instructed Miss Lawrence to appear on her behalf.

I remind myself that the defendants have no previous convictions. Good character is not a defence to the charges but it is relevant to my consideration of the case in the case of Bobby Roberts in two ways.

First, he has given evidence. His good character is a positive feature of the defendant which I should take into account when considering whether I accept what he told me. Secondly, the fact that the defendant has not offended in the past may make it less likely that he acted as is now alleged against him.

However, the judgement of what weight should be given to the defendants' good character and the extent to which it assists on the facts of this particular case is a matter for me to make. In making that assessment I am entitled to take account of everything I have heard about them.

It is axiomatic but I include for the sake of completeness the fact that the burden of proving the case rests upon the prosecution. The standard of course is the highest. I have to be satisfied so that I am sure of the defendants' guilt before I can convict them.

The defendants bear no burden of proving anything and it is not their task to prove their innocence.

The fact that one of them has given evidence does not imply any burden upon them to prove their innocence.

I do need to reach a decision about what reliance I can place on the defendant's evidence and I should, when deciding upon the truth, reliability and accuracy of the evidence, adopt the same fair approach to every witness.

The Evidence

The evidence comes in the form of video footage obtained by ADI over a period of weeks at the beginning of 2011. This is supplemented by oral evidence from Robert Cogswell who explained how that footage had been obtained and oral evidence from Jan Creamer from ADI. A major difficulty in this case is that the footage was released to the media before proceedings were begun. This has resulted in a great deal of coverage both on the internet and elsewhere which had the potential to jeopardise the right to a fair trial under Article 6 of the ECHR. It also meant that by the time the DPP took over the prosecution, the "enquiry" for want of a better word had effectively concluded because the relevant evidence was no longer available and as the trial has proceeded it has become evident that steps which ought to have been taken prior to the commencement of proceedings were not taken. Since the DPP took over the prosecution there has been no investigative work by the police (there was no requirement or need to) but it does call into question the work of the ADI once they have gathered their evidence. It raises a wider issue because of the media fervour for want of a better word which this has engendered. This is an emotive case involving as it does acts of extreme cruelty to a defenceless animal. The difficulty however is that by releasing the footage to the media rather than proceeding through a more appropriate method two consequences have followed. Firstly this couple have been tried by the public who have only the footage of the cruelty to the animal upon which to make a judgment. This has resulted in personal vilification of both of the defendants both by members of the public and from my own observations by member of the press; secondly, as we now know, it has resulted in their grandchildren being ostracized by their peers on the strength of what has been released to the media.

As a result of what I witnessed outside this court building on Monday I have asked the police to be present to ensure the safety of the two defendants.

Another factor which will not be known to the public and the press is that throughout this week the court staff here have received a number of emails containing some serious threats directed at the defendants. Those have been referred to the police who are currently investigating them and I have also asked for the comments by some members of the public on Facebook and other sites to be investigated as *prima facie* they constitute an offence.

Whilst ADI may claim that their actions had the desired effect, namely the removal of the elephant from its plight there are two concerns which I have. Firstly they effectively "sat on" the evidence for two months, leaving the elephant where she was and secondly, my experience of dealing with "animal cruelty" cases usually brought by the RSPCA leads me to understand that if the plight of such an animal is reported to the RSPCA immediately they will take steps to ensure the safety of the animal without delay and if appropriate work with the owner to re-home the animal or ensure its future in its current environment. Had that been done arguably these proceedings (which are costly) could have been avoided, Anne's future would have been secured and the Roberts' Grandchildren would not be suffering.

The conclusion to which I am drawn therefore is that Anne's welfare was only a part of the objective by ADI; they have a wider agenda much of which has been alluded to by defence counsel.

I also heard evidence from Jodi Gordon who works for the RSPCA and who has had a number of dealings with the Roberts Circus, from Professor Donald Broom an acknowledged expert in the field of animal husbandry and from Andrew Greenwood, a practising veterinary surgeon with particular expertise in this field. He has in the past visited the circus and treated the animals but not for many years.

I also heard evidence from Sidney Copeland, a police case builder and received a number of statements read under the provisions of section 9 CJAct 1967 and a number of admissions made under section 10 of that Act.

The Law

The law is contained in the Animal Welfare Act 2006.

Animals to which the Act applies

1. The offence under s.4(1) AWA applies to "*protected animals*". Protected animals are defined in s.2 AWA. It is not disputed that the elephant was a protected animal: she was under the control of man on a permanent basis (s.2(2)(b)); and she was not living in the wild (s.2(2)(c)).
2. The offences under s.4(2) and s.9 AWA apply to "*animals*". Animals are defined as all vertebrate animals other than man (s.1(1) AWA). It is not disputed that this includes the elephant.

Persons to whom the Act applies

3. The offences under s.4(2) and s.9 AWA (Charges 2 and 3) apply to any person who is "*responsible*" for the animal. A person who owns an animal is always regarded as being responsible for it: s.3(3) AWA.
4. The offence under s.4(1) applies to anyone, whether or not they are the owners of or responsible for the elephant.

The Defendants

The Defendants are husband and wife. They run the Bobby Roberts Super Circus ("the Circus"), based at 3 Roberts Lane, Polebrook, Peterborough ("the Polebrook site"). They keep a variety of animals as part of the Circus.

It is the Prosecution case that at all relevant times the Defendants were the joint owners of Anne, a female Indian elephant who suffers from arthritis.

Maira Roberts disputes that she was an owner.

During the winter months, when the Circus is not on tour, the Defendants kept the elephant at the Polebrook site. Following the events giving rise to this prosecution, on 1 April 2011 the elephant was handed over to the care of Longleat Safari Park (through Specialist Wildlife Services).

Bobby Roberts has been a circus proprietor for many years during which time the circus has owned and cared for a variety of animals, including a number of elephants. There is evidence which is not disputed and which I accept that over many years the circus animals have been

inspected by appropriate statutory bodies and by veterinary surgeons, sometimes by appointment and sometimes not, and no concerns have been raised about the condition of the animals. All statutory provisions relating to the keeping and transportation of animals have been complied with.

I also accept that both defendants have a deep love for and care very much about the animals under their control. I also accept that Bobby Roberts would not abuse an animal or use a weapon on any animal under his control.

Agreed Facts

It is agreed by both Defendants in their Addendum Defence Statement served on 31 August 2012 that between 21 January and 15 February 2011 at the times the footage was recorded and visible the elephant was chained by one front and one hind leg, save for when the chains were changed over.

Both Defendants also admit that the visible footage during this period shows that the chains were changed over to the opposite legs on two occasions, once on 22 January 2011 at 11.36 and once on 28 January 2011 at 18.11. On both occasions when the chains were changed, Bobby Roberts was present and the person who physically changed the chains was Nicolai Nitu a keeper employed to work with the elephant. Moira Roberts admits this on the assumption that the video times are accurate: she was not present.

That the chains were changed over on 2 occasions in the period between 21 January and 15 February accords with Sid Copeland's record of which legs the elephant was chained by on each file of footage he viewed.

Both Defendants admit that Bobby Roberts is seen on the footage to enter the barn on 22 January 2011 at 11.36, 28 January 2011 at 18.11, 5 February 2011 at 11.09 and 13 February 2011 at 11.23. Again, Moira Roberts admits this on the assumption that the video times are accurate: she was not present. Moira Roberts did not enter the barn between 21 January and 15 February 2011.

Both Defendants admit that Nicolai Nitu is the person who is seen on the footage between 21 January and 15 February 2011 repeatedly striking the elephant with his feet and hands and with implements, including a pitchfork.

The Issues

1. Did the defendants or either of them cause the elephant to be chained in the way that she was?
2. Was Moira Roberts an owner of the elephant?
3. Did the defendants fail to take steps to prevent the abuse of the elephant by the groom?
4. Did the defendants fail to take steps to meet the needs of the elephant by providing a suitable environment, by protecting her from injury, suffering and disease?

Assessment of the Evidence

I found **Robert Cogswell** to be a witness whose evidence I must treat with caution. He works for ADI an organisation which has its own agenda and was, perhaps not unnaturally, somewhat circumspect about the amount of detail he gave in his evidence. He was questioned at length

about his previous conviction and his previous activities with organisations engaging in like activities. He was not shaken under cross-examination but I was left with the impression that he had told me what he wanted me to hear. In particular his account of how the camera came to be placed in the location was too coincidental for me to accept.

Jan Creamer is the Chief Executive of ADI. She was very clear about the objectives of her organisation. She authorised Robert Cogswell to undertake the covert surveillance of the barn. It was put to her at length that the keeper Nitu was an employee planted by ADI, something which she denied equally vehemently. She was also questioned at length about the way in which and the time-frame within which the video footage had been released to the media. She maintains that this is the most effective way of promoting their cause and of securing convictions. She was not shaken under cross-examination. Her evidence re-inforced the concerns which I have about the way in which this case was put together before the Crown Prosecution Service became involved and about the way in which ADI in general operates.

Jodi Gordon was an impressive and in my view truthful witness who gave good balanced evidence which I accept and which was of great help to the court as indeed were **Professor Broom** and **Mr Greenwood**. I am unsure why **Sidney Copeland** was required to give evidence but his evidence, whilst helpful, was uncontroversial.

The Case for the Defence

At the close of the prosecution case I heard submissions from all parties, from Miss Howell for Bobby Roberts (supported by Miss Lawrence for Moira Roberts) asking me (1) to stay the proceedings (2) if that failed to exclude the video footage under section 78 PACE. For the reasons which I gave in June when I ruled on both submissions I rejected them again. The third submission, if both of those failed, was that there was no case to answer applying the “Galbraith” test. I rejected that submission also but I am not required to give my reasons for that (even though I did give some brief reasons)

I then heard evidence from **Bobby Roberts** whom I found to be a witness of truth, an engaging man whose love for his animals (and his family) was apparent from the beginning. His distress at seeing the video footage of the groom striking Anne was both genuine and very moving. He has devoted his whole life to the circus, performing from the age of 4 and clearly has many talents.

The groom he engaged and who is seen on the footage is a man named Nitu. He was one of three grooms engaged by the Circus. All three come from Romania. Bobby Roberts described to me how he trained them and once trained allowed them to get on with their job albeit that Bobby Roberts was a constant presence on the site and maintained a supervisory role over them.

However at the time this footage was obtained Bobby Roberts had been diagnosed with and was being treated for a serious personal medical condition. This affected his mobility, his general health and the extent to which he could supervise the grooms. Although he was paying visits to the barn, as shown on the footage, it was nowhere near as regular as was customary and even though he witnessed Anne in chains at times when she should not have been, for reasons which he cannot explain, he did nothing about it. With the benefit of hindsight he fairly says that he should have invited a family member, principally his daughter, to undertake the supervision of the grooms. He accepts that he did not.

Bobby Roberts impressed me both as a man and as a witness. He has remained calm and conducted himself with great dignity in the face of opprobrium. He deserves credit for that and I hope that the media affords it to him.

I then heard evidence from two men who have worked with or for Bobby Roberts. A Mr Williams and a Mr Hall. Both emphasised the views which I had already reached namely that Bobby Roberts is a man who cares for his animals, will not tolerate ill-treatment of them and has never prevented anyone in authority from examining the animals.

Jonathan Cracknell from Longleat Safari Park provided illuminating information of the extent to which Bobby Roberts had assisted in the transfer of Anne to Longleat, his continued involvement with Longleat both in enquiring after the welfare of Anne continuing to provide assistance and advice. He was able to confirm to me that Anne was in excellent physical condition when she arrived at Longleat, with the obvious exception of the arthritis from which she has suffered since approximately 2003. In the enclosure which she has she is able to be more mobile and is only chained for the purposes of washing and medical attention, usually no more than a matter of minutes daily. Her medication has been changed but Mr Cracknell agreed with other experts that the perceived improvement in Anne may not necessarily be attributable to the fact that she was being medicated. It could be a combination of factors and her medication had been changed more than once since she had been at Longleat. All of this evidence was both useful and informative.

Simon Hancock confirmed what other witnesses had said about Bobby Roberts care and **Joseph Grun** confirmed my suspicions about the actions of Robert Cogswell.

Moira Roberts declined to give evidence before me and I draw no adverse inferences from that. I have received a statement from her general practitioner.

My Findings

- 1) I am satisfied that for most of the time that Bobby Roberts has been responsible for the care of his animals they have been looked after and cared for to a high physical standard such that no responsible person has had cause to complain about the standard of physical care afforded to them. I base this on the written records which I have received and the evidence which I have heard from Andrew Greenwood and Jonathan Cracknell. This is particularly so in the case of Anne.
- 2) I am also satisfied that what has been described to me as a “kick” by Bobby Roberts of the trunk of Anne the elephant was no more than a casual flick to deter the elephant from wrapping her trunk around him whilst he was wearing a suit and not his working clothes. I base this on my own observations and the evidence of the professionals who have viewed that footage.
- 3) I am also satisfied that for a period of nearly ten years since Anne was diagnosed with suffering from arthritis she has been prescribed and administered appropriate medication. I also accept the evidence of Andrew Greenwood and Bobby Roberts that at times it was difficult to administer the medication to Anne. Jonathan Cracknell made the same observation. However, the tethering of Anne with the chains for long periods of time would have resulted in increased suffering to her (Based on the observations of Prof. Broom and Andrew Greenwood). **[Count 3]**
- 4) I am also satisfied that the groom, Nitu, was not planted there by ADI. I base this on the fact that (a) he had been there for a long while (b) he was recruited with two other Romanian nationals (c) if he had been a “plant” he would probably have had a lapel

camera and any permanent camera would have been more strategically placed (d) I do not believe that ADI would have set someone up to administer such severe abuse to an animal (e) I believe Jan Creamer's evidence on that point.

- 5) I am satisfied that for the period during which Anne was under observation she was chained for an excessive period of time and that that chaining for such an excessive period would have caused the elephant to suffer. The fact that on several occasions Bobby Roberts did not tell Nitu to unchain Anne and the fact that at one point he assisted the groom in changing the chains leads me to conclude that the groom was acting under his instructions. During that time she was struck repeatedly by Nitu using an implement in a way which was completely contrary to any standard of good practice and which would have caused unnecessary suffering to Anne. I am also satisfied that Bobby Roberts was unaware of this. **[Count 1]**
- 6) During the time that Anne was chained she did not have sufficient space and ability to move as required by good practice and this I regard as a very serious problem. As a result Anne was unable to exhibit normal behaviour patterns, again as required by good practice. This also gave rise to the stereotypy identified by both Prof Broom and Andrew Greenwood. **[Count 3]**
- 7) Bobby Roberts by his own admission failed to exercise sufficient supervision over his groom during the period in question thus resulting in the physical abuse, the excessive chaining and the lack, at times of sufficient bedding to enable Anne to lie down when she was chained during the day. **[Count 2 and 3]**
- 8) Finally, I am satisfied that at no time was Moira Roberts an owner of Anne the elephant and I base this on the fact that Anne came into the ownership of Bobby Roberts father, before Moira Roberts met Bobby Roberts and that Bobby effectively inherited Anne from his father; throughout the documentation which I have received going back a period of years Moira Roberts describes herself as an administrator and in one document upon which the prosecution relies namely the transfer of ownership form Moira Roberts describes herself as signing "for and on behalf of the owner". Other documentation, notably from Veterinary Practices describes her as an owner but I am not satisfied in strict legal terms that that is either sufficient or correct.

My Conclusions

It follows from what I have said that Moira Roberts is entitled to be acquitted of all the charges against her and I formally record verdicts of "Not Guilty" against all three counts involving her.

For the reasons which I set out above I find Bobby Roberts "Guilty" of all three charges with the caveat in count three that I am not satisfied on the second limb of count 3. Although Counts 1 and 2 are described as being alternative counts I am persuaded that I should return a verdict on each but the penalties should reflect the way in which the counts are drafted.

