

At a term of County Court of the State of New York, held in and for the County of Schoharie at Schoharie, New York.

PRESENT: HON. GEORGE R. BARTLETT, III
J.C.C.

People of the State of New York

Appellant,

- against -

DECISION/ORDER

MARY DAWN SITORS,

Respondent.

On or about February 10, 2005, defendant, Mary Dawn Sitors, was charged with 20 counts of violating Agriculture and Markets Law §353, a misdemeanor. That section, entitled "Overdriving, Torturing and Injuring Animals, Failure to Provide Proper Sustenance," provides that:

A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, whether wild or tame, and whether belonging to himself or to another, or deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink, or causes, procures or permits any animal to be overdriven, overloaded, tortured, cruelly beaten or unjustifiably injured, maimed, mutilated or killed, or to be deprived of necessary food

or drink, or who wilfully sets on foot, instigates, engages in, or in any way further any act of cruelty to any animal, or any act tending to produce such cruelty is guilty of a misdemeanor . . .

In particular, the informations filed against defendant on or about February 10, 2005 allege that on or about February 4, 2005 in the Town of Carlisle, County of Schoharie, State of New York, defendant “failed to provide proper sustenance” in violation of Agriculture & Markets Law § 353 as she:

intentionally, knowingly and unlawfully commit the misdemeanor by depriving any animal of necessary sustenance, food or drink or neglects or refuses to furnish it such sustenance or drink, or in any way furthers any act of cruelty to any animal, or any act tending to produce such cruelty: to wit; At the aforesaid time and place upon the execution of a search warrant at the Palomino Palace, defendant did fail to provide necessary sustenance and food to a female equine by the name of . . . (*various names of different horses in each complaint*).

After defendant was charged, the horses were seized and appellant, Catskill Animal Sanctuary filed an application pursuant Agriculture and Markets Law § 373(6) seeking the posting of a security for the seized horses. That section provides in relevant part as follows:

a. If any animal is seized and impounded pursuant to the provisions of this section or section three hundred seventy-five of this article for any violation of this article, upon arraignment of charges the duly incorporated society for the prevention of cruelty to animals, humane society, pound, animal shelter or any authorized agents thereof, hereinafter referred to for the purposes

of this section as the "impounding organization," may file a petition with the court requesting that the person from whom an animal is seized or the owner requesting that the person from whom an animal is seized or the owner of the animal be ordered to post a security. The security shall be in an amount sufficient to secure payment for all reasonable expenses expected to be incurred by the impounding organization in caring and providing for the animal pending disposition of the charges. Reasonable expenses shall include, but not be limited to, estimated medical care and boarding of the animal for at least thirty days. The amount of the security, if any, shall be determined by the court after taking into consideration all of the facts and circumstances of the case including, but not limited to the recommendation of the impounding organization having custody and care of the seized animal in accordance with this section, the impounding organization may draw from the security the actual reasonable costs to be incurred by such organization in caring for the seized animal.

b. (1) Upon receipt of a petition pursuant to paragraph a of this subdivision the court shall set a hearing on the petition to be conducted within ten business days of the filing of such petition. The petitioner shall serve a true copy of the petition upon the defendant and the district attorney. . . . The petitioner shall have the burden of proving by a preponderance of the evidence that the person from whom the animal was seized violated a provision of this article. The court may waive for good cause shown the posting of security.

Pursuant to the statute's requirements, Carlisle Town Court held a lengthy hearing upon the Catskill Animal Sanctuary's request for the posting of a security by defendant. Upon conclusion of the hearing, Carlisle Town Justice Hon. Mark S. Fletcher issued a thoughtful and detailed decision attached hereto.

Thereafter on September 6, 2005, the People and defendant appeared in Carlisle Town Court for jury selection in the criminal case. Defendant moved to dismiss based on collateral estoppel. Specifically, defendant contended that since Town Court dismissed the Catskill Animal Sanctuary's petition seeking the posting of security, which had a lower standard of proof than in the criminal action, it would be impossible to obtain a conviction under the reasonable doubt standard. Town Court granted defendant's motion; and, accordingly, dismissed the criminal action.

These appeals from both of the court's decisions and resulting orders ensued.

**Appeal of Town Court's Decision Denying
Catskill Animal Sanctuary's Request for the Posting of Security**

Catskill Animal Sanctuary's ("Catskill") primary argument on appeal is that Town Court's decision was based upon an erroneous "interpretation that so long as the animals are alive, there cannot be a finding of animal cruelty pursuant to [Agriculture and Markets Law § 353]." In this regard, Town Court found, inter alia, that § 353 does not:

dictate or intend to dictate management practices. It does not tell us that animals need to thrive. The intention here is to keep the animals alive, hence the term 'necessary sustenance.' That could be taken further to include 'care,' care which is necessary to sustain life.

A careful reading of Town Court's decision indicates that it determined that a person cannot be found to have violated Agriculture and Markets Law § 353, unless the animal(s) in question, because of lack of sustenance or care, would not survive. However, the statute in question prohibits a wider range of conduct than that envisioned by Town Court's interpretation. Contrary to Town Court's interpretation, Agriculture and Markets Law does address management practices, no one may commit an act of cruelty to an animal. Death need not be imminent to commit cruelty to an animal. What is required to constitute a violation of the Agriculture and Markets Law in a case such as this is that defendant committed an act of cruelty to an animal by failing to provide "necessary sustenance."

Agriculture and Markets Law § 350, which defines various terms in Article 26 of the Agriculture and Markets Law provides that:

"Torture" or "cruelty" includes every act, omission, or neglect, whereby unjustifiable physical pain, suffering or death is caused or permitted (emphasis supplied).

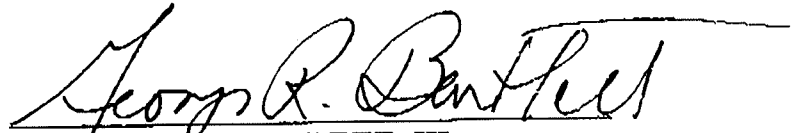
Animal cruelty under Agriculture and Markets Law § 353 includes not only those acts or omissions that would result in death, but also encompasses a broad range of acts or omissions (see, People v. VanGuilder, 282 AD2d 773, leave denied 96 NY2d 836; People v. Ruger, 288 AD2d 686, 687, leave denied 97 NY2d 728; 733; People v. O'Rourke,

83 Misc.2d 175; People v. Mahoney, 9 Misc.3d 101, leave denied 5 NY3d 854; People v. Arcidicono, 79 Misc. 2d 242, *affd.* 79 Misc.2d 242). People v. O'Rourke (see, 83 Misc.2d 175, *supra* at 178) instructs us that "cruelty to an animal includes every unjustifiable act, omission or neglect causing pain, suffering or death which is caused or permitted. The test of cruelty is the justifiability of the act or omission" (*citations omitted*). Accordingly, Town Court erred in concluding that a violation of the Agriculture and Markets Law, as applicable here, could only be found if sustenance provided would not be sufficient to keep the horse(s) alive. The matter should be remitted to the Town Court for a determination based upon proper standard.

Dismissal of Criminal Prosecution.

Having determined that Town Court erred in determining the conduct prohibited by Agriculture and Markets Law § 353, the Court also sets aside the determination of Town Court based on collateral estoppel to dismiss criminal proceedings against defendant. The criminal actions are, thus, reinstated.

Dated: March 14, 2006
Schoharie, New York


GEORGE R. BARTLETT, III

Attachment

cc: Hon. James L. Sacket, Schoharie County District Attorney.
Terence L. Kindlon, Esq., Attorney for Defendant
✓ Eric Schneider, Esq., Attorney for Catskill Animal Sanctuary
Town Court, Town of Carlisle

STATE OF NEW YORK
JUSTICE COURT

TOWN OF CARLISLE
COUNTY OF SCHOHARIE

IN THE MATTER OF:

THE PEOPLE OF THE STATE OF NEW YORK

- against -

DECISION:

MARY DAWN SITORS,

DEFENDANT

Petition Seeking Posting
of Security, Catskill Animal
Sanctuary - Petitioner

The question before the court is whether to grant or deny the petitioners request for a security posting in the amount of \$12,600.00, and a second petition to post security in the amount of \$34,500.00, to cover the care and treatment of 20 horses taken from the farm of the defendant. The People of the State of New York have filed information's charging the defendant with alleged violations of New York State Agricultural and Markets Law 353. Under this section of Agricultural and Markets Law, the impounding agency is entitled to seek financial security to cover reasonable expenses incurred while impounding the animals seized while the case is pending. The expenses may include daily feeding, veterinary visits, transportation fees, and other professional services associated with the care of the animals during the impound period.

Before a decision can be entered to grant the petitioners request, the court must first find, by a fair preponderance of the evidence presented, that New York State Agricultural and Markets Law 353 has been violated.

New York State Agricultural and Markets Law 353 as written states in part that "a person...who deprives any animal of necessary sustenance, food or drink, or neglects or refuses to furnish it such sustenance or drink,...is guilty of a misdemeanor..."

In simple translation, this law means you must provide feed and water for the animals in your charge. Whether one does it themselves or they make arrangements to have it done. The law does not dictate or intend to dictate management practices. It does not tell us that animals need to thrive. The intention here is to keep the animals alive, hence the term "necessary sustenance". That could be taken further to include "care". Care which is necessary to sustain life.

I cannot allow public or political pressures to influence my decisions, in this case or any case in which comes before me. The court must keep the playing field even to assure that all sides have an equal opportunity to argue their case and be heard without prejudice. I must use reasonable judgment, superior court rulings or interpretations, my experience; both on the bench, and in real life; and arguments heard here in this room as tools to reach a decision. The decision in this case must be derived from a preponderance of the evidence, not beyond reasonable doubt.

This case is about domestic horses, living breathing creatures. They are the focus of evidence in this case. Being animals, I can infer that they can change physically from one time of year to another, from one management style to another or from one location to another. They can change from good to poor, or from poor to good. As such, they cannot be used as evidentiary offerings after the point of seizure.

To be brief, I heard about an industry standard body condition-scoring tool called the "Henneke" score. I heard it is subjective depending upon the individual doing the score. In testimony entered by Agriculture and Markets veterinarians, Drs. Scafford and Denny, the horses they used the Henneke score on, scored low. They may or may not have been the horses seized. We heard how the hair coat was encrusted with manure, mud, and urine. We heard how the animals used manure pack to lay on. We heard how the hooves, skin, and conformity of the horses were far from ideal. Also, we heard that there was hay and

ATTACHMENT

09/02/2005 09:53 2540030

CARLISLE TOWN COURT

PAGE 02

water available to the horses. Some of the water was frozen and dirty, but I must keep in mind two things. Number one, it was "very, very cold", and number two, the defendant was cooperating with the vets instead of tending to her horses. That brings a troubling question to my mind. Was there any regularity to when horses were fed and watered? I will draw a conclusion to that question by using the fact that the defendant was cooperating with the investigation and the investigators. I believe I can use fair preponderance and conclude that she had a schedule. The schedule may not have been witnessed by the impounding agent or by the investigative agency simply because the investigation may have had a predetermined outcome.

I heard from the petitioner under oath that there was in fact 21 horses slated to be removed that day but only 20 were actually taken. Why? Because, the hour was late, and the horse was giving the handlers trouble while loading it onto the vehicle. The people just wanted to go home. Giving that testimony fair preponderance, number 21 could have been number 10, or 2, or 15 and would have been left behind. I have formed an opinion in that if one horse was in danger of dying because it wasn't being fed, but it was left behind simply because it was giving the handlers and attitude during loading, then that weakens the case for the other 20 being in danger of dying because the defendant neglected or refused to provide feed and water.

In the defendants closing remarks, and the petitioners' response, Dr. Holly Cheever delivered testimony that drew particular attention. I don't care for the words Mr. Kindlon uses to refer to people working in a professional capacity (moonlighting; referring to Dr. Stafford working on a part time basis for the Cobleskill Vet Clinic as a veterinarian, and Dr. Cheever as a professional witness and animal rights activist). These witnesses are professional and should be treated as such. However, Dr. Cheever did leave a very negative note with the court in her depositions filed along with the information's regarding this case. I find it highly irregular that a veterinarian with the credentials of Dr. Cheever, or any accredited veterinarian for that matter, could boldly enter a question mark concerning any portion of a veterinary examination. To be specific, pregnancy and peritonitis. These results should be positive or negative or non-existent, not questionable. I found her testimony to be highly editorialized in favor of an outcome positive to her belief. I point to her offering of a beautiful pasture. It may be beautiful in May, but it is reasonable to assume it is frozen in February. Also, Dr. Cheever indicated that the horse that was put down, was suffering from an unknown, incurable illness. It seems to me, if you don't know what it is you should find out, and if you can't find out how can one call the illness incurable. I weighted her offering accordingly.

This case is troubling to me, and I have prepondered and re-pondered testimony, pictures, objections, rulings, bills, and the witness's demeanor as they were offering testimony. I find the timing of the seizure to be of significant importance. Typically animals will be in their worst condition during to coldest months of the year. This complaint had been investigated for months prior to this seizure. We heard a veterinarian (Dr. Mackenzie) testify that in October of 2004 she inspected the horses on the Sitors farm, noted 5-6 thin horses, she noted typical conditions, and found no neglect. She conferred with the defendant as to treatment concerning the horses. If in fact the conditions set forth in the information's filed in February 2005 for 20 horses, it would be reasonable to believe that they would have existed in October 2004. In a chronic case it would be reasonable to believe these conditions would have existed in May of 2004 or March of 2003 and beyond. There is no evidence to establish this belief other than Dr. Stafford testifying that malnutrition may have been a factor leading to unconformity in the young stock. Without knowing when the mares weaned their foals, how long the horses had been on the farm, what the end product was for these specific horses, or even how old these horses are (other than a vague "geriatric") I cannot conclude that thin, bad haired, manure crusted, non-trimmed hoof, round bale fed horses that don't live in box-stalls in Carlisle NY in February are deprived necessary sustenance.

Thru all the testimony, motions, decisions, grandstanding and the like, one thing seems clear. The defendant may not care for her charges in a textbook manner, but I can find no evidence to point to her neglect in providing necessary sustenance as intended thru NYS Agriculture and Markets Statute 353

NYS Agricultural and Markets laws go so far as to specify how horses are to be transported, they don't indicate how cows are to be transported. NYS Agricultural and Markets statues do not indicate what necessary or proper care is to mean. That definition is left up to the court to determine on a case by case basis. It would seem to me, if the legislature had any other intention, they would have inserted language in

08/02/2005 09:53

2540030

CARLISLE TOWN COURT

PAGE 03

the statute to clarify such questions.

Further, Article 26 section 373 (7) allows the people to request a court to order a person charged with violating section 353 to provide necessary sustenance and be routinely monitored by the proper authority without the animals being removed from the premises. It is horribly unconscionable to seize and remove animals from a defendant who is charged; not proven guilty, with only a two-hour visual assessment, to conclude these animals will die unless removed, then go ahead and leave one behind on the farm to suffer because it was getting late.

I could include in this decision other points of concern I have, but for the scope of this proceeding and my decision, I don't find it necessary to include at this time.

I enter my decision as follows:

The evidence as presented to the court falls short of a finding of a violation of Agricultural and Markets 353. Therefore, the petition seeking security in the amount of \$12,600.00, and an additional \$34,500.00 is denied, the civil portion of this case is concluded. The criminal portion of this case is free to proceed. The people have filed a ready notice of trial with the court. It is my intention to summon a jury to hear this case starting on September 6, 2005 and proceeding forward at the courts convenience. There can be no adjournment of the trial date without just cause. Any waiver of a trial by jury must be submitted in writing to this court. It is also my intention to set a calendar date not more than 3 weeks from today to serve as a pre-trial conference.

Entered this 2nd day of August 2005



Mark S. Fletcher
Hon. Mark S. Fletcher
Carlisle Town Justice