

**ROYAL COURT**  
**(Samedi Division)**

21st April, 1994

**Before:** The Bailiff and  
Mr. Adolphus Le Maistre,  
Ms. Wendy Kinnard,  
Mrs. Jacqueline Le Brun.

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**Juvenile Court Appeal**

C. and T.

- v -

The Attorney General

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Appeal against conviction by the Juvenile Court on 2nd February, 1994, on:

1 charge of contravening Article 2(1)(a) of the Protection of Animals (Jersey) Law, 1980  
(charge 2 of the charge sheet).

(The appellant pleaded guilty on the same occasion to:

1 charge of contravening Article 3(2) of the Firearms (Jersey) Law, 1956 [charge 2]).

Appeals dismissed.

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S.C.K. Pallot, Crown Advocate.  
Advocate S. Slater for C.  
Advocate P. Landick for T.

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**JUDGMENT**

**THE BAILIFF:** On 2nd February, 1994, the two appellants were convicted together of having, in a field off the Rue du Maupertuis in the Parish of St. Clement, acted in contravention of Article 2(1)(a) of the Protection of Animals (Jersey) Law, 1980, in that they worried or terrified cattle by shooting pellets into the field.

The Article in question is as follows:

"Any person who -

(a) *cruelly beats, kicks, wounds, worries, tortures, infuriates, terrifies, overrides, overdrives or overloads any animal, or drives it when overloaded;*

.....

*shall be guilty of an offence of cruelty and shall be liable to a fine not exceeding £500 or to imprisonment for a term not exceeding six months, or both."*

It is to be noted that in the charge sheet in the Police Court the word "cruelly" was omitted, but both counsel for the appellants accept that this appeal does not hang on that omission, although it is important that that adjective should be inserted in the charge because that is the requirement of the Article.

The appeal is brought on the ground that the word "worries" should be considered along with the other words in Article 2(1)(a), all of which imply some degree of pain and suffering, or more than what Mr. Landick, for the appellant T, called "a slight touch of nerves".

What happened on that day was that the two boys, with a newly acquired air pistol, each fired a pellet towards cattle in the field. They did not know, from the evidence, how far a pellet would carry, and each admitted quite freely to the police their part in what they had done.

As regards C, the police officer who saw him put to him the following questions: "Did you aim and attempt to shoot at any of the livestock?" And he said that he did. He was then asked: "Did you hit any of the livestock?" He was not sure: "But when we fired the shot, the cows moved away". He was asked how far away he was from the livestock and said: "About 25 metres". But he did not know the range. He was asked, it is true: "Would it be a fair assumption to say that you worried the livestock in that field?" and he replied: "Yes". However, we accept the point made by counsel that that was, so to speak, begging the question and the boy may not have known what was meant by "worrying".

The second boy, T, was put a number of questions by a different police officer, a woman police constable, and he was asked: "Did you personally shoot at livestock?" His reply was: "I shot once but I don't know if I hit it or not". The question was next asked: "When you shot at the livestock was your aim deliberate?" And his answer was: "Yes". The question next put was: "What were you hoping to achieve?" The answer was: "To get a kick out of it." It was he who said: "They just did a little trot probably because of the noise of the gun".

We have had several definitions of the word "worry", but we must now look at what in fact the Juvenile Court Panel itself said. On p.28 of the transcript, Judge Day says the following:

5            "I have found them guilty under the Law which we'll have a  
look at if you wish. Well, look, there's ... I can  
summarise it in this way. 'Worrying' you raised the point  
that it might have a ... or it should have a specialised  
10            meaning in the context. I find (and presumably that means  
the Panel) "that 'Worrying' has a specialised meaning when  
it is one animal having a go at another animal, such as  
when a dog 'worries' sheep. Other than that, I think that  
the Panel should give the word its ordinary meaning, which  
they have done".

15            That is the point made by Mr. Pallot, that we should look at  
the ordinary meaning of that word and not seek to adduce a meaning  
beyond its ordinary usage. Mr. Day then went on:

20            "There's also the word 'cruelty'. I think that the  
definition of the word 'cruel', we all know what cruel  
means and they have interpreted the activities of your  
clients as having been for the purposes of the law and in  
25            general, 'cruel'."

30            I pause there for a moment. It is quite clear from that that  
the failure of the prosecution to include the word "cruelly" in  
the charge is not something that should affect an appeal because  
the learned Panel directed its minds to the question of cruelty.  
Mr. Day continues:

35            "It means acting in disregard to any discomfort or  
suffering one might be causing another person, or indeed,  
another animal".

40            Mr. Pallot has urged that the meaning of the word "cruelly"  
in the statute is indicative solely of the mens rea that is  
necessary to found that offence. And he has referred the Court to  
the definition of cruelty in Vol. 1 of "Words and Phrases, legally  
45            defined" at p.383: "Cruelty to animals" and the case of Lewis -v-  
Fermor (1887) 18 QBD 532. That case was brought under the Cruelty  
to Animals Act, 1849, which was replaced by the Protection of  
Animals Act, 1911, which provides:

50            "that if any person shall cruelly... ill-treat... any  
animal, he shall be liable to a penalty".

In this statute the word "cruelly" must refer to something  
done for no legitimate purpose.

The extract from "Words and Phrases legally defined" then  
states that "**cruelty must be something which cannot be justified**

and which the person who practices it knows it cannot be justified...". Stopping there for a moment, it is openly accepted by each of the appellants that there was no justification for what each of them did in that field in St. Clement on the day in question. There was no particular purpose and each boy knew that what he did by firing an untested air pistol towards the animals could certainly not be justified. The extract continues:

**"Cruelty means the infliction of grievous pain without a legitimate object either existing in truth, or honestly believed in".**

There, of course, is a definition of cruelty, but if cruelty as such has to be proved in our Law, then accepting Mr. Slater's argument but turning it round slightly, the word "terrified" would certainly be called a degree of cruelty, whereas "worries" would not necessarily do so. We find that the interpretation advanced by Mr. Pallot is the one to be preferred. Therefore the "cruelty" which has to qualify "worries", merely means carrying out the actus reus without justification.

As regards the actus reus itself: the act of firing; it is quite clear that the shots were aimed at the animals. It is quite clear that after the two shots were fired, the animals moved off, whether it was a little trot or at a gallop is really irrelevant. Something upset them, something caused them to react to what had been done without justification.

I also wish to refer to the extract from Halsbury, which Mr. Landick so helpfully gave us. Mr. Landick referred to 4 Halsbury 2 at p.178, where he read a passage referring to "**Intention and cruelty**":

**"Except in one instance the Protection of Animals Act 1911 does not expressly refer to wilfulness or intention in the mind of the offender, and the offences which it creates consist in the doing of forbidden acts, or causing or procuring or permitting them to be done with, in certain cases, the qualification that they are offences if done cruelly."** (Which is exactly what our qualification is). **"Thus, in general, an intention to commit cruelty need not be proved; the questions, in those cases where the enactment specifies that the offence is doing an act cruelly, are whether pain or suffering was inflicted and, if so, whether it was inflicted without good reason. On the other hand, if the charge is of causing or procuring an act to be done, guilty knowledge must be shown, or the causation or procuring will not be proved."**

It is the sentence below that which this Panel finds important and interesting:

**"It must be borne in mind that the climate of public opinion changes considerably over the years, and older authorities where cruelty was not found to have been committed might well not be even persuasive today."**

5 Our Law, The Protection of Animals (Jersey) Law, 1980 was passed, as I have just said, in 1980. It may well be that the amount of 'worrying' which was caused to the cattle in those days might not have been regarded as an offence but we have no doubt that public opinion would regard people - not necessarily children, but as in this case, juveniles - who fire air pistols at cattle, as clearly (taking the commonsense view of the law) 'worrying' those cattle. The degree to which the cattle are subjected to worrying would, of course, go not to the commission of the offence but to mitigation. We are strengthened in our view that this is the correct interpretation after looking at the Oxford Dictionary and the definitions of "worry" which are on p.571. There are a number of definitions - obviously, there is the definition where dogs worry sheep or cattle, but paragraph 5. a. sets out a definition in the following terms:

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25 *"To harass by rough or severe treatment, by repeated aggression or attack; to assail with hostile or menacing speech".*

That of course is perhaps meant to apply to human beings. There are two other sentences here. Paragraph 5. d.:

30 *"To irritate (an animal) by a repetition of feigned attacks, etc."*

There were two attacks on these animals, one by each boy and that begins to be a repetition in our view. Lastly, at paragraph 7. a.:

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40 *"To cause distress of mind to; to afflict with mental trouble or agitation; to make anxious and ill at ease. Chiefly of a cause or circumstance".*

We have no doubt that the cattle were made ill at ease. Sometimes of course with human beings it is sufficient to say some cruel words which make people ill at ease. Sometimes there is cruel behaviour, and we have no doubt that in this case, the cattle were made ill at ease by the actions of the boys and that accordingly they 'worried' the cattle, within the meaning of our statutes. The extent of their worry and what the cattle actually suffered is a matter, of course, for litigation and a question for the sentence itself, which is not appealed. So far as both appeals against conviction are concerned, they are dismissed.

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Costs for legal aid are granted.

Authorities

Protection of Animals (Jersey) Law, 1980.

Loi (1896) pour empêcher le mauvais traitement des animaux.

4 Halsbury 2 p.178.

Protection of Animals Act, 1911.

Words and Phrases, legally defined (3rd Ed'n): Vol 1: p.383:  
Cruelty to animals.