

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS
2 CRIMINAL SIDE
3

4 SCA NO: 0009/2017
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6
7 MARCEL DEARDON ARCHER
8

9 V.
10

11 THE QUEEN
12
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14



15 **Appearances:**

Mr. David Lewis-Hall of Priestleys for the
Appellant

18 Mr. Greg Walcolm for the Respondent/Crown

19 **Before:**

Justice Marlene I. Carter (Actg.)

20 **Hearing Dates:**

13th and 20th May 2020

22 **Delivery of Decision:**

2nd June 2020
23
24

25 **HEADNOTE**

26 *Criminal Law – Animal Law – Abandonment – Cruelty to Animals – Appeal*
27 *against conviction and sentence.*
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31 **JUDGMENT**
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1. On the 4th August 2010 an Animal Welfare Officer, in response to an anonymous tip-off, went to the Appellant's farm at Hutland Road, Northside. During the visit the officer noted a variety of animals at the scene which had perished and others that were in an emaciated state. These animals included dogs, chickens, rabbits and pigeons. There was a lack of food or water for the animals.
2. The Appellant was prosecuted as follows: One charge of Abandonment pursuant to s.70(2) of the *Animals Law* 1976 (2003 Revision) and four charges of Cruelty to Animals pursuant to s.70 (3) of the said law. The charges all stemmed from the condition of animals found to have been kept at the Appellant's farm between the 10th June 2010 and the 4th August 2010.
3. The Appellant was convicted in the Summary Court by Magistrate Gunn on the 26th of September 2019 of all charges.
4. The Appellant appeals against this conviction and sentence – submitting, in the round, that the evidence before the Learned Magistrate, taken as a whole, and fairly assessed, was not capable of giving rise to the inferences which the Magistrate drew and so could not support the Magistrate's finding that she was satisfied beyond a reasonable doubt that the Appellant had neglected the animals on his farm.
5. The Crown submitted that "...based on the evidence, the Magistrate was entitled to draw the reasonable inferences which she did and the Magistrate was entitled to find the Appellant guilty of the offences based on the evidence."
6. The Crown argued that the Magistrate accurately summarized the evidence in the case and that there could be no issue that she had clearly identified the issues in the case.

1 7. The Learned Magistrate stated in her Verdict Judgment:

2 *“The question is whether Mr. Archer, as the owner of the animals, failed himself*
3 *or permitted the animals to be left in these conditions. If I find that Mr. Archer had*
4 *made reasonable arrangements to ensure their supervision and care – or I am not*
5 *sure that he did not in fact do so – then he must be acquitted. If I am sure that Mr.*
6 *Archer failed to make reasonable arrangements or himself failed to supervise*
7 *and/or cause the conditions then he remains responsible for the cruelty the*
8 *animals endured. In addition I must determine whether the chickens and pigeons*
9 *had been domesticated and as such formed part of the farm animals for which Mr.*
10 *Archer had assumed responsibility and was therefore owner of them.”¹*

11

12 8. The Appellant does not take issue with the Magistrate’s identification of the issues and
13 this Court can find no fault with her direction on the law in that regard.

14 **The grounds of appeal**

15 **A. The evidence of the witness Booth**

16 9. The Appellant argued that the Learned Magistrate had placed great reliance on the
17 evidence of the witness Booth. However, the Appellant submitted, *“his evidence was*
18 *not clear on important aspects relied upon, [and] the learned judge drew conclusions*
19 *about his evidence that are not apparent from the notes of evidence or were not*
20 *reasonable.”*

21 10. In support of this aspect of his argument the Appellant submitted that Mr. Booth’s
22 evidence could not support the inference that the Appellant must have tended to the
23 animals himself between the date on which Mr. Booth left the Cayman Islands and the
24 date the premises were searched. The Appellant submitted that someone else could
25 have attended on the farm and abated the suffering of the animals and the Magistrate’s

¹ See page 12 at line 2 of the Verdict Judgment.



1 failure to consider this possibility meant that she did not consider all reasonable
2 possibilities before reaching the inference against the Appellant.

3 11. The Crown's response to this submission was as follows:

4 *"The issue in the case was whether the Appellant made arrangements for the care*
5 *of the animals.*

6 *There was no other evidence presented by the Appellant that he had made any*
7 *other arrangements for someone other than Mr. Booth to attend on the farm and*
8 *care for the animals.*

9 *There was evidence that persons would assist with taking food to the various*
10 *farmhands that were employed to the farm throughout the period that Mr. [Archer]*
11 *owned and operated the farm. It is undisputed that the last farmhand employed by*
12 *the Appellant was Mr. Booth and that he left the jurisdiction on the 10.06.2010.*

13 *Given the expert evidence on time of death and state of the animals when Ms.*
14 *Baldino attended the farm, the reasonable inference was that after Mr. Booth left*
15 *the island someone must have attended to the animals. The only other person who*
16 *said that attended the farm three weeks prior to being interviewed on the*
17 *5.08.2010, was the Appellant in interview. The reasonable inference was that the*
18 *Appellant had attended to the animals when he went to the farm."*

19 12. The Learned Magistrate's judgment reflects that she did address her mind to the direct
20 possibility of whether someone other than the Appellant may have been at the farm
21 after Mr. Booth left and abated the suffering of the animals.

22 13. Page 14 of the Magistrate's Judgment reads:



1 *"The fact that some animals survived and that the animals were in different states*
2 *of decomposition further undermines the proposition that the animals were left*
3 *totally unattended for almost 8 weeks. In other words, the overwhelming inference*
4 *from the circumstances is that the animals must have been attended to after Mr*
5 *Booth left the jurisdiction on 10th June.*

6 *Mr Archer's evidence was that Mr Booth was the only person who he had tasked*
7 *with caring for the animals. There was no evidence to suggest that there was*
8 *another individual who unbeknown to Mr Archer was caring for the animals -and*
9 *this would be quite unbelievable in any event. This leads me to conclude that Mr*
10 *Archer himself must have tended to the animals after Mr Booth left the island. This*
11 *would be consistent with his account in interview that he had been up to the farm 3*
12 *weeks prior to the interview."*²

13
14 14. The Learned Magistrate could only draw inferences from the facts as she found them
15 from the evidence led before her. There was no evidence pointing to anyone other than
16 the appellant, upon his own admission, having been at the farm during the intervening
17 period other than the anonymous caller to the animal welfare office. It is difficult for
18 this court to accept that the Magistrate should have accepted as a reasonable possibility
19 that someone unknown had attended on the farm and abated the suffering of the
20 animals given the evidence before her. To this Court's mind it would have been mere
21 speculation on the Learned Magistrate's part to find that a reasonable inference to be
22 drawn from the facts was that someone else unknown had attended on the farm and
23 abated the suffering of the animals.

24 15. Even if the Magistrate were to have considered it as a possibility there was sufficient
25 evidence before the court for the Magistrate to have rejected that possibility, and to
26 have found as she did in the circumstances of this case.

27 16. The Appellant also submitted with regard to the evidence of Mr. Booth that *"the*
28 *learned Magistrate failed to have any regard to the fact the witness demonstrated*
29 *either a lack of understanding of some questions or deliberate refusal to acknowledge*

² At Lines 14-27

1 *their meaning, thus undermining his reliability and/or credibility.*” It is clear that the
2 Learned Magistrate accepted the evidence of Mr. Booth as she noted at page 13, lines
3 9-18 of her Judgment:

4 *“Mr Booth's account was very clear. He was consistent in his evidence. He was not*
5 *shaken in cross-examination. I considered whether he had a motive for lying. He*
6 *had nothing to gain from giving evidence. He asserted that Mr Archer owed him*
7 *money which could provide a motive to be dishonest. I consider whether he was*
8 *being dishonest in order to cover up his own fault in this matter - that he is trying*
9 *to deflect from his failure to properly care for the animals by leaving the*
10 *jurisdiction without informing Mr Archer. There was nothing in his demeanour*
11 *that suggested he was being less than forthright. I found that there were several*
12 *key features of his evidence which were corroborated by other, independent and*
13 *reliable sources, including Mr Wilson and the Defendant himself.”*

14
15 17. She dealt with this evidence fairly and carefully in making this assessment – clearly
16 considering whether Booth had any reason to be untruthful or anything to gain by
17 being dishonest.

18 18. With regard to Mr. Booth’s evidence of the presence of goats on the farm during the
19 early part of his employment by the appellant, it appears to this court that the
20 Magistrate did not have any difficulty in understanding what the witness was trying to
21 convey. Her finding in this regard demonstrates that she did not find Booth’s response
22 to be in any way ambiguous: Page 4 lines 25-31 of the Magistrate’s judgment reads:

23 *“Mr Archer had told him to "feed everything" on the farm. Mr Booth explained*
24 *that throughout his employment with Mr Archer he looked after many goats which*
25 *were held in three pens on the property. He slaughtered four of the goats on*
26 *instruction of Mr. Archer. Mr. Booth was adamant that the goats were still on the*
27 *farm when he ceased working for Mr. Archer. Mr. Booth spoke of feeding the dogs*
28 *on the property as well as feeding the chickens and collected their eggs, which he*
29 *said Mr Archer collected regularly. Mr Booth said that he also fed the pigeons*
30 *which were nesting in some of the cages. These pigeons were free to fly out of the*
31 *cages.”*



1 19. The Learned Magistrate found that the Appellant's evidence in interview itself
2 corroborated Mr. Booth's. At page 15, lines 1-12 of her judgment the Magistrate states:

3 *"Parts of Mr Archer's interview were also consistent with Mr Booth's evidence.*
4 *Although Miss Baldino and PC Bult had been cross-examined to the effect that Mr*
5 *Archer was unwell during the interview, Mr Archer did not assert this in his*
6 *evidence to the court. Consequently there is no evidence that he was unwell so as*
7 *to affect the reliability of his answers. The interview corroborated Mr Booth's*
8 *account on the following points –*

- 9 • *That Mr Archer sold the goats after Mr Booth had been hired ("sold*
10 *them 6 weeks before interview") therefore corroborating Mr Booth's*
11 *assertion that he had been caring for goats.*
12 • *That Mr Archer visited the farm almost daily.*
13 • *That the pigeons were part of the farm."*



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16 These findings are consistent with by the evidence accepted by the Magistrate at trial.

17 20. This court cannot agree with the Appellant submission that the Learned Magistrate
18 *"was selective in the evidence she relied [on] in looking for corroboration to Mr.*
19 *Booth and failed to have regard to or assess all the relevant evidence."* There is no
20 requirement that Booth's evidence be corroborated in order for the Learned Magistrate
21 to rely upon it in any event. The Appellant's submissions with regard to the evidence
22 of Mr. Wilson and the Magistrate's findings that some aspects of Mr. Wilson's
23 evidence supported Mr. Booth's evidence must be considered in a similar manner.

24 21. This court is always mindful that the Magistrate had the advantage of seeing and
25 hearing the witnesses at trial and for this reason the Court is very hesitant to interfere
26 with a Magistrate's finding on credibility and reliability. While she may not have
27 addressed her mind to all of the matters in the manner which the Appellant would have
28 preferred, it is evident that she did consider the most crucial aspects of the evidence
29 going to the issue of *"whether Mr. Archer, as the owner of the animals, failed himself*
30 *or permitted the animals to be left in these conditions."*

1 **B. The Appellant's Evidence**

2 22. The Appellant submitted that the learned Magistrate failed to properly assess his
3 evidence and highlighted various aspects of the Magistrate's judgment in this regard.

4 23. Making reference to lines 14-19 of page 15 of the Magistrate's judgment where she
5 stated:

6 *"Mr Archer's answers in interview were inconsistent with his evidence to the court*
7 *on several points..."*

8  The Appellant submitted "... the inconsistencies were explained in evidence and the
9 learned Magistrate failed to properly consider or have regard to these explanations."
10

11 24. The learned Magistrate precisely identified the inconsistencies between the Appellant's
12 interview and his evidence, stating in her Judgment at page 15 lines 16-19:

13 *"Mr Archer's answers in interview were inconsistent with his evidence to the court*
14 *on several points:*

- 15 • *When he last attended the farm;*
16 • *When he sold the goats;*
17 • *How frequently he visited the farm;*
18 • *Which animals were being farmed or cared for,"*
19

20 25. The Magistrate cannot be faulted for her reasoning that she would have expected his
21 account at interview to have been fresher than his testimony some 6 years later. Even
22 giving allowances for his poor health, the Magistrate found that some crucial aspects of
23 his interview were untruthful. This court finds that the Magistrate dealt carefully and
24 fairly with this evidence. I find that she did give proper consideration to the
25 explanations offered by the appellant. However, she rejected them.

26 26. The Appellant submits further:



1 *"The learned Magistrate failed to have sufficient regard to the poor health and*
2 *cognitive impairment that the Appellant suffered from when assessing his evidence,*
3 *in particular with regards to dates. In the circumstances it is submitted that the*
4 *learned Magistrate put too much emphasis on dates in reaching her conclusions.*
5 *The learned Magistrate found that the pattern of travel from the Appellant's*
6 *immigration records was inconsistent with leaving the jurisdiction "several times"*
7 *in the preceding month. ...On a reasonable analysis it would be trite and unfair to*
8 *hold this as inconsistent with his evidence. That he may have erred as to when his*
9 *operation took place was not an issue between Mr. Booth and the witness and was*
10 *plainly an error on timings."*

11 27. In response, the Crown submitted:

12 *"For the Crown it was submitted that "the complaints made by the Appellant in*
13 *relation to the Magistrate's assessment of the Appellant's evidence are without*
14 *merit. The Magistrate was clearly assessing the Appellant's evidence vis-à-vis his*
15 *assertions in interview in its entirety to determine whether or not the Appellant's*
16 *evidence was credible and reliable. This was entirely appropriate given that the*
17 *issue in this case was one of credibility...*

18 ...

19 *The Learned Magistrate properly considered the Appellant's assertions of long-*
20 *term memory loss when assessing his evidence in determining whether his*
21 *evidence is reliable and accurate."*

22 28. The trial record indicates that the Learned Magistrate was aware of the Appellant's
23 illness and it could not be said that she did not have regard to this aspect when



1 considering the Appellant's evidence. Page 15 lines 3-5 of the Magistrate's judgment
2 reads:

3 *"Mr. Archer was unwell during the interview, Mr Archer did not assert this in his*
4 *evidence to the court. Consequently there is no evidence that he was unwell so as*
5 *to affect the reliability of his answers"*
6

7 29. At lines 27-32 on page 15 the Magistrate stated further:

8 *"Mr-Archer's assertion that he had suffered significant long-term memory loss on*
9 *most things yet claimed he could be certain of his actions with regards to the farm,*
10 *including his movements, is inherently inconsistent and therefore either unreliable*
11 *or untrue. Mr. Archer conceded that things may have been said to him that he can*
12 *no longer recollect causing me to further doubt that I can accept his evidence as*
13 *accurate."*
14

15 30. This court does not agree that the Learned Magistrate could or should have dismissed
16 these inconsistencies in the manner that the Appellant suggests. This was an important
17 aspect of the trial and the Magistrate was correct not to regard it as trite. The
18 Magistrate noted as follows at 16 lines 22-25:

19 *"Mr Archer's account of his travel, both in interview and to the court, was*
20 *completely at odds with the immigration records. This was a critical point in the*
21 *case. I rejected Mr Archer's evidence on his pattern of travel as either his*
22 *recollection is unreliable or he was being untruthful in an attempt to deflect from*
23 *his guilt."*
24

25 31. As the Magistrate asserted, it was not only the frequency of the travel, but also the
26 timing and the length of such travel that she found troubling. This matter influenced
27 the central issue in the case of whether the Appellant was aware of when Mr. Booth
28 had left the jurisdiction, the circumstances related to his departure and the
29 arrangements necessary to be made for the care of the animals thereafter.

1 32. The very fact that the Learned Magistrate conceded that the Appellant could have been
2 either untruthful or unreliable speaks to her being cognizant of the Appellant's illness
3 and her consideration of how it may have impacted his evidence before the court.
4 Having seen and heard the Appellant the Learned Magistrate clearly found that this
5 was more than simply "an error on timings" as the appellant now submits.

6 **C. The Appellant's Good Character**

7 33. The Appellant submitted in oral argument that while the Learned Magistrate properly
8 directed herself on the law regarding good character, she downplayed those aspects of
9 that direction that could support the Appellant's evidence, thereby falling into error,
10 and causing her finding that the Appellant had got his dates wrong to overshadow the
11 Appellant's good character in her assessment of his evidence. In essence, the
12 Appellant submitted that he was not given the benefit of his good character.

13 34. At Page 12, line 28 through to page 13 line 2 of her Judgment the Learned Magistrate
14 sets out:

15 *"Not only does Mr. Archer not have any previous convictions he, he is a man of*
16 *previous exemplary character. I remind myself that this is relevant in two ways,*
17 *credibility and propensity –*

- 18 a. *His character is a positive feature of the Defendant which I should take*
19 *into account when considering whether to accept his account; and*
20 b. *The fact that he has not offended in the past may make it less likely that he*
21 *acted as is alleged now."*

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24 35. After analysis of the Appellant's evidence she stated at page 17, lines 21-25:

25 *"Although neglecting animals would appear to be entirely contrary to Mr Archer's*
26 *previous history of being an advocate for animal welfare, I am satisfied so that I*
27 *am sure that Mr Booth gave a truthful, reliable and accurate account of the events.*
28 *I also accept the evidence of the other witnesses. Despite his good character I*
29 *reject Mr Archer's evidence as being in part unreliable and in other parts*
30 *untruthful."*

1 36. Crown counsel submitted to the court that good character is not a defence to the
2 charges. The court agrees with this statement. While the Defendant's good character
3 could bolster his evidence, it is clear from the Magistrate's judgment that she found the
4 Appellant's evidence on the major issues either unreliable or untruthful. It is difficult
5 to agree with the Appellant's suggestion that his good character could have somehow
6 overcome those findings by the Magistrate. This court is finds that the Magistrate did
7 properly consider the Appellant's good character, in the proper context, in her
8 assessment of his credibility and reliability.

9 37. This court does not agree that the Learned Magistrate simply equated the Appellant's
10 lack of accuracy surrounding his travel dates with a lack of credibility. An assessment
11 of the Verdict judgment shows that the Learned Magistrate carefully combed through
12 the Appellant's evidence at interview and his evidence in court. She was entitled to
13 believe some of a witness's evidence and reject other aspects of his evidence. It was
14 reasonable for her to remind herself of the passage of time when assessing the
15 witness's evidence. Her judgment suggests a fair assessment of the evidence presented
16 and a fair reasoning of same in coming to her conclusions. She cannot be faulted in
17 this regard.

18 38. This court agrees with the Crown that: "The Appellant's submissions that the
19 Magistrate failed to properly consider his evidence is without merit. It is clear from the
20 Magistrate's verdict judgment that full consideration was given to the entirety of the
21 Appellant's evidence as it relates to the issues in the case."



1 **Conclusions**

2 39. This court must determine whether the weight of the evidence is sufficient to uphold
3 the Appellant's conviction. In so doing this court is mindful that on this appeal it is not
4 in as good a position as the Magistrate to assess the credibility of the witnesses. For
5 this reason, it must accord a measure or degree of deference to the Magistrate's
6 findings for it is she who has considered the demeanour of the witnesses in assessing
7 their credibility and reliability.

8 40. Having considered the Appellant's submissions and those of the Crown as well as the
9 evidence at trial and the extensive and detailed examination of that evidence together
10 with the Learned Magistrate's reasons for her decision, there is no reason to find that
11 any advantage enjoyed by the Magistrate by reason of having seen and heard the
12 witnesses was not sufficient to explain or justify her conclusions as to the Appellant's
13 guilt.

14 41. No error of law is alleged on this appeal.

15 42. This court finds that the Learned Magistrate has correctly applied the applicable law.

16 43. While the appellant's submissions target purported errors of fact or inference on the
17 Learned Magistrate's part, given this court's assessment of the Magistrate's findings of
18 fact none of these is dispositive in any event. For these reasons the appeal against
19 conviction is dismissed.



1 **Appeal against sentence**

2 44. The Appellant submitted that: *"The sentence of the learned Magistrate was manifestly*
3 *excessive in that it failed to have sufficient regard to the medical circumstances of the*
4 *Appellant at the time of the offences and sentencing."*

5 45. The Crown submitted that the sentence was not manifestly excessive, and that the
6 Magistrate had properly considered the Appellant's state of health in imposing the
7 curfew order.

8 46. At paragraph 20 of the Sentence Judgment the Learned Magistrate sentenced the
9 Appellant as follows:

10 *"I therefore make a curfew order for 4 months. The terms of the order are as*
11 *follows:*

12 a. *For the first 8 weeks Mr Archer is subject to a 24-hour curfew with the*
13 *exception of Monday to Saturday noon - 2 pm and Sundays 8am - noon, to*
14 *allow him to carry out essential tasks such as grocery shopping and*
15 *attending the pharmacy. He may also attend such pre-arranged medical*
16 *appointments or emergency medical treatment. Medical appointments are*
17 *to be confirmed by his assigned probation officer who will communicate*
18 *with the RCIPS. Given the material produced the curfew will be suspended*
19 *and Mr Archer is permitted to travel from 26th March to 2nd April*
20 *(inclusive).*

21 b. *For the remainder of the order Mr Archer shall be the subject of a curfew*
22 *6pm-6am Monday - Sunday. The curfew is suspended 29th May – 1st June*
23 *inclusive to permit Mr Archer to travel for medical treatment.*

24 c. *In the event that any adjustments are needed the defendant may return to*
25 *the court and apply for a change of the hours, including if he has to*
26 *receive treatment in the US.*

27 d. *The order will be monitored by Probation and the RCIPS who will conduct*
28 *regular checks to ensure compliance. Mr Archer may need to provide*
29 *proof of appointments to them. If Mr Archer breaches any terms of the*
30 *order he may be summonsed back to court and if the breach is proved or*
31 *admitted he may be fined or have the order revoked and substituted with a*
32 *fine and/or such other sentence as appropriate, including a term of*
33 *imprisonment."*



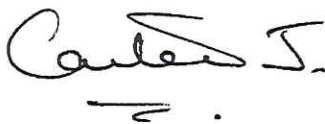
1 47. This court does not find any reason to interfere with the sentence imposed. It is not
2 manifestly excessive. The sentence is plainly influenced by the Magistrate's
3 acknowledgment of the Appellant's health issues.

4 48. This Court recognises that the national protocols for daily life which have been
5 established to reduce the effects of the Coronavirus (Covid-19) Pandemic on public
6 health and safety may make variations to sections (a) and (b) of the Magistrate's
7 sentence appropriate in all the circumstances.

8 49. Section 181 of the *Criminal Procedure Code* states that this court has the power to
9 confirm, reverse, vary or modify the decision of the Summary Court, including the
10 passing of some other sentence (whether more or less severe).

11 50. In the present circumstances it appears to me that the Appellant can serve the sentence
12 if it is modified to take account of current national (Covid-19) health and safety
13 protocols (such as shopping on 'name days' only, curfews, reduced opening hours for
14 banks and other businesses, and, more time required to carry out everyday business due
15 to national crowd-limiting and social distancing protocols.in public spaces.). I invite
16 counsel to provide written submissions in relation to the variation of sections (a) and
17 (b) of the Sentence Order.

18
19 **Dated this the 2nd June 2020**

20 
21

22 **Mme. Justice Marlene Carter**
23 **Acting Judge of the Grand Court**

