IN THE DISTRICT COURT
AT PAPAKURA

I TE KŌTI-Ā-ROHE
KI PAPAKURA

CRI-2018-092-012517
[2021] NZDC 13983

THE QUEEN

v

BARBARA GLOVER
JANINE ANNE WALLACE

Date of Ruling: 9 July 2021

Appearances: L Radich for the Prosecutor
S Galler for the Defendant Glover
C White for the Defendant Wallace

Judgment: 9 July 2021

RULING OF JUDGE J C MOSES

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[1] The defendants, Janine Wallace and Barbara Glover, face some 79 charges in total. The charges have been brought by the Royal New Zealand Society for the Prevention of Cruelty to Animals, which is an animal welfare charity.

[2] The defendants are breeders of German Shepherd dogs on a farm at Mangatangi.

[3] They were first charged in November 2018 and made an initial appearance in December 2018.

[4] Both defendants subsequently elected trial by jury and the trial was initially set down for hearing on 9 November 2020. That trial was vacated and a new trial date given for two weeks starting on 19 July this year in just over a week's time. That was set down on 22 October 2020.

[5] Mr White now represents Ms Wallace and Mr Galler continues to represent Ms Glover.

[6] Prior to the first trial date in November last year Mr Galler had sought leave to withdraw in September on the basis of lack of instructions. That was declined, and I note from the court record that at that time no experts had been instructed by defence counsel, certainly as of at the very latest September last year both defendants were well and truly on notice as to the issue of whether or not experts may or may not be required by them.

[7] Both counsel for Ms Wallace and Ms Glover indicated that they were ready to proceed. However, an adjournment was subsequently granted on medical grounds in October last year. Because counsel for Ms Wallace, at that time Mr Gardiner, had a conflicting High Court trial he arranged for other counsel to appear, and Mr White has been assigned as counsel on these matters since December last year.

[8] I also note that as far back as 12 November last year Ms Wallace had sought to adjourn the trial from July this year until November, but that application was declined.

[9] Since the trial has been adjourned after counsel advising the court that it was ready to proceed, the defence have raised pre-trial issues.

[10] I make these comments in passing, and I should note that today I have heard argument on a number of pre-trial issues, and I am giving this decision as an oral decision and reserve the right to correct the decision without altering the decision that ultimate outcomes that I have come to on these issues if the need arises, and to give additional reasons for my decisions.

[11] There seems to have been a good deal of effort and energy on behalf of the defendants in recent times on the issue of whether or not the informant can be allowed to vary its name in relation to the charges from the Royal Society for the Protection of the Cruelty to Animals to The Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated despite acceptance that this issue would not in any event be fatal to the prosecution.

[12] I scheduled today's hearing to deal with any outstanding pre-trial issues. At the beginning of the day I clarified that the issues that appeared from memoranda that had been filed by counsel included, firstly, an application for an adjournment of the trial. That was an application which both counsel sought to make.

[13] Secondly, both counsel had sought further particulars in relation to certain matters, and the parties have indicated today that those particulars have been attended to, although I will make some further comment regarding that later in this decision.

[14] Thirdly, there had been a challenge to the admissibility of parts of the evidence of Dr Murphy who is a prosecution witness. I am advised however that the parties have now agreed on edits to that brief and there is no longer a need for me to make any determination.

[15] The vast majority of these charges are brought under ss 11 and 12 Animal Welfare Act 1999 and are strict liability charges. However, if a defendant wishes to assert that they have taken all reasonable steps, then a comprehensive written notice must be given to the prosecution within seven days after the service of the summons, which I understand was in November 2018, or within such further time as the court may allow. Both defendants seek additional time to file that notice.

[16] The next issue is the application on behalf of the prosecutor to amend the name of the informant in relation to the matter that I have already commented on, and finally, that application is opposed by Ms Wallace, but Mr Galler has indicated that he can see no grounds to make opposition to that, and finally, there is a Crown application to amend dates of certain charges which neither defence take any issue with.

[17] Looking at the issues, the key issue that I am asked to determine today is in relation to an application for an adjournment of the trial. Mr White has filed written submissions in support of this application, more than one set, and in his written submissions of 25 June this year the grounds put forward are broadly speaking that the defence have had insufficient time to obtain detailed instructions and to provide the s 13 notice.

[18] It is further claimed that counsel has not had time and resources to brief possible defence experts, including veterinarians and animal behaviour specialists, and to speak with any other potential defence witnesses.

[19] Thirdly, the defence invoke their rights pursuant to ss 24 and 25 of the New Zealand Bill of Rights Act 1990 which provide inter alia that a defendant be given adequate time and facilities to prepare a defence, and refer to a further memorandum dated 28 June this year where further grounds were set out, namely, that Ms Wallace had sent to Mr White some 28 emails on 24 to 28 June with long detailed attachments.

[20] A further ground for an adjournment is that Ms Wallace's instructions to Mr White were that her preparation was hindered by not having access to her mother's diary. Her mother is Ms Glover, and it was claimed that material which was seized during the enquiry has not been returned.

[21] Mr Galler supports the application for an adjournment and says he too has only recently been receiving instructions from his client. He had however in recent months received emails from Mr White's client, Ms Wallace, regarding pre-trial issues. As I have already alluded to, the defendants are mother and daughter who continue to reside together.

[22] The Crown opposes the adjournment and it is submitted that this is not a particularly long or complex trial, and there are only approximately 10 prosecution witnesses. Mr Radich points out that both defendants indicated through their counsel in September last year that they were ready to proceed. Furthermore, the Crown has supplied copies of documents from the SPCA which list the items taken during an

execution of a search warrant of the defendant's property at 1478 Miranda Road on 27 March 2018. These documents show that the items were returned on 29 March and 3 April respectively in 2018, well over two years ago. Defence have not challenged that claim.

[23] Mr Radich points out that the defendants have filed detailed affidavits in civil proceedings which have run alongside the criminal charges which outline steps which the defendants say they took in relation to the care of the animals in question, and that it is open for the defendants to give that explanation in court.

[24] So far as the recent provision of additional particulars, Mr Radich says that is going to be used as a ground for seeking an adjournment, and he points out that his view those matters were not in fact required and were contained and clear from statements provided to the defence a long time ago, and that it is abundantly clear what was being alleged.

[25] I am not prepared to grant an adjournment of this trial. It is two and a half years since these charges were laid, and from my knowledge of the trial situation at the Manukau District Court it would be at least 15 or 16 months before a firm fixture could be provided for this, a two week trial. The trouble that both counsel may have had in being prepared as well as they would like falls fairly and squarely on the shoulders of the two defendants. The defendants have had disclosure of the matters relating to this trial for an extremely long period, certainly over a year so far as Ms Glover is concerned, and I suspect an equal length of time so far as Ms Wallace is concerned. Whilst Mr White says that Ms Wallace had said she had only received the information in February this year I treat that submission or comment from the defendant with great suspicion.

[26] Firstly, I find it highly unlikely without any confirmation from counsel involved to say that they had not provided that disclosure to their clients, particularly in a situation where previous counsel had indicated the matter was ready to proceed to trial in September last year.

[27] Secondly, Ms Wallace clearly advised Mr White that items taken had not been recovered and I am satisfied on material before me that they were returned to the parties soon after any items had been uplifted.

[28] Thirdly, I cannot ignore the fact that Ms Wallace resides with her mother, Ms Glover, who did have disclosure. Ms Wallace has clearly been actively involved in the case and in fact has been writing to Ms Glover's counsel. It defies belief that she would not have seen or looked at any disclosure provided to her mother.

[29] I find that the New Zealand Bill of Rights Act 1990 provisions relied on by counsel do not require me to adjourn the proceedings. The defendants have had two and a half years to prepare these matters for trial. I have no evidence that any witnesses are unavailable and it is pure speculation as to whether any of the persons named by the defence would have anything to say.

[30] Can I make it quite clear, that my comments here are not criticising counsel. Mr Galler since October last year has been trying to get detailed instructions from his client and Mr White has asked early on for instructions from his client as well. There is no adequate reason given for the defendants not providing information to their lawyers earlier. The inference that I draw from the fact that there has been lack of contact other than for the last two weeks is that this was a calculated attempt by the defendants to try and derail this trial.

[31] As the Court of Appeal said in a case of *R v McKinnon*:

> "In recent times courts have made it clear that defendants who seek to manipulate or evade court processes are unlikely to succeed."[1]

[32] I find that the defendants here are similarly seeking to manipulate or evade the court processes and I am not prepared to allow such behaviour to derail this trial.

[33] In terms of the notice requirements, the defence already two and a half years late, however I am going to grant the defence until 5 pm on Wednesday 14 July to file any notice they wish to rely on the provisions of s 13 of the Act.

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[1] *R v McKinnon* [1980] 2 NZLR 31 (CA)

[34] In terms of the application to amend the prosecutor's name, I find that this is a matter which clearly falls within s 133 Criminal Procedure Act 2011. That amendment is a matter of form not of substance. The defendants raised similar issues in relation to civil proceedings that had been brought against them by the Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated. I have been provided a copy of the judgment of Powell J dated 9 July 2020 where he canvasses the issues raised by the defendants.

[35] In that case Powell J clearly found there that the amendment of the name was of a minor nature, and I find similarly in this case the amendment sought is minor and is clearly appropriate. There is no prejudice to the defendants, and the fact that the defendants have put so much energy into this particular issue rather than facing the significant issues which will need to be dealt with at trial is something that they have chosen to focus on and simply highlights the approach, in my view, that the defendants have taken to try and avoid these matters being dealt with by the courts.

[36] I therefore grant the Crown the application to amend the name. As I say, I will give further reasons if I need to.

[37] I should note for completeness, Mr White in one of his submissions had indicated if the application for an adjournment was declined he would seek leave to withdraw. I am not prepared to grant Mr White leave to withdraw. He has had carriage of these matters for seven months. Whilst he may feel that he is unable to be as effective as counsel on these matters as he would like, that is due to his clients' inactivity and it is no reason, in my view, to grant him leave to withdraw.

[38] As I say, it is not a particularly long or complicated trial, and I am not prepared to grant leave to withdraw.

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Judge J C Moses
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 23/08/2021