

**IN THE DISTRICT COURT
AT INVERCARGILL**

**I TE KŌTI-Ā-ROHE
KI WAIHŌPAI**

**CRI-2018-025-001593
[2021] NZDC 19459**

EUGENE ANTHONY GREENDRAKE
Prosecutor

v

WAYNE ALEXANDER MCCONNOCHIE
Defendant

Hearing: 29 September 2021

Appearances: Prosecutor appears in Person
M Walker for the Defendant

Judgment: 29 September 2021

ORAL JUDGMENT OF JUDGE R WALKER

[1] This matter is a private prosecution taken by the prosecutor, Mr Eugene Greendrake, against the defendant, Wayne Alexander McConnochie.

Charges

[2] The first charging document involves an allegation under s 57(2) of the Dog Control Act 1996 that on 18 August 2018 at the entrance to 22 Leithen Street Nightcaps of –

Making his dogs attack two domestic (Peking) ducks.

[3] This is a category 1 offence with a maximum fine of exceeding \$3000.

[4] The second charging document alleges that on the same date and in the same place Mr McConnochie was responsible for what the offence description says was:

Reckless ill-treatment of two domestic ducks, Drakie (male) and Duckie (female), by letting his dog to attack them. Drakie's undertail was torn to pieces with internal organs let out from which he died. Duckie was severely bitten in the neck and distressed. She lost her lifemate and eggs she was about to lay, spent 12 days at veterinary centre and is still recovering.

[5] I should add at this point, Duckie has also been referred to by another name of Missy throughout these proceedings. That second charging document is laid under s 28(a) of the Animal Welfare Act 1999 and has a maximum penalty of three years imprisonment, or a fine of exceeding of \$75,000, or both. That is a category 3 offence.

Elements of charges

[6] In order to establish the first offence, the prosecutor must prove firstly Mr McConnochie's identity as the owner of the dog, and second, that the dog attacked in this case poultry or a domestic animal, of which the ducks could be described as either.

[7] Regarding the first element of s 57 of the Dog Control Act, the term *owner* in relationship to any dog means every person who either owns a dog, or has the dog in his or her possession. That charge is one of strict liability.

[8] In order to establish, second, the more serious charge, the prosecutor must prove that firstly Mr McConnochie recklessly ill-treated an animal, which involves establishing the mens rea element of recklessness; and that the animal is permanently disabled, dies, or the animal is seriously injured or impaired.

[9] It is for the prosecutor to prove each ingredient of the charge beyond reasonable doubt. Proof beyond reasonable doubt is proof that requires me to be firmly convinced of guilt. If, based on my consideration of the evidence, I am firmly convinced that Mr McConnochie is guilty of one or both of the charges, then that charge or those charges will be proven. If, however, I believe that there is a reasonable possibility he is not guilty, then I must give him the benefit of that doubt and find the charge or charges are not proven.

[10] Where, as in this case, the defendant elects to give evidence, the onus remains on the prosecutor. If I find his evidence credible and reliable, or I am left unsure of what the real position was, then I must determine that the charge or charges are not proven. If, however, I believe the defendant's evidence or part of it is entirely unconvincing or incredible, then I must be careful not to jump from that conclusion to an automatic conclusion of guilt, or even regard it as adding to the case against him. Rather, I must go back to the rest of the evidence and ask myself whether, on the basis of that evidence, I am satisfied about guilt to the required standard.

Case for the prosecutor

[11] Evidence was given in court today by a number of witnesses.

Beverley Renton

[12] The first of them was Mrs Renton. Mrs Renton gave evidence that she saw the farmer come along in his truck. He opened the gate, drove the truck into the paddock, the short way, and then stopped and let the dogs out. She said the black dog went straight at the ducks that were by the flax on the property. She said the man got into the truck and drove around the paddock and then returned again. She said the man grabbed one duck and put it in the ditch beside the gate and then grabbed the second duck and did the same before driving away. She was unable to describe the dog in any detail, other than it was black and that she had never seen it before.

[13] Mrs Renton was understandably hazy on some of the details of what occurred, given the time that has now passed and the distance from which she observed the events - she thought approximately 100 metres from her kitchen window from the inside of her house. She did not identify the person she described as being the farmer. She could not recall the colour of the vehicle.

[14] In cross-examination she was unable to elaborate on the breed of dog she saw but said that the other two dogs that were present appeared to be darkish coloured Collies. It was put to her that she had changed her evidence in a previous statement where she identified a black Labrador, whereas she was saying today that it was simply

a black dog. She said from where she was observing, it looked as though the black dog was biting the duck.

Colin Groube

[15] Mr Groube also gave evidence for the prosecution. He is another resident in Nightcaps. He was familiar with the two ducks who he referred to as Drakie and Missy. He said he heard a noise outside his property and voices. He went outside where he says he saw Mr McConnochie's ute.

[16] At that stage, he was putting a dog, which he described as a big grey sheepdog, in a crate on the back of the truck, and did not think anything more about it and went back inside. He thought there might be at least one more dog in the crate but could only describe the one he saw going into the crate. He then thought something was not right and went outside again and saw Mr McConnochie getting into his ute. He went back inside a second time but soon after re-emerged to see Mr McConnochie in the driveway to his property.

[17] Mr Groube went to the property and saw two ducks in the creek or drain. At that stage, he thought both were dead, until he saw one move. At that point he returned to his house to get a rifle, thinking that the surviving duck was so badly injured that he would need to put it out of its misery. When he returned with the rifle, the surviving duck had disappeared.

[18] Mr Groube was shown photos of the scene as he had seen it on that day. It was clear, though, from his evidence, that Mr Groube did not see any actual attack on the ducks.

[19] He later described an exchange or confrontation between him and Mr McConnochie a few days later in the Winton New World carpark, which he said was over the fact that he had given Mr McConnochie's phone number to others and presumably Mr Greendrake.

[20] In cross-examination, Mr Groube denied having seen a black Labrador in the area, and a number of other matters that were put to him by Mr Walker. It was clear during the course of cross-examination, however, that Mr Groube had little time for Mr McConnochie. He at one point explained to the Court that there had been a lot more going on than was directly relevant to this case.

Peter Franklin

[21] Mr Franklin also gave evidence. He, too, is a resident in Nightcaps. He also knew the ducks well and referred to them by name. He was shown the pictures of Drakie in the drain, and the other duck Missy when she was located, and before Ms Greendrake was able to capture her for the purposes of veterinary treatment. It was clear that Mr Franklin also did not see the ducks being attacked but witnessed the aftermath.

Lisa Stuart

[22] Ms Stuart also gave evidence for the prosecution. She is a vet practicing in Invercargill for some 25 years. She described Missy as having a large wound around her neck and that she was at the clinic for some 10 days, approximately. It was clear from evidence that if not for veterinary intervention, Missy would have died. Ms Stuart said that the wound fitted with the history that she was given, namely that Missy had been bitten by a dog.

Eugene Greendrake

[23] Mr Greendrake also gave evidence. He says in the days before the incident he saw the two ducks, Drakie and Duckie, walking around as usual but were tending to gravitate towards the property at 22 Leithen Street owned by Mr McConnochie.

[24] Mr Greendrake was not living at his address in Nightcaps at the time because he was in the process of building but was visiting most days. On the day in question he noted that Mr McConnochie's land, he said, was empty and that there were no sheep before or after the incident.

[25] He gave evidence that Mr Groube came to his gate and he was told by Mr Groube that Mr McConnochie had made his dog kill the ducks. Mr Groube explained to Mr Greendrake who Mr McConnochie was.

[26] Mr Groube then took Mr Greendrake to the place where they both observed Duckie in the drain. Mr Groube showed Mr Greendrake the blood and guts on the driveway.

[27] Mr Greendrake subsequently took possession of his camera and took photos of the scene. After that they left Drakie lying in the ditch, because it had been suggested to Mr Greendrake that they should contact the authorities before moving him.

[28] The next morning, 20 August, Mr Greendrake saw Mr Groube and Mr Franklin. They sat and talked about what had happened.

[29] The SPCA returned a call that Mr Greendrake had made earlier to them the previous day, and both he and Mr Groube talked to the SPCA, although Mr Groube could not recall that.

[30] Mr Franklin then looked for the second duck, Missy. He returned quickly, according to Mr Greendrake, because he had located her. Mr Greendrake then went to where Missy had been seen and was able to retrieve her and thereafter took her to the vet.

Application by prosecutor to amend charges

[31] At the end of Mr Greendrake's evidence, he made an application to amend the charge under the Animal Welfare Act to an allegation of wilful mistreatment.

Application by defendant under s 147

[32] Mr Walker made a s 147 application that there was no case to answer on the evidence that had given to that point, which I declined.

Case for the defendant

Wayne McConnochie

[33] Mr McConnochie then elected to give evidence. He described himself at the present time as being a self-employed builder because he has sold the property at the centre of this incident.

[34] He said that in August 2018 on the day in question, he went to the paddock to shoot a dog, a black Labrador that he had been told by a Mr Andy McDonald - who is now deceased - had been worrying the sheep on Mr McConnochie's farm.

[35] Mr McConnochie said on arrival at the paddock that the dog trap on the property had been sprung but there was no dog in the trap. It was his view that any dog caught in the trap had been removed. He described taking with him his two huntaway dogs - a ginger dog and a grey dog.

[36] Mr McConnochie said that he went to the property to check on stock, having lost three ewes and five lambs within days of this allegation, and many more in the years prior. Dog attacks on his stock, he said, were a regular problem in the area.

[37] Mr McConnochie confirmed in his evidence that according to dog registration records, at the time of this incident he owned three huntaway dogs. He was adamant that he had never owned a Labrador of any sort because he had no use for a Labrador, having never been a duck hunter. He was told, however, by Mr McDonald that it was a black Labrador that had been on his property and worrying his stock.

[38] In relation to the incident in the New World carpark with Mr Groube, he said that he did have an exchange with Mr Groube about Mr Groube handing out his cellphone number to others. He said he challenged Mr Groube over the fact that Mr Groube had not paid for firewood allegedly provided to him previously, and that Mr Groube was affected by alcohol and that Mr McConnochie was worried about him driving.

[39] Mr McConnochie also confirmed as had been an issue throughout the proceedings that there had been problems with people dumping rubbish on the property.

[40] When specifically put to Mr McConnochie whether it was him or his dogs that were involved in this incident, his response was “definitely not”. He said he did not allow his dogs to chase ducks. He said that salmonella was spread by ducks as result of them being on a nearby sewage pond, and that as a result he would never allow his dogs to have anything to do with ducks.

[41] Mr Greendrake said in his submission to the court that Mr McConnochie’s denial is completely made up and that his evidence simply should not be trusted.

[42] I have to say that I did not get any impression from Mr McConnochie’s evidence that he was being anything other than truthful in his denial of any involvement in the death of Drakie or the injury to Missy.

The Court’s assessment

[43] This case heavily relies on the evidence of Ms Renton because she is the only purported eyewitness to what occurred. No one else saw a dog attacking the ducks.

[44] As emerged in the course of cross-examination, Mrs Renton’s property was approximately 140 metres away from what she said she observed. Not only that, but the view is obstructed by trees and she was inside her property at her kitchen table. She could not be specific about what she saw.

[45] During her evidence today, she talked about a black dog, as opposed to a black Labrador that had been identified previously by her other statement made much closer to the time. She did not identify Mr McConnochie directly. She had difficulty in describing what she said she saw in terms of what the dog was doing in relation to the ducks, and then gave evidence that she saw the man putting both ducks in the drain independently, from what was a considerable distance. She was short on detail and could not, for example, recall the colour of the vehicle she said was present.

[46] I consider that while there was no suggestion that she was a dishonest witness, or that she was not doing her best to try and recall events of more than three years ago, given her age and infirmity and the health issues that were evident to me in the course of her giving her evidence, her evidence was not such that I could rely on it, particularly given Mr McConnochie's denial of involvement.

Conclusion

[47] I therefore find that the elements of both charges are not made out, and there is significant doubt, in my view, that Mr McConnochie was, in fact, the owner or possessor of the dog in question.

[48] Accordingly, I find these charges are not proved beyond reasonable doubt.

ADDENDUM:

[49] Due to the conclusion I have reached in this matter, it was not necessary to deal with Mr Greendrake's application pursuant to s 133 of the Criminal Procedure Act 2011 to amend the charge laid pursuant to s 28A Animal Welfare Act 1999 to one pursuant to s 28 of the Animal Welfare Act 1999 involving the higher mens rea threshold of 'wilfulness'.

Judge R J Walker

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 05/10/2021