

CANADA / JUDGMENT

R. v. Elite Farm Services Ltd.

2021 BCSC 657

COURT

Supreme Court of British Columbia

DECIDED

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2021 BCSC 657 R. v. Elite Farm Services Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Elite Farm Services Ltd.,

2021 BCSC 657

Date: 20210409

Docket: 67608

Registry: Chilliwack

Regina

v.

Elite Farm Services Ltd.,

Dwayne Paul Dueck and

Sofina Foods Inc./Ailments Sofina Inc.

Before: The Honourable Mr. Justice Crabtree

Reasons for Ruling on Application for Particulars

Counsel for the Crown:

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J.R. Lawn

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E.H. Irving

Place and Date of Trial/Hearing:

Chilliwack, B.C.

Dec. 2, 2020

Place and Date of Judgment:

Chilliwack, B.C.

April 9, 2021

INTRODUCTION

- [1] The accused apply for an order pursuant to s. 587(1) of the Criminal Code, R.S.B.C. 1985, c. C-46 requiring the Crown to furnish particulars in relation to the 12 counts of Indictment 67608-1.
- [2] The direct indictment contains a total of 12 counts against three accused: Elite Farm Services Ltd. ("Elite Farms"), Dwayne Paul Dueck ("Mr. Dueck"), and Sofina Foods Inc./Ailments Sofina Inc. ("Sofina"). The three accused are charged on Counts 2, 4, 6, 8, 10 and 12 of the indictment. In each of those counts, the Crown alleges on a specified date, or dates, the accused unlawfully loaded or caused to be loaded, an animal, to wit: chickens, in a way likely to cause injury or undue suffering to it. The allegation in each count is a violation of s. 139(2) of the Health of Animals Regulations, C.R.C., c. 296 and the commission an offence contrary to s. 65(1) of the Health of Animals Act, S.C. 1990, c. 21.
- [3] Elite Farms and Mr. Dueck are also charged on Counts 1, 3, 5, 7, 9 and 11 of the indictment. On each of those counts, the Crown alleges, the accused unlawfully beat an animal, to wit: chickens, being loaded or unloaded in a way likely to cause injury or undue suffering to it, on a specified date or date(s). The allegation in each count is a violation of s. 139(1) of the Health of Animals Regulations and the commission an offence contrary to s. 65(1) of the Health of Animals Act.
- [4] Sofina, with respect to the counts they face, and Elite Farms and Mr. Dueck, with respect to all counts, seek an order that the Crown particularise the date, location, actions, and events alleged to constitute the loading of, or causing to be loaded, an animal, in a way likely to cause injury or undue suffering, together with the precise video footage that relates to each action alleged to be an offence.
- [5] The accused Elite Farms and Mr. Dueck seek similar relief with respect to the balance of the counts they are charged with.

LEGAL FRAMEWORK

[6] The Criminal Code is applicable to a prosecution pursuant to the Health of Animals Act.

[7] Section 583 of the Criminal Code states:

583. No count in an indictment is insufficient by reason of the absence of details where, in the opinion of the court, the count otherwise fulfils the requirements of section 581 and, without restricting the generality of the foregoing, no count in an indictment is insufficient by reason only that

- (a) it does not name the person injured or intended or attempted to be injured;
- (b) it does not name the person who owns or has a special property or interest in property mentioned in the count;
- (c) it charges an intent to defraud without naming or describing the person whom it was intended to defraud;
- (d) it does not set out any writing that is the subject of the charge;
- (e) it does not set out the words used where words that are alleged to have been used are the subject of the charge;
- (f) it does not specify the means by which the alleged offence was committed;
- (g) it does not name or describe with precision any person, place or thing; or
- (h) it does not, where the consent of a person, official or authority is required before proceedings may be instituted for an offence, state that the consent has been obtained.

[8] Section 587(1) of the Criminal Code provides where it is determined the detail in the indictment is lacking, a court may order particulars. Subsections 587(1) to (3) provide:

587. (1) A court may, where it is satisfied that it is necessary for a fair trial, order the prosecutor to furnish particulars and, without restricting the generality of the foregoing, may order the prosecutor to furnish particulars

- (a) of what is relied on in support of a charge of perjury, the making of a false oath or a false statement, fabricating evidence or counselling the commission of any of those offences;
- (b) of any false pretence or fraud that is alleged;
- (c) of any alleged attempt or conspiracy by fraudulent means;
- (d) setting out the passages in a book, pamphlet, newspaper or other printing or writing that are relied on in support of a charge of selling or exhibiting an obscene book, pamphlet, newspaper, printing or writing;
- (e) further describing any writing or words that are the subject of a charge;

- (f) further describing the means by which an offence is alleged to have been committed; or
- (g) further describing a person, place or thing referred to in an indictment.

Regard to evidence

- (2) For the purpose of determining whether or not a particular is required, the court may give consideration to any evidence that has been taken.

Particular

- (3) Where a particular is delivered pursuant to this section,
 - (a) a copy shall be given without charge to the accused or his counsel;
 - (b) the particular shall be entered in the record; and
 - (c) the trial shall proceed in all respects as if the indictment had been amended to conform with the particular.
- [9] A charge or count set out in an indictment must provide the accused with sufficient information to identify the alleged transaction to constitute a criminal offence. The classic statement of the law was set out in *R. v. Brodie*, [1936] S.C.R. 188 at 196-198, where Rinfret J. stated:

It must contain, in substance, a statement of the specific act which is charged, although it is not necessary that it should "specify the means" by which the act was committed, or that it should name, or describe, "with precision" any person, place or thing.

- [10] The current approach to interpreting s. 581 of the Criminal Code is set out in *R. v. Douglas*, [1991] 1 S.C.R. 301 at para. 20, where Cory J. stated:

- [20] Thus, the Code provides that the indictment must contain sufficient details of the circumstances of the alleged offence to give the accused reasonable information with respect to the act or omission to be proved against him and to identify the transaction referred to. In cases where confusion exists as to the indictment, a provision is made for the accused person to obtain particulars. The indictment can and should be expressed in clear and simple language.

- [11] The purpose or function of an indictment is to provide the accused with notice of his or her potential legal jeopardy. In *R. v. Côté*, [1978] 1 S.C.R. 8 at 13, de Grandpré J. noted that the key factor or the golden rule is for the accused to be reasonably informed, stating:

[T]he golden rule is for the accused to be reasonably informed of the transaction alleged against him, thus giving him the possibility of a full defence and a fair trial. When, as in the present case, the information recites all the facts and relates them to a definite offence identified by the relevant section of the Code, it is impossible for the accused to be misled. To hold otherwise would be to revert to the extreme technicality of the old procedure.

- [12] With respect to the identification of the transaction, it has been held that each count on an indictment is meant to identify a "single transaction" with sufficient detail to give the accused the ability to identify the specific transaction: *R. v. Armour Pharmaceutical Company*, 2006 CanLII 811 (Ont. S.C.).
- [13] However, the mere fact that a count in an indictment refers to several acts, each of which may constitute a separate offence, does not necessarily violate the single transaction rule: *R. v. C.K.*, [1999] O.J. No. 4590 (C.A.), at para. 7.
- [14] In *R. v. Canadian General Electric Co. Ltd. (No. 1)* (1974), 17 C.C.C. 2(d) 433 (Ont. H.C.J.), the court identified a second function or purpose of the indictment:
- [35] ... Primarily their function is to give such exact and reasonable information to the accused respecting the charge against him as will enable him to establish fully his defence. The second purpose is to facilitate the administration of justice.
- [15] While the primary function is focused on the fair trial rights of an accused and in knowing the case one has to meet, the second aspect is focused more generally on the impact of the effective administration of the trial, including the court's ability to properly assess the relevance of the evidence adduced at trial.
- [16] Particulars also have a restrictive element set out in s. 587(3), which requires the Crown to prove the particulars specified. In *R. v. Saunders*, [1990] 1 S.C.R. 1020 the Court stated:
- [5] ... It is a fundamental principle of criminal law that the offence, as particularized in the charge, must be proved. In *Morozuk v. The Queen*, [1986] 1 S.C.R. 31, at p. 37, this Court decided that once the Crown has particularized the narcotic in a charge, the accused cannot be convicted if a narcotic other than the one specified is proved. ...
- [17] Disclosure is not a substitute for particulars, however courts have relied on the Crown providing fulsome disclosure as a reasons why particulars are not required. In the course of the steps leading up to the commencement of the trial, the accused have been provided with significant disclosure comprising:
1. in excess of 3,000 pages of disclosure;
 2. 240 video clips related to the 12 counts of the indictment and, during the course of the argument, the Crown attached a schedule to their argument linking the date, offence, and location to the specific video clips that they intend to rely upon at trial; and,
 3. a report of the Crown veterinary expert.
- [18] In addition, the accused are awaiting receipt of further relevant disclosure contained on a recently discovered computer hard drive belonging to one of the primary Crown witnesses.

- [19] While no preliminary inquiry was convened in this matter, all accused have the opportunity to hear the primary witnesses (the civilian investigator and the CFIA officer leading the investigation) of the case, in the course of voir dres that are currently underway. In addition, they will have the opportunity in the course of such pre-trial proceedings to cross-examine the primary witnesses.

POSITION OF THE DEFENCE

- [20] The accused submit particulars, in the context of this case, would enable the accused to prepare their respective defences; and are necessary to ensure that the accused persons and corporate entities have a fair trial.
- [21] The accused submit that the indictment simply specifies the general offence charged, and it should be ordered to define the actual transaction that the prosecution must prove to support a conviction. In their current form, the counts drafted are vague, or uncertain, regarding the conduct that could be characterised as causing injury or undue suffering. In particular, the accused raise the following issues:
1. Particulars are required as the counts lack sufficient detail.
 2. Particulars are required to link the video clips to the specific allegations.
 3. Particulars are required in the prosecution of strict liability offences.
 4. Particulars are require to identify the basis of legal responsibility.
- [22] Defence counsel submit that an order for particulars would, in this case, enable the defence to know the case it has to meet and adequately prepare for the trial.

POSITION OF THE CROWN

- [23] The Crown submits that the present indictment sufficiently particularises the offences, such that the accused are reasonably informed of the transactions alleged against them. In the present form, the indictment puts the accused in a position to make full answer and defence, and have a fair trial in accordance with s. 11(d) of the Canadian Charter of Rights and Freedoms [Charter].
- [24] The Crown argues that an order for particulars is not necessary to ensure a fair trial in this case; and may be contrary to the proper administration of justice, as an order for particulars would fetter prosecutorial discretion.

DISCUSSION

1. Particulars Required Due to Insufficient Detail

- [25] The accused complain that the indictment does not contain sufficient detail to provide them with reasonable information to identify the transaction. In other words, the underlying transaction is not identified in sufficient detail to permit the accused the opportunity for a fair trial, and to provide a full answer and defence.
- [26] The more general complaint is, as stated above, that the indictment contains insufficient detail to identify the transaction. As such, the indictment fails to inform the accused as to what they allegedly did wrong, with sufficient particularity to ensure them a fair trial.
- [27] Each count of the indictment specifies a date or range of dates, location, and the alleged violation that the accused are said to have committed, either, in the case of Sofina, Elite Farms, and/or Mr. Dueck, that they unlawfully loaded, or caused to be loaded, chickens, in a way likely to cause injury or undue suffering. In the case of Elite Farms and Mr. Dueck, it is alleged that they also beat chickens in the course loading the animals.
- [28] While disclosure is not a replacement for an order for particulars, where required, in this circumstance, the Crown has provided a series of video clips characterised by date, farm, and location, setting out video evidence linked to the various accounts laid by the Crown. The video footage is taken by an individual, who was also present on each occasion and provides an account of his observations as to what took place at each location. In addition, further disclosure including a large number of documents together with expert reports have also been provided.
- [29] At present, there is an ongoing process to address the disclosure of further video, photographs, and documents as a result of the recent discovery of a computer hard drive, which contains relevant information to the prosecution of this case. Whether this information is a duplicate of what has already been disclosed, or additional new disclosure, has yet to be determined.
- [30] Based on the specific wording of the indictment and the disclosure provided, the Crown submits the accused have detailed knowledge of the impugned conduct. The video files, video logs, notes, and the witnesses' notes of observations made, together with the testimony during the voir dire, include a range of conduct that the Crown asserts to be a cause for undue suffering or harm of animals.
- [31] The information in *R. v. Atlantic Towing Ltd.*, 2010 NSPC 58 [Atlantic Towing], is similar to the present case. The accused was alleged "between November 18, 2008 and November 20, 2008, [to] take action that might jeopardize the safety of a vessel or of persons on board", (para.1). In *Atlantic Towing*, the accused submitted particulars should be ordered because, over the three days during which the offence was alleged to have occurred, there were numerous actions that could have given rise to the charge. Particulars were not ordered, given the wording of the charge combined with the extensive disclosure was found to be sufficient to reasonably inform the accused.
- [32] In *R. v. G.R.*, 2005 SCC 45 Binnie J. for the majority wrote at para. 15:

- [15] It is important not to confuse the requirement to specify the charge with the need to provide sufficient supporting detail of the underlying transaction or circumstances.
- [33] Conversely, the Crown is not obliged to incorporate the minutia of the evidence setting out where animals were tossed, thrown, hit, kicked, and handled roughly in the course of loading.
- [34] Each count of the indictment identifies the transaction that gives rise to it and, in concert with the disclosure provided, has sufficiently detailed the loading events alleged to constitute the offence.

2. Particulars Linking the Video Clips to the Specific Allegations

- [35] The accused submit, in order for the accused to be in a position to rely on their right to a fair trial, the Crown should be ordered to provide a link between the video footage and the specific allegations that have been committed.
- [36] There are 240 video clips, totalling approximately three hours of playing time, broken down by count, date(s), and location.
- [37] In addition, the witness responsible for taking the video footage has prepared a video log itemising the video clips, and testified to his observations made while recording the footage. All of which, is subject to cross-examination by the defence in the course of the voir dire, if they wish to pursue this line of inquiry.
- [38] It is the Crown's submission that it is the collective effect of the video clips on each count, together with the observations of the primary Crown witness, which comprises the evidence of the allegations.
- [39] I am not persuaded, at this juncture, that further particularisation of the video footage to each event, or action, is required in addition to what has already been provided, documented, and testified to by one of the primary Crown witnesses.

3. Particulars Required in Cases of Strict Liability Offences

- [40] The defence submits the requirement for particulars takes on an enhanced importance in strict liability offences, particularly because of the accused's burden of establishing due diligence in a regulatory prosecution: *R. v. Precision Drilling*, 2018 ABCA 273 [Precision], at para. 55.
- [41] The requirement is premised on the principle that the accused must be reasonably informed of the transaction alleged against him or her, in order for a fair trial and to prepare a full defence.
- [42] I do not read Precision to say particulars are required in all strict liability cases. In Precision, the Court held that particulars were required in circumstances where the Crown laid a charge contrary to the "general duty" offence. The charge in question was under s. 2(1) of the Occupational Health & Safety Act., R.S.A. 2000, c. O-2 [OHSa]. The wording of the general

duty offence provided: "an employer did fail to ensure, as far as it was reasonably practicable to do so, the health and safety of the worker engaged in the work of that employee". Given the general nature of the wording of the offence, the Court ordered particulars be provided setting out what the employer was alleged to have failed to do, in order for the accused to identify the transaction which formed the subject matter of the allegation.

[43] A similar decision was reached in *R. v. Driving Force Inc.*, 2017 ABPC 265 where the accused faced similar charges to those in *Precision*.

[44] I accept the particulars take on a greater significance in strict liability offences, particularly where a general offence is charged. However, in this case, I am satisfied that the accused have been reasonably informed as to the transaction which is the focus of the offence charged.

4. Particulars Setting Out the Route to Conviction

[45] The accused Sofina complains that the Crown has failed to set out how they are accountable for the offences charged. There is some evidence that a representative of the accused was present on several of the occasions. However, the parties alleged to be responsible for the acts depicted in the video were workers employed by a separate company. The accused Mr. Dueck complains the Crown has failed to provide how he is responsible for the actions of the workers of the accused Elite Farms.

[46] The accused argue that there are no particulars setting out the basis of liability, or the basis on which the Crown argues they ought to be held legally responsible. It has been held that a fair trial does not require the indictment to contain details of the acts or omissions over the relevant time period, or that the Crown layout its theory of the case.

[47] The Crown, in the course of the submission, set out in a general manner how liability is alleged to attach to the accused Sofina and Mr. Dueck. However, as a general response, the Crown submits there is no requirement that the Crown provide the theory or basis on which legal liability could be found.

[48] In *R. v. Dalton*, [1999] N.J. No. 388 (S.C.) [Dalton] the accused applied for an order that the Crown particularise the specific manner by which the accused was alleged to have caused the victim's death.

[49] The issue in *Dalton*, was whether the court should order that the indictment be amended to incorporate or specify whether the Crown alleged the death was caused by strangulation or smothering.

[50] In *Dalton*, the court referred to the comments of Dickson C.J.C., as he then was, in *R. v. Thatcher*, [1987] 1 S.C.R. 652 [Thatcher]. In *Thatcher*, the trial judge refused to order particulars in relation to the means by which the accused caused the death of his wife.

- [51] At para. 73, Dickson C.J.C. stated as follows:
- [73] In sum, this Court has held that it is no longer necessary to specify in the charge the nature of an accused's participation in the offence: *Harder*. Moreover, if there is evidence before a jury that points to an accused either committing a crime personally or, alternatively, aiding and abetting another to commit the offence, provided the jury is satisfied beyond a reasonable doubt that the accused did one or the other, it is "a matter of indifference" which alternative actually occurred: *Chow Bew*.
- [52] In *Dalton*, the court notes that it is important to distinguish between the essential elements of an offence and the theory of the Crown. The Crown is required to establish the essential elements of the offence, but is not required in the course of the prosecution to prove its theory.
- [53] Finally, in *Dalton*, the court commented that ordering particulars, which required the Crown to specify its theory of liability, had the effect of restricting the Crown in the presentation of its case. This would result in an unfair trial for the prosecution, and would justifiably bring the administration of justice into disrepute.
- [54] At paras. 20 and 21 of *Dalton*, the court stated:
- [20] In this case the "theory" of the Crown is that the Applicant either choked or smothered his wife. The Crown has made full disclosure of its theory by providing the Applicant with the reports of Dr. Hutton and Dr. Di Maio. The Applicant is therefore able to make full answer and defence. Accordingly, it is not necessary to order that the Indictment be amended to include the "theory" of the Crown to ensure a "fair trial".
- [21] The Crown should not be required to set out its "theory" in the Indictment. The Indictment should be broadly worded in order to allow the Crown to fully prosecute the case without any judicially imposed limitations. The Crown should be entitled to rely upon any part of the definition of second degree murder which may be applicable to the evidence presented during the trial.
- [55] Sofina argues that the loading of the animals was undertaken by employees of another company; and that there were very few occasions where a representative of Sofina was present on a farm when these allegations are said to have taken place. It is alleged the relationship between Sofina and the contractor is clear; the animals were loaded by the employees of Elite Farms, as directed by Sofina. Whether the relationship is sufficient to establish legal liability to Sofina, can only be determined upon consideration of all the evidence presented at trial.

- [56] Similarly, Elite Farms and, in particular, the accused Mr. Dueck, question the basis on which liability could attach to either of them. The Crown, without formally particularising its theory, stated during submissions the offences were allegedly committed by employees of Elite Farms, and the directors of the company are responsible for the actions of the employees.
- [57] That said, the Crown is not required to particularise their theory of the case against the accused.

SUMMARY

- [58] In summary, particulars are warranted in the situation where an accused is not reasonably informed of the nature of the case to be met.
- [59] I conclude that the accused are possessed of sufficient information, as contained in the indictment, when considered in the context of the disclosure produced to date, including the videos and the schedule linking the videos to the various counts. In addition, the defence has had the opportunity thus far to hear the evidence-in-chief of the Crown's two primary witnesses and will have the opportunity to cross-examine each of them in the course of the voir dires. To order the Crown to provide particulars, in these circumstances, would unnecessarily restrict the Crown in the presentation of their case.

"T.J. Crabtree J."

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