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Case No: 202401200 A2 / 202401201 A2 / 202401202 A2

IN THE COURT OF APPEAL (CRIMINAL DIVISION)

ON APPEAL FROM CROWN COURT AT SWANSEA

HHJ VOSPER KC

CASE No: T20210233

Swansea Crown Court
St Helen's Road, Swansea SA1 4PF

Date: 20/11/2024

Before :

LORD JUSTICE MALES

MRS JUSTICE JEFFORD

and

MRS JUSTICE STACEY

Between :

Charles Hartt, Edward Hartt, Henry Hartt

- and -

Pembrokeshire County Council

Appellant

Respondent

(Transcript of the Handed Down Judgment.

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S Jessop (instructed by **Harrison Clark Rickerbys**) for the **Appellant**
T Crowther KC & R Rosser (instructed by **Pembrokeshire County Council**) for the
Respondent

Hearing dates : 14th November 2024

Approved Judgment

This judgment was handed down remotely at 10.00am Wednesday 20th November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE STACEY :

1. In the Crown Court sitting at Swansea before HHJ Thomas KC on 25 March 2022 the Appellants pleaded guilty to a total of 12 counts of breach of Regs 4 & 13 of the Cattle Identification (Wales) Regulations 2007 in proceedings brought against them by Pembrokeshire County Council.
2. Nearly 2 years later on 4 March 2024 before HHJ Vosper KC at the same court the Appellants were each sentenced to pay a fine of £2,000 on each count consecutively, amounting to a total of £24,000 each to be paid within 12 months. The Court ordered the Appellants to pay a total of £94,569.64 towards the costs of the prosecution and a confiscation order for £217,906.25, these figures having been agreed with the prosecution. These sums were both payable within 3 months, with a 5 year term of imprisonment in default. The proceeds of crime confiscation proceeded on the basis of the lifestyle provisions as the benefit was in excess of £5,000 and there was a course of criminal activity.
3. With leave of the single Judge the Appellants appeal the level of the fines imposed on grounds that the sentences were manifestly excessive. At the conclusion of the appeal hearing on 14 November 2024 we announced that we dismissed the appeal with reasons to follow. These are our reasons.

The facts

4. The Appellants are two brothers (Charles and Henry Hartt aged 74 & 62 respectively) and Charles' son and Henry's nephew, Edward Hartt aged 47, who together farm Longford Farm at Clynderwen, Pembrokeshire in partnership. The farm has been in the ownership of the Hartt family for over 50 years when Charles and Edward's parents moved to Wales from Ireland. It is a fully functioning Dairy Farm which has grown and expanded considerably over the years to a herd of 3,600 cattle. It is required to comply with the Cattle Identification (Wales) Regulations 2007 ("the Regulations") and each of the Appellants was a keeper of the herd within the meaning of the regulations.
5. Under the Regulations the keeper of a dairy herd must identify each bovine animal in their herd in accordance with the Regulations. Reg 4 and Sched 1 to the Regulations, requires that each bovine animal must be identified by applying a single ear tag within 36 hours of birth (herd identification) and by a second ear tag within 20 days of birth (identification of individual animal). It is an offence to fail to do so.
6. Each bovine must then be registered within 7 days of double tagging when it is allocated a unique number and is registered. In order to register the bovine, the number on the ear tags and the birth details are required before a passport is subsequently provided. The bovine is then monitored by the British Cattle-Movement Service (BCMS) and recorded on an Ear Tag Allocation System (ETAS). If a bovine is transported from a holding, it has to be accompanied by its passport and the new owner provided with details upon arrival.
7. Reg 13(1)(c) makes it an offence to furnish to any person acting in the execution of the Regulations any information that he or she knows to be false or misleading. Breaches of Reg 4 and Reg 13 carry a maximum penalty of 2 years' imprisonment.
8. One of the purposes of the cattle identification and registration process is to assist in the prevention and control of bovine tuberculosis ("TB"). All farms in Wales are required to have annual testing for TB, which is done by a tuberculin skin test. This is then monitored and if there is a positive reaction a further, more sensitive, test may be carried out. If there is a positive test then the bovine will be destroyed. If fit to travel, the bovine is taken to an abattoir, otherwise the animal will be killed on site.

Longford Farm was subject to more frequent testing as Bovine TB was prevalent in the area and on the Appellants' farm. If a bovine is killed due to a positive TB test, a payment is made to the farm on the basis of an independent valuation of the specific animal which has tested positive.

9. The prosecution evidence demonstrated that a substantial number of bovines were incorrectly identified by the Appellants. As a result of the misidentification, bovines which had presented positive tests remained on the farm when they should have been removed for slaughter and different animals to the ones which had tested positive were slaughtered. It was particularly serious given the prevalence of TB on Longford Farm. Two bovines which had reacted positively to the tests and been misidentified had thus remained on the farm and later displayed overt symptoms of TB with lesions and were only subsequently correctly identified by the authorities and destroyed.
10. The case was initially advanced as 15 counts of fraud by dishonestly making a false representation as to the true identity of a bovine intending to make a financial gain (counts 1-15) and 12 counts of breach of the Regulations (counts 16-27). In counts 16-23 the Appellants had applied an ear tag number to a bovine which had previously been used to identify a different animal in breach of Reg 4. The 8 offences had been committed over a period from 13 November 2016 and 17 February 2020. Counts 24-27 were committed on 13 Dec 2019 when the Appellants knowingly provided false or misleading information to a Food Standards Agency representative that an animal bearing a specific ear tag number was correctly described in its cattle passport when that was not so, contrary to Reg 13(1) of the Regulations.
11. Initially the prosecution case was that there had been 27 instances – one in each count - of deliberate misidentification and swapping of bovines to secure higher compensation from the government by two methods. If a bovine that would be assessed as a low value bovine provided a positive test, the animal was then swapped and a higher value bovine would be misidentified and presented at valuation, with the lower positive test animal being subsequently destroyed. The other method alleged was if a high value bovine tested positive, it would remain for valuation before being mis-identified at the destruction phase and substituted with a low value bovine for destruction, with the result that a positive testing bovine remained on the farm with a false identity. The allegation was that this was a long-running intentional breaching of the Regulations in a deliberate attempt to evade the rules and the destruction of the bovines that were required to be killed under the regulations for financial gain.
12. The Appellants first appeared before Llanelli Magistrates' Court on 24 June 2021 and at a PTPH on 19 August 2021 the trial was set for 7 March 2022. The Appellants first made a firm offer to plead guilty to the breach of Regulations, but not fraud, on 22 March 2022. Guilty pleas were then entered on 25 March 2022 for counts 16-27 and not guilty verdicts entered for the fraud counts after the prosecution offered no evidence.
13. The prosecution accepted that they could not prove which of the three Appellants had acted dishonestly for gain and therefore could not prove fraud against any one of them.
14. Pre-sentence reports assessed each appellant as being of low risk of re-offending and low risk of harm to the public. Whilst the Appellants were considered suitable for community orders, all of the Appellants explained to the author of the pre-sentence report that they would have great difficulty in being able to undertake either unpaid work or rehabilitation activity requirement days because of the long working hours required on the farm. In any event it was thought by the PSR author that RAR days would be of limited usefulness.

15. All Appellants were of previous good character and nor had any previous animal welfare issues been raised about the farm. They had all worked on the family farm all their lives. There were a number of positive character references from their NFU representative, their farm consultant and their animal feed supplier who spoke of their high farming standards.

The sentencing remarks

16. The Judge dealt firstly with the proceeds of crime application and satisfied himself that the assets to pay the agreed amount were available from the sale of a house on an 80 acre farm owned by the Appellants for a net benefit of in excess of £220,000.
17. The Judge noted that registration and identification of cattle are particularly important in the context of the control of bovine TB which is prevalent in the area in which the Appellants farm. The harm caused by the offending was the undermining of the effectiveness of the regulations to prevent the spread of bovine TB, the cost to the public purse and the general risk to public health from the spread of bovine TB.
18. The Judge accepted that thankfully, the risk of human transmission from the Appellants breaches of the regulations was very low because all of the milk produced by their cows was pasteurised which destroys any TB. He also accepted that as a dairy farm, very little meat was intended for human consumption and that any meat infected with bovine TB would be identified at the abattoir and stopped from entering the food chain. But although there were no specific identifiable direct risks to public health, the increased risk of spread of TB within the herd and to adjacent farms was a general risk to public health. The offences constituted a general failure of the procedures for the control of bovine TB.
19. As to culpability, for seven of the eight offences of breach of Reg. 4, the Appellants had either deliberately attached ear tags to bovines knowing they were attaching them to the wrong animal, or not caring whether they were being attached to the correct animal. It was a cavalier disregard for the requirements of the regulations and the control of TB in cattle. However that was not the case for the breach of reg.4 in count 17 which came about by the alteration of the freeze brand number of a cow from 1,146 to 1,148 – the brand had been altered so that the number 6 looked like an 8 - which must have been a deliberate alteration of the freeze brand. For the offences of breach of reg. 13, dishonesty in the sense of deliberately misleading or knowingly giving false information to the officials was a key component of the offence.
20. But the Appellants were not dishonest in the sense that it had not been proved that the bovine misidentifications were intended to achieve direct financial gain for the Appellants, although there undoubtedly was inadvertent financial gain which resulted in the confiscation order under the Proceeds of Crime Act 2007. The Judge did not accept the Appellants submission that they were good herdsman but merely poor administrators and that the offences were simply a failure to cope with necessary record keeping as the size of the herd had increased exponentially in the preceding years.
21. Count 18 was particularly concerning since an animal which had tested positive in December 2018 and was thought to have been removed for destruction in January 2019, later gave birth to a calf on the farm and by January 2020 was noted by inspectors to have significant lesions.
22. In the course of his submissions for the Appellants their counsel explained that they were cash poor but asset rich and would be able to release equity from some of their properties in order to pay the legal costs ordered and any fines imposed and urged this course upon the court. The Judge had the farm records for the years 2017 – 2019 which showed annual average net profit of £99,000 which varied considerably from

year to year, partly depending on the farm gate milk price and interest rates with net profits sinking to £25,000 for the year end 2020. Annual turnover was in the region of £2.2million and net assets were valued at approximately £5.5million. The Appellants' living expenses were modest as they all lived off the farm and each drew £800 per month for business expenses.

23. The prosecution submission was that the case passed the custody threshold and that it would be difficult to imagine more serious breaches of the regulations.
24. Detailed mitigation was advanced for each appellant setting out the impact on their mental health of the proceedings, their long working hours, the distress caused by the loss of their good name in the community and the impact on their families and dependent children some of whom were dealing with their own challenging health conditions. Steps had been put in place to ensure no further breach of the regulations and a company had been engaged to undertake genome testing of the herd. There had been no further breaches since these offences had come to light.
25. The Judge concluded that even if the seriousness of the offending passed the custody threshold, having regard to the Appellants' good character, the time passed since the offending without any further repetition, and given the problems of prison overcrowding, fines would be the appropriate punishment.
26. In accordance with ss. 124 & 125 Sentencing Act 2020 & s.13 Proceeds of Crime Act 2007 he took into account the financial circumstances of the Appellants, including the confiscation and costs orders he had made.
27. He concluded that if the Appellants had been convicted after trial then, having regard to each of their means the appropriate total penalty would be in the region of £30,000 for each, made up of a fine of £2,500 per count. He allowed a discount of 20% for their guilty pleas after the PTPH to reduce the fine on each count to £2,000 with a total fine for each of them of £24,000. He partly acceded to the defence request for leeway in the time to pay and whilst he did not agree to the 2 year time frame requested, he allowed for a repayment period of 12 months. He accepted that the Appellants would have to significantly increase the borrowing on the farm assets to pay, but considered that he could not impose a total fine for less than £24,000 for each to reflect the seriousness of the offending.

Grounds of appeal

28. The two principal grounds of appeal were that the Judge's sentence was not proportionate to the culpability and harm caused by the offending and that he had not adequately assessed or applied the means of the Appellants to the fines imposed, which included the impact on their resources of the confiscation and costs orders under s.13 Proceeds of Crime Act 2007. Totality also needed to be considered. Finally it was said that although there are no Sentencing Council guidelines for these offences, the sentences were not in line with the food safety guidelines which were comparable.

Analysis and conclusions

29. We have had the benefit of the transcript of the entire sentencing hearing in which both sides' points were canvassed thoroughly. The Judge gave careful and detailed consideration to the parties' submissions and was able to probe and analyse their arguments fully in court.
30. As the Judge noted these were very serious offences that undermined the authorities' crucial work to control and prevent bovine TB which is an important public health imperative. The repeated breaches of the regulations over a period of three and a half years meant that the steps necessary to reduce TB within the Appellants' farm were

not being taken. It increased the risk of TB spreading further within their own herd and the herds of neighbouring farms. Whilst some of the breaches of Reg 4 in counts 16-23 could be attributed to recklessness by the Appellants, that was not so for count 17 where there was deliberate falsification of a freeze brand number. Whilst the prosecution accepted that there was no dishonesty in the sense of trying to obtain a financial advantage by deception, by their admission to counts 24-27 each appellant accepted that they had knowingly provided information that was false or misleading to public health officials on 13 December 2019. They had then refused to allow the Food Standards Agency representative to take a blood sample for DNA testing on that date. Count 18 was also particularly serious with the bovine remaining on the farm for 14 months after having tested positive and been ordered to be destroyed, and in that time giving birth and going on to develop significant lesions.

31. The Appellants' conduct cannot be described as good herdsmanship and it amounts to much more than poor record keeping. Allowing a bovine with overt symptoms of TB to remain in the herd untreated is an animal welfare issue for the individual cow and the other animals in the herd, as well as a public safety issue.
32. Contrary to their counsel's submissions, the Judge did not find that the culpability was only reckless. Nor did he conclude that the Appellants would have to sell a property to pay any fine in his careful sentencing remarks. But even if the Judge had found that some of the partnership's assets would have to be sold to meet a fine, it would not have precluded him from imposing substantial fines in light of the seriousness of the offending.
33. The effectiveness of the TB prevention and control programme relies on compliance by all dairy farmers and bovine keepers and requires a collective effort. The failure of one farm to comply with the regulations places the public health programme in jeopardy.
34. There are no Sentencing Council guidelines specific to the Regulations. We were asked to consider that the guidelines for breach of food safety and hygiene regulations provided some assistance by analogy. We note that breach of the Food Hygiene (Wales) Regulations 2006 carries the same maximum sentence as the Regulations. However the food hygiene regulations and these regulations seek to address different mischiefs. The food hygiene regulations seek to ensure that food is safe for individuals to eat. The Cattle Identification Regulations are an essential part of the measures necessary to prevent the spread of bovine TB which is a significant challenge for the UK cattle farming industry in parts of Wales and the rest of the UK. The cost of the control programme and the compensation for keepers of the many thousands of animals that are slaughtered annually to help prevent the spread of bovine TB is substantial and the impact of bovine TB is also costly to the industry. The fact that there was only a low risk of bovine TB entering the food chain therefore rather misses the point of the Regs which is to prevent the spread of bovine TB. It is not a mitigating factor, although had there been a higher risk of human transmission, for example from the sale of unpasteurised milk or raw cheese, it would have been a significantly aggravating factor.
35. The food hygiene sentencing guidelines were not addressed below and in any event are not relevant because of the different purposes of the legislation.
36. We find that the Judge's approach was impeccable. Given the seriousness of the multiple offences committed he was entitled to conclude that the offending might well pass the custody threshold. However in all the circumstances of the case he was also entitled to conclude that the gravity of the offending could be met by substantial fines, as the Appellants' counsel had argued at the sentencing hearing.

37. In considering the financial circumstances of the offenders in accordance with ss.124 and 125 Sentencing Act 2020. The Judge was right to consider the family farming business taking a global approach, not merely the modest monthly drawings of each appellant from the business. The Judge had all the financial information necessary to do so. Indeed the sentencing had been adjourned previously to enable more time for the Appellants to serve financial information to assist the court. The Judge was also careful to take account of both the confiscation order and costs order in accordance with s.13 Proceeds of Crime Act 2007 before deciding on the level of fines to impose.
38. The Judge was sentencing for a total of 12 offences committed by each appellant. He clearly had the totality principle in mind and considered the total fine necessary to reflect the overall seriousness of all the offending which he then divided by 12 for each individual count. There was no suggestion that the Judge should distinguish between the Appellants and they were equally culpable and responsible for the harm caused and should each receive the same sentence.
39. In summary, these were serious offences committed over a sustained period with serious consequences for the prevention and control of TB and animal welfare that could well pass the custody threshold as the Judge correctly observed. But for the reasons that he stated, the gravity of the offending could be met by the imposition of fines. In arriving at the amount of the fines to be imposed the Judge took all relevant matters into account including the availability of assets to meet the fine he had in mind and arrived at fair and just sentences that cannot be regarded as wrong in principle or manifestly excessive.
40. The appeal is dismissed.