

IN THE WESTMINSTER MAGISTRATES' COURT

REGINA

-v-

MARK HANKINSON

DECISION

1. The Defendant is charged, contrary to section 44 of the Serious Crime Act 2007:

On 11 August 2020, did an act capable of encouraging the commission of the offence of hunting a wild mammal with a dog, and he intended to encourage its commission.

Section 65(2) adds:

A reference in this Part to a person's doing an act that is capable of encouraging or assisting the commission of an offence includes a reference to his doing so by—

- (a) taking steps to reduce the possibility of criminal proceedings being brought in respect of that offence.

2. The Crown allege that the Defendant, through his words on two webinars, gave advice on how to hunt illegally by making it look like a hunt was in fact, trail hunting. In doing so, that he was encouraging the commission of the offence of illegal hunting.
3. Trail hunting is not illegal and involves the laying of a scent for mounted riders and hounds to follow. It replicates closely what a traditional hunt would have looked like but without a fox actually being chased, injured or killed. It seeks to replicate the traditional route that would have been taken by a fox. There is always danger in a trail hunt that the hounds will accidentally come across the scent of a fox and end up chasing it. The hounds should then be stopped but that eventuality would not amount to a criminal offence. Trail hunting is capable of being used as a cover for illegal hunting,

4. The question for me is whether the Crown have proved to me that the defendant actually offered advice and encouragement through his words and whether he intended his words to encourage illegal hunting but behind the smoke screen of trail hunting.
5. I remind myself that the Crown bear the burden of proof. They must satisfy me so that I am sure.
6. The Defendant is a man of good character. Good character is not a defence to the charges but it is relevant to my consideration of the case in two ways. First, the defendant has given evidence. His good character is a positive feature of the Defendant which I take into account when considering whether I accept what he told me. Secondly, the fact that the Defendant has not offended in the past may make it less likely that he acted as is now alleged against him.”

The Evidence

7. I have heard oral evidence and in particular, I watched the two ‘by invitation only’ training webinars by The Hunting Office during which the Defendant was one of those who addressed huntsmen and Hunt Masters. It was ‘an invitation only’ audience and I noted that the Defendant accepted that he was speaking to ‘like minded people’ could therefore speak freely.
 8. During the first webinar, the Defendant spoke on a topic billed as ‘overt trail laying’. During it, he spoke of the challenge of the ‘sabs’, the hunt saboteurs. During his address, he said the following words of significance and, suggested, central to this case:
 - i. *‘we need to have clear, visible, plausible trail laying being done throughout the day.’*
 - ii. He spoke of huntsmen previously having been ‘caught out’ but that the League was still out there and could be hiding watching and filming. He described them as *‘a force to be reckoned with.’*
- Further:
- iii. *‘...it’s a lot easier to create a smoke screen if you’ve got more than 1 trail layer operating, um, and that is what it’s all about, trying to portray um, to the people watching that you’re going about your legitimate business.’*
 - iv. *‘Um, it’s probably just as well to have something pretty foul smelling on the end of their, end of their drag just in case an anti leaps out from behind a gateway and grabs hold of it and says this is just a clean silk hanky or something ..’*

- v. *‘ Um, a lot of people in the past have tried to say oh we laid trails earlier, or we lay them the day before. In a situation where you’ve got saboteurs out, or antis or whatever, that’s not really going to work too well. We need to have clear and visible trail laying going on, on the day, and it needs to be as plausible as possible. ‘*
- vi. *‘Um, I always love Will Day who might be joining us on Thursday, when he lays trails for the New Forest he has emblazoned on the back of his sweatshirt ‘TRAIL LAYER NO. 3’.*

9. I need to carefully consider what he said in context and in light of the explanation he and others have given.

10. I have noted what is said by Mr Davies who spoke after the Defendant at that first Webinar:

‘ Now, you know more about hunting than the saboteurs or the Courts know, but what it will do is create that smoke screen, or that element of doubt that we haven’t deliberately hunted a fox, so if nothing else you need to record that and it will help us to write the defence to your Huntsman.’

Mr Davies is not before the court and it may be that the Defendant did not hear what he said. The Defendant cannot be held responsible for what Mr Davies said nor is he responsible. Mr Davies is, of course, right that the speakers do know more about hunting than this Court. This court does however understand well concepts such as creating smoke screens and creating ‘elements of doubt on **deliberately** hunting foxes’ (and I emphasise the word deliberately). This court is also very familiar with the writing of defences.

11. In the second webinar , the Defendant continued, in my judgement in a similar vein.....

- i. *‘ but as we’ll discuss later on that trail hunting needs to be highly visible, it needs to be credible and those involved need to be robust when questioned.’*
- ii. He talked of the use of a pack of dogs to flush out a wild mammal to be hunted by a bird of prey and that it was *‘a terribly good wheeze ‘*
- iii. He stated on hound exercise, *‘obviously that really is your default setting when things start to go wrong that really is one that you need to always have up your sleeve. And don’t be shy coming back to that when all else fails. Um that is your default setting.’*
- iv. *‘ So what are we looking for with the trails being laid? It’s got to simulate how the quarry would run, so there’s no point having someone with a quad bike just zooming up and down tracks and roads; that’s not achieving anything. Um, and in the same vein we need it, obvious evidence of it being laid into woods and other places where someone galloping around on a horse may not be able to*

get to. Now obviously you can if you're in a moorland situation, but you know having someone on foot I think is key to having proper trails laid um, in proper places to prove the correct evidence, um, and try and do that as best as you can. Er, and so at the end of the day we have the scenario where trails have been laid and the Huntsman sets off with the intention of finding these trails, er, and certainly not for looking for a live quarry and how, and then the Huntsman carries on in the normal way using hound and, er, voice and horn to control the hounds. Some people say well what's the point in laying trails? Well I think it's fairly self-explanatory. Er, if you haven't laid a trail on a daily basis you're not going to be covered by the insurance..... These, these Court cases are extremely expensive, er, and every time it goes badly wrong for us we take quite a financial hit, so we need, we need those trail lays laid properly, er, we need that evidence and it needs to be credible and it needs to be robust. Um, very important that whoever is laying those trails is prepared to stand up and be counted and that will mean going to Court, so your trail layers need to be of a calibre that they will stand up and face cross-examination in a Court room. Um, obviously we also need it um, if we're going to get any support from the Police, particularly when they're dealing with saboteurs and the like, if you haven't got any viable trail laying evidence, how on earth are we going to refute these allegations? And this has increasingly come to light with us now that the Police are not prepared to support us when we have problems with saboteurs, um, if we can't prove quite conclusively that we're not taking the micky, er, and just using this as a shield.'

'Um, so coming back to the, to the sort of modus operandi of the day, um, the trail layers, in my view, you need to have at least 1 trail layer out there, particularly if you've got the presence of undesirables.'

12. He went on to say the following :

- i. ' Don't forget at the end of the day it's a far more serious offence to commit perjury in Court than it is to be prosecuted under the Hunting Act, and if you're going to be under cross-examination in a Court room and someone says:
'Well, Mr JONES, um, what were you using as a scent?'

And you say 'Well I don't really know'.

'Well didn't you see the scent being put on, or did you not put the scent on the trail yourself?'

'Um, not sure'.

Um, you're going to find yourself in an awkward position, so I think that is a key point.'

ii. ‘ *Um, we’ve already discussed the credibility of, of the trail layers. Um, I think they also need to know the country well. Another key point is no hollering or pointing by anyone; we’ve had several people who has successfully, a Huntsman who’s been successfully prosecuted on that.*’

13. Lord Mancroft spoke during that second webinar. Agin, I re-iterate that the Defendant cannot be held responsible for what he said said.

He stated :

‘ *“...so please those of you who are filming and recording, please don’t stand there recording um, the opposition um, blowing their, flying their gizmos and blowing horns and say isn’t that marvellous that they haven’t seen us because we’ve just caught a fox behind them or something like that. I mean you’ve got to be very careful about who’s saying what. Even if you’re there, even if you’re not um, recording that person, that person may be talking behind your back and you must be very careful that if you’ve got your camera on the whole time, bearing in mind that it’s not a good thing to edit, try and edit your videos, what you don’t want to be doing is filming, um, after you’ve finished laying your trail and filming something that you don’t want to them be shown to anybody. **So the answer is yes, everybody with cameras and, and videos and recordings has got to be very careful about what they’re recording and make sure that we only record all the legal things that we do, because of course we only do legal things, so that’s all we can really record. So everyone yes, the answer be very careful, everybody.**”*

I did not hear from him and, of course, the Defendant isn’t responsible for another’s words.

That said, all the words of the others are relevant because it tells me something about the events he was speaking at and the ‘overall agenda’ in which he was also speaking. I do make clear that the Defendant is to be judged wholly on what he said but others’ words , in my view, provide context to what he said.

I should add, the Defendant stated in oral evidence that he had spoken to him after the meeting and described the words ‘as a bad joke.’

14. Richard Gurney also spoke at that second webinar. He said:

“...by collating evidence and having um, having a good trail laying team it was vital that we had that, enable, which would enable us then to be able to go and do what we all want to go and do. So this wasn’t about turning the Old Surrey and Burstow and West Kent into a trail laying pack, it was about giving us the support and protection that we needed.”

Mr Gurney did not give evidence so I bear in mind that I did hear his or others' explanations. That said, his comments are in line with all the other speakers and certainly not consistent with advising or training on legal hunting.

In my judgment, he was clear and unambiguous, it wasn't about turning that particular hunt into a trail laying pack. Rather laying a trail, allowed them to do what they really wanted to do.

Again, the messaging from other speakers was consistent and the Defendant was sharing an online stage with them. He said absolutely nothing to contradict or distance himself from what they were saying.

15. Paul Jelley said in the same seminar :

“If you're recording evidence for... Hunting Act trail laying whatever, don't use the same phones or anything where you've been using social media and bragging about what you've been doing out hunting, because if the police get hold of it you'll get both sides of it.”

Again, he did not give evidence but was clearly concerned on the police getting hold of evidence on both sides, for and against the hunt.

The Defendant was sharing a platform with Mr Jelley and others and said nothing to contradict their words. I make clear, I only consider what he said but I consider his words in context of the overall agenda. He was speaking at webinars where speaker after speaker was recognising illegal hunting would be going on.

Analysis

16. The words said must, of course, be considered in context and any ambiguity weighed in favour of the Defendant.

17. The Defendant came across as articulate and expressive in his use of the English language. I simply did not find him credible in any of his explanations of the words he used. He has, since, had much time to try to attempt to innocently explain them away but he was unable to do so. It wasn't just 'bad language' as he suggested.

I reject any suggestion that his choice of words were clumsy. There was a clear common thread throughout his addresses in the two webinars on 2 separate dates in that.

In my judgment, he was clearly encouraging the mirage of trail laying to act as cover for old fashioned illegal hunting. Whilst he didn't use overt words, he implied it again and again. Whether it was ensuring there was an actual smell on the trail laying and not using a clean hanky to ensuring that the trail laying in fact, looked plausible or his reference to creating a smoke screen. The latter can not be interpreted innocently in

perhaps trying to deflect anti hunt campaigners at a hunt, when coupled with the need to 'try to portray that you are going about your legitimate business' in the same sentence. Why would you need to try to portray anything as legitimate if you were in fact engaged in legitimate business?

In addressing the audience, he asked what is the point of laying trails? The answer he said was so that they would be covered by insurance. It is a strange question and damning answer if you only envisage lawful hunting; Trail laying is essential if that is what is genuinely going on. It is a simple answer and an unnecessary question. This was clearly a warning of the risk to those watching on if they could not show trail laying going on. It was a clear statement that in order to hunt illegally, there would have to be trail laying as a cover or smoke screen to be protected through insurance. Perhaps most incriminating is his direction and advice that trail laying has to be 'as plausible as possible.' The only reasonable interpretation of those words leads to the conclusion that a need to make something plausible is only necessary if it is a sham and a fiction.

If more evidence were needed, his reference to the need to have at least 1 trail layer out there is wholly illogical if lawful hunting was in fact, being suggested. If it were genuine trail hunting, it goes without saying that there would be at least 1 trail layer for it simply couldn't happen with one. There would be no need to suggest one was necessary unless it were a sham and a smoke screen.

18. The suggestion that his words have been misinterpreted by the police and they were innocent and consistent with genuine trail laying is simply not credible. They were deliberate and carefully chosen words to avoid making the encouragement appear blatant and 'in your face'. They were to provide a route to continue illegal hunting but under the cover of visible trail laying so that it could be pointed to if there were challenge.
19. In coming to my conclusions, I have considered the totality of the oral and written evidence but at the heart of this case are the two webinars and agreed transcripts. His words are clear and, in context, consistent and unambiguous. I didn't hear from the other speakers who I have referred to above and of course, make no criminal findings against any of them. Their words, however clarify the true meaning of what the Defendant said.

Conclusion

20. I am sure that the Defendant through his words was giving advice on how to illegally hunt. This was through the pretence of laying trails which it could be said the hounds were following. As he himself said, he was speaking to 'like minded people' and could therefore speak freely. He did not expect his words to be recorded and released into the public domain. It was clearly advice and encouragement to commit the offence of hunting a wild mammal with a dog. I am sure he intended to encourage the commission of that offence.

21. I find the Defendant guilty of the offence before me.

22. Fine of £1000 and contribution of costs of £2500 victim surcharge - £100. collection order. 7 days.

The Deputy Chief Magistrate

15 October 2021