IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	
${f v}_{ullet}$) Case Nos. 1208003037, 1208004171
EDWARD KELSCH AND	
SANDRA KELSCH,)
Defendants.	

Submitted: June 24, 2013 Decided: August 15, 2013

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MEMORANDUM OPINION AND ORDER ON DEFENDANTS' MOTION FOR JUDGMENT OF ACQUITTAL

At the close of the State's case on May 17, 2013, Defendants Sandra and Edward Kelsch moved for judgment of acquittal pursuant to *Court of Common Pleas Criminal Rule 29*. The State opposed the motion and the Court reserved decision. For the reasons set forth below, the Court **DENIES** the motion.

FACTUAL AND PROCEDURAL POSTURE

A. Background

On August 15, 2012, Sandra and Edward Kelsch were atrested and charged with misdemeanor offenses concerning their care and treatment of animals. Sandra Kelsch was charged with: 19 counts of Animal Cruelty or Neglect to Animals pursuant to 11 *Del. C.* § 1325(b)(2); 19 counts of Dogs Without License in violation of Section 402(b)(1) of the New Castle County Code; and 19 counts of Rabies Inoculation for Dogs pursuant to 3 *Del. C.* § 8204. Edward Kelsch was charged with 19 counts of Animal Cruelty or Neglect, pursuant to 11 *Del. C.* § 1325(b)(2).

On Friday, May 17, 2013, a trial was held in Court of Common Pleas for New Castle County. At the conclusion of the State's case-in-chief, Defendants moved for judgment of acquittal on the grounds that the State failed to prove a necessary element of their case: that the offenses occurred in the State of Delaware. Therefore, they argue, the Court lacks jurisdiction. The Court reserved decision on the motion and ordered briefing on the matter. The following are the relevant facts pertaining to the issue of jurisdiction.

B. Facts Established at Trial

Defendants Edward and Sandra Kelsch resided at 800 Chambers Rock Road. The property is situated along the border of Delaware and Pennsylvania. The investigating officers testified as to the events and investigation that preceded Defendants' arrests.

On July 12, 2012, Sgt. Eric Barnes of the Kent County SPCA arrived at 770 Chambers Rock Road to investigate a complaint of dogs running loose. Previously in his investigation of this complaint, Barnes had contacted Linda Wilson, sister of Defendant

Sandra Kelsch. Linda Wilson's driver's license listed her address as 770 Chambers Rock Road. Upon arriving at that location, Barnes drove up the driveway until it became necessary to continue on foot because of the terrain. When Barnes exited his vehicle, he heard multiple dogs barking on an adjacent property. Barnes then backed out of the driveway and drove to the adjacent property, 800 Chambers Rock Road. After pulling into the driveway at 800 Chambers Rock Road, Barnes encountered Defendant Sandra Kelsch. Barnes identified himself and stated that he was looking for the owner of 770 Chambers Rock Road. Sandra Kelsch responded that her sister owned the property at 770. When Sandra Kelsch told Barnes that the property was in Pennsylvania, he left the property.

On August 2, 2012, Barnes returned to the properties at 770 and 800 Chambers Rock Road, along with Sgt. Hollet of the Delaware County Animal Control and officers of the Chester County SPCA. They advised Sandra Kelsch that they were there to check the dogs. At 770 Chambers Rock Road, more than 15 dogs were found. When Barnes asked if he could see the dogs that were inside the residence at 800 Chambers Rock Road, Sandra Kelsch responded that the dogs would not "present well." Sandra Kelsch refused to allow them into the residence without a search warrant.

On August 3, 2012, Barnes returned to 800 Chambers Rock Road with members of the New Castle County Police Department and the New Castle County Code Enforcement Office to execute a search warrant for any dogs on the property. Barnes entered the house through the garage, where he found 13 dogs in crates. The dogs in the garage appeared to be living in their own urine and feces. Their coats were stained yellow and there were feces in

the crates. According to Barnes, there were "thousands of flies" throughout the garage. Some of the dogs had skin irritation or infections.

Defendant Edward Kelsch then took Barnes and Major Brian Whipple of the Kent County SPCA inside the residence. Inside the house, Barnes counted five loose dogs who had free roam of the house. He noticed animal urine and feces throughout the house as well as an overwhelming stench of ammonia from animal urine. Barnes and Whipple then brought the dogs outside of the house while waiting for New Castle County Police Department detectives to arrive.

Around this time, Sgt. Caterina Botterbusch of the New Castle County Police Department arrived at the residence. Botterbusch testified that upon taking a brief tour of the house, she smelled an odor of urine and observed feces on the floor. Additionally, she noticed "animals and clutter, trash, flies." Botterbusch stated that flies were "everywhere," and that she saw a bed which was being used as a litter box. Botterbusch also observed ducks in the dining room.

After the New Castle County detectives completed their investigation, Barnes and Whipple seized the dogs. Barnes asked Edward Kelsch if there were more dogs inside the house; he replied that there were not. Detectives then advised Barnes and Whipple that there was another dog still inside the house, trapped in a closed room. Inside the room, Barnes said there were "piles of runny feces" and that the stench was unbearable. The dog in the

room was a Samoyed.¹ The Samoyed could not stand, and the Officers observed maggots exiting its rectum.

New Castle County Code Enforcement Officer Chris Shetzler was also at 800 Chambers Rock Road to assist in the investigation on August 3, 2012. Shetzler's description of the interior of the residence coincided with the descriptions provided by Barnes and Botterbusch. Shetzler said that the kitchen and several bedrooms inside the house were "covered in filth" and that there were feces and an overwhelming odor of urine permeating throughout the home.

Shetzler testified that 800 Chambers Rock Road was located in Delaware. When asked during his testimony whether the property was located in New Castle County, Shetzler answered, "Yes." Shetzler explained that he checked a parcel map and determined that part of the property was located in Delaware and part was located in Pennsylvania. However, in his capacity as a New Castle County Code Enforcement Officer, Shetzler issued a citation which declared the house unfit for human habitation. The State submitted into evidence a photograph of the notice that Shetzler posted on the door of the house. The photograph shows the posted declaration of the house as unfit for human habitation under the authority of the New Castle County Department of Land Use.

Upon conclusion of the investigation, the Kent County SPCA seized a total of 19 dogs: 17 Samoyeds, one black lab mix, and one Lhasa/Shih Tzu mix. When the Kent

¹ Particular Siberian dog breed, known for their gentle disposition and thick white coats that require extensive grooming.

² State Ex. 2.

County SPCA asked whether the dogs had been vaccinated for rabies or if the dogs were properly licensed, Defendants were unable to produce any documentation.

Before resting, the State submitted into evidence a copy of the mortgage from the Recorder of Deeds for New Castle County for the property located at 800 Chambers Rock Road.³ The document states that the address is located in Newark, Delaware 19711.

PARTIES' CONTENTIONS

Defendants contend that the State failed to meet its burden of proving that the offenses occurred in New Castle County, State of Delaware pursuant to 11 Del. C. § 204(a). Defendants argue that it is unclear whether the house and garage, where the alleged offenses occurred, are located in Delaware or Pennsylvania. Defendants further contend that the State showing that New Castle County officials arrived at 800 Chambers Rock Road is insufficient to show that the situs was in Delaware. Lastly, Defendants maintain that even if the State can identify which parts of the property are in Delaware and which parts are in Pennsylvania, the State failed to prove where the allegedly abused dogs were located on the property. Accordingly, Defendants move the Court to grant the joint motion for judgment of acquittal pursuant to Court of Common Pleas Criminal Rule 29(a).

The State's response in opposition is that, under the standard for motions for judgment of acquittal, the State has provided sufficient evidence of jurisdiction so that a reasonable fact-finder could find Defendants guilty.

³ State Ex. 5.

⁴ Defs.' Post-Trial Mem. at 4.

⁵ *Id*.

DISCUSSION

A. The Legal Standard

Motions for judgment of acquittal are governed by Court of Common Pleas Criminal Rule 29(a), which provides that the Court, either upon motion or sua sponte, must enter a judgment of acquittal of an offense "if the evidence is insufficient to sustain a conviction of such offense." The judgment of acquittal motion "is tantamount to the former motion for directed verdict with the added proviso that the Court may, in its discretion, reserve decision upon the motion until after the verdict of the jury."

The standard for the Court to enter a judgment of acquittal is high under Delaware law. A judgment of acquittal is a judicial determination that the case should not go to the jury.⁸ A motion for acquittal will only be granted where the State has offered insufficient evidence to sustain a verdict of guilt.⁹ In determining whether to grant the motion, the Court must consider all evidence in a light most favorable to the State.¹⁰

In deciding the motion before the Court, it must be determined whether a reasonable fact-finder could conclude that jurisdiction was proper after construing the evidence most favorably to the State. I must decide whether the State provided sufficient evidence as to

⁶ Ct. Com. Pl. Crim. R. 29(a).

⁷ State v. Biter, 119 A.2d 894, 898 (Del. Super. 1955).

⁸ *Id*.

⁹ *Id.*

¹⁰ *Id*.

whether the alleged neglect of the dogs and the accompanying violations occurred in New Castle County, State of Delaware, in order to sustain a guilty verdict.

B. Sufficient Evidence of Jurisdiction

Pursuant to 11 *Del. C.* § 232, "[f]acts establishing jurisdiction . . . must also be proved as" an element of the offenses charged. ¹¹ Jurisdiction is a predicate element of any offense, which the State must prove beyond a reasonable doubt. ¹² The prosecution of an offense must occur in the county where the alleged offense was committed. ¹³

In determining whether jurisdiction is proper, the Court may consider direct or circumstantial evidence.¹⁴ Direct evidence includes "specific testimony or exhibits that an offense occurred in New Castle County; circumstantial evidence of jurisdiction could be inferred."¹⁵

In Naylor v. State, the Delaware Superior Court found that there was sufficient evidence of jurisdiction on appeal, "although there was no direct testimony that the events occurred in New Castle County, [and] there were no exhibits in evidence . . ."¹⁶ The Superior Court determined that "there was testimony about activity that could lead to the

¹¹ 11 Del. C. § 232.

¹² State v. Fax, 2005 WL 419366, at *4 (Del. Com. Pl. Feb. 23, 2005).

¹³ Ct. Com. Pl. Crim. R. 18.

¹⁴ Naylor v. State, 2013 WL 2151696, at * 3 (Del. Super. May 16, 2013).

¹⁵ Id. (citing James v. State, 377 A.2d 15, 15-16 (Del. 1977) (finding that "situs may be established by inference")).

¹⁶ *Id*.

inference that events occurred in New Castle County."¹⁷ "Although the testimony did not establish that 200 Red Fox Lane could only have been in New Castle County or was even in Delaware . . . a reasonable inference could be made that a uniformed New Castle County police officer . . . was performing his duty in New Castle County."¹⁸

In this case, I must only determine whether the State has provided sufficient evidence for a reasonable fact-finder to enter a guilty verdict, not whether the State has in fact proven jurisdiction beyond a reasonable doubt. Here, there is more than circumstantial evidence of jurisdiction that was upheld in *Naylor*, there is direct testimonial evidence of proper jurisdiction in the trial record.

First, Officer Shetzler of New Castle County Code Enforcement testified that 800 Chambers Rock Road is located in New Castle County. Shetlzer made this determination when he checked the parcel prior to arriving at the investigation. Shetzler posted on the door to the house located at 800 Chambers Rock Road that the residence was declared unfit for human habitation by New Castle County. 19 This direct evidence of Shetlzer testifying in his official capacity concerning his investigation of the jurisdiction and his official action of declaring the home unfit in New Castle County could lead a reasonable fact-finder to believe that the home and the attached garage are located in New Castle County, Delaware.

Second, Sgt. Barnes testified that 13 dogs were found in the garage and 6 dogs were found in the home. Barnes' testimony concerning the location of the animals, coupled with

¹⁷ *Id*.

¹⁸ *Id*.

¹⁹ State Ex. 2.

Shetzler's testimony that the home is located in New Castle County could lead a reasonable fact-finder to believe that the alleged abuse of these animals, failure to inoculate, and failure to have dog licenses occurred in the home and garage, located in New Castle County, Delaware. Lastly, the State submitted a copy of the mortgage, which states that 800 Chambers Rock Road is in Newark, Delaware. This could also lead a reasonable fact-finder to conclude that the home and garage are located in New Castle County, Delaware.

In viewing the evidence in a light most favorable to the State, I find that there is sufficient evidence of jurisdiction for a reasonable fact-finder to determine that the offenses occurred in New Castle County, Delaware.

CONCLUSION

Accordingly, IT IS HEREBY ORDERED this 15th day of August, 2013 that Defendants' motion for judgment of acquittal is DENIED and the matter will be rescheduled for further proceedings.

The Honorable Alex J. Smalls,

Chief Judge