

Thursday, 19th August 2010

Before:

HIS HONOUR JUDGE HODSON

R E G I N A

v

JEFFERY PAUL LENDRUM

Transcribed from tape by Harry Counsell & Co
Official Court Reporters
Cliffords Inn, Fetter Lane, London, EC4A 1LD
Telephone: 0207 269 0370

MR N WILKINS appeared on behalf of the PROSECUTION
MISS N PURCHES appeared on behalf of the DEFENCE

PROSECUTION OPENING OF FACTS

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[Preamble discussions between the Judge and counsel on the correct wording of the indictment and the POCA timetable]

MR WILKINS: Dealing with the facts of the offences, in the case involved, the attempt to export fourteen Peregrine Falcon eggs. This occurred on the 3rd May 2010 when, just before noon on that day, a cleaner at the Birmingham International Airport became aware of someone in the Emirates lounge, and in the cleaner's view, was acting somewhat suspiciously. Going into the shower area, staying there for quite a time, coming back out, but when the cleaner inspected the shower, it appeared not to have been used. Towels had not been used, etc. The cleaner then found two egg boxes within the shower area; one empty box and the other had what appeared to be a stained chicken egg inside. The stain, the prosecution say to look

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like a peregrine egg.

The matter was reported, initially it was feared he may be a, some terrorist type action had taken place and the police were immediately summoned. The police duly arrived and found the defendant; he was pointed out. It transpired that this not was not a terrorist situation, instead what the defendant was found to have, when searched, was a number of falcon eggs; he had fourteen in total. Which had been placed into socks, that had been tied to keep the eggs individually wrapped and they in turn had been strapped with bandages to the chest of the defendant. [Inaudible], there are some photographs, I think they are on Your Honour's bundle but there are some better quality photographs there...

JUDGE HODSON: I have seen them.

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MR WILKINS: ...which show the items, the socks and then the eggs [inaudible].

When the defendant was first questioned about the matter, he claimed to the police officers that they were chicken eggs. They were chicken eggs that he had been purchased from Waitrose and he gave two reasons for why he had got them with him; one was he was going to play a joke on his father when he got back to, he was flying to Johannesburg; he would get some sort of egg hard boiling all bar one and also said that he had strapped them to himself because he had heard that it was a remedy for back pain. Needless to say, officers were not convinced, officers attended and believe the eggs were falcon eggs and therefore subject to export restrictions and the defendant was duly arrested in relation to the matter. Other items were also found; there were two searches; one of the car that he arrived at the

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airport in and within that vehicle there were various items including an incubator, a cool bag, egg wrappings, a back pack containing filing equipment and a satellite navigation unit. On interviewing the defendant it also became apparent that he had storage room at Northampton which was also searched. And, there was found an incubator top, three syringes and another incubator. Also in his possession as he left the country in his luggage was found a number of items, including a Leika make scope, viewing scope, a thermometer, binoculars, [inaudible] thermometers, a Garmin GPS system and stuff, satellite system, walkie talkie, a golf ball retriever and another insulated bag.

As a result of all these finds the defendant was then taken to Solihull Police Station and interviewed about the matter having been arrested under the Wildside and Country, Wildlife

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and Countryside Act and Customs and Excise Management Act for the stealing of these eggs. What he said in interview, there are lengthy interviews but can be summarised quite simply is that he admitted that he, himself had taken these eggs from Peregrine nests. He said he had done it over a period of two days, this was the Tuesday because he was interviewed on, he said it was on the Thursday, the Friday, of the previous week. That he travelled to Wales, saw a number of Peregrine falcons there and decided to take the eggs, and visited four sites and got the eggs by either climbing to the nests, [inaudible] he was unaided by a rope or anything but also abseiling down to the nests in order to take eggs from nests. He did state that he, initially, was going to take them from the country, he says to South Africa, where he intended to hatch and breed from them. He said that he did keep the

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eggs in an incubator for a time, but the then alleges that when he got to the airport, he thought, the eggs were no longer alive. And, he was still taking them, just to keep as a collection saying that he had been unable to blow them and get the contents from them before he got to the airport, albeit [inaudible] was found to have in his Northampton store [inaudible] commonly used for that kind of activity. He says that he wrapped the eggs in socks to protect the shells and not to try to incubate them on the flight out of the country. However, the fact is that the eggs were still alive. After seizure they were handed over to an expert who managed to hatch, within a few days, the eggs were near to hatching, twelve of the eggs; two did not hatch. Out of those twelve, eleven of the birds survived and were returned to the wild.

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Also in the defendant's luggage was a number of sums of money; £5,000 sterling, \$3,500 United States, and some South African rand. However, in interview the defendant still maintained that this was not a commercial enterprise; the prosecution do not accept that for a number of reasons. Other items found in his possession, including the items that were patently for the taking and dealing in eggs, were a number of items of documentation which showed...

JUDGE HODSON: Taken from where [inaudible] possession?

MR WILKINS: The papers were, some was in luggage, some in Northampton, there were lists of nest sites, in his luggage, the, there were items, the previous Court appearances abroad in his Northampton possession.

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Examples of these papers show that he had at one stage responded to an article written by a lady in Canada when [inaudible] falcon eggs were taken. The defendant was responsible for that offence and was subsequently fined for his part in the offence; he received seven fines of \$500 plus \$104 costs in each case. He had been found in possession of a number of eggs and also some [inaudible] ...

JUDGE HODSON: When was that then please, when?

MR WILKINS: That was in May 2002, he also had in his possession the actual court order indeed documentation relating to that conviction.

JUDGE HODSON: He was convicted of what?

MR WILKINS: Possessing wild bird's eggs.

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There was also a number of letters that he had written and also letters he had received from a person by the name of Dugmore. These, all in a period in early 1980s, 1981, 1982. When those letters are read they refer to getting birds and getting birds eggs, transporting eggs from South Africa to England where the Dugmore's resided. Asking for, their requirements, what they would like and telling them of sites that he had found and birds that he knew were nesting. In fact, following an investigation, Mr Dugmore was prosecuted in 1986 at the Stafford Crown Court for keeping six eagles, again, avoiding import prohibition. He received a £500 fine with £500 costs. It is apparent from the letters that the eagles, in all probability, came from the supply of eggs from this defendant to him.

In relation to the Canadian offence, a DVD was also found showing the defendant, in fact,

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abseiling from a helicopter with the attire to get at the relevant nests [inaudible]. For those reasons it is said by the prosecution that this was indeed a commercial operation, an operation that the defendant was very familiar with and had partaken of in the past. Further investigation into, also led to information that he, in 1984, he and his father were convicted in a Zimbabwean Court of illegally taking eggs from a variety of birds, from national parks. The relevant legislation in that country was The Park and Wildlife Act and each defendant was fined \$1,000 on each count and a four month prison sentence, suspended for five years. Again, the prosecution say that this was a true commercial operation that the defendant was partaking in on.

Checks were made but indeed the defendant admitted that he had no proper permits for the

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exports of the eggs. He has given some explanation for the money saying he recently sold a house, those monies are still in police possession obviously pending the Proceeds of Crime Act order.

Dealing with the value of the eggs, I know again, from the Proceeds of Crime Act hearing there may be some dispute but the, what the potential value of these eggs are. For certainly, the live birds, the fledgling birds can be obtained legally, they can be bought but they will all in the main be birds that have been bred in captivity, not birds from the wild. It is known from looking at the number of internet sites that such eggs, such a newly fledged falcons, which no doubt these eggs were intended to produce, sell for, on average, £1,500 for a female bird; £600 for a male. However, an expert in the field has made comments that of

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course, in this particular case, the person who was going to buy the eggs was effectively getting them on the black market. It is most likely that they were going to end up in the Middle East and a stop-off in Dubai was [inaudible] most likely to sell. It appears, from the expert's evidence that the birds that have been hatched from eggs taken from the wild are far preferred to those bred in captivity. I am told that it produces a gene pool in [inaudible] birds and the person looking to buy these birds [inaudible] for his own falconry and then further breeding prefer and will pay more for these that that have been taken unlawfully from the wild. There is an estimate by the expert that this one puts an extra premium on for that type of egg and taken into account that the risk that the defendant has to go to get the eggs to the customer, the estimate is that these fourteen eggs, had they all hatched could

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have produced birds that would have sold for in the region of £70,000.

ANTECEDENT HISTORY

I have mentioned the convictions in other jurisdictions; Your Honour will be aware from the antecedent history that there are no convictions recorded against the defendant in this country.

Can I mention at this stage a matter that appears to be similar, shall we say to the law regarding the [inaudible] Act. There are a number of items, I do have a list of items that the prosecution will seek forfeiture of, and I have mentioned many of them already, the items from Northampton, from the luggage and from the car at the airport. And, also, the application for the car itself because that was equipped with an incubator that [inaudible]

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been used by the car's electrical system, which the prosecution say was obviously being used to keep the eggs incubated while travelling to the airport took place.

There are two provisions whereby those items could be forfeited by the Court. One is Section 143 of the Powers of the Criminal Courts Sentencing Act. Obviously, under the Proceeds of Crime Act legislation, such an order should wait until the Proceeds of Crime Act proceedings have taken place because they are factors which must be taken into...

JUDGE HODSON: That is an order depriving him of his interests? [crosstalk].

MR WILKINS: Yes, [crosstalk] because, his story, the thinking the behind it is [inaudible] until it is safe to enforce some sort of assets. However, there is also provision under the Wildlife and Countryside Act 1981, Section 21, for forfeiture of such goods and of course the

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defendant obtained these eggs in contravention of that Act and those provisions could also apply. That Act did not mention any Proceeds of Crime Act and the forfeiture provision could not take place. Therefore it would appear as if that [inaudible] is to be used it would have to take place today, but would have the effect of taking those items out the calculation of assets available to this defendant. I, in my application is that the confiscation [inaudible] if forfeiture does take place today under the Wildlife and Countryside Act.

There was also, so the Court is aware that [inaudible] similar in terms, in due course there is no argument about this, there is a compensation claim but that must be left until the Proceeds of Crime Act matter is heard that being the arrangements to the care of these eggs and the hatching of them.

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JUDGE HODSON: Ought those the costs to of the prosecution?

MR WILKINS: No, not under authorities I have read, Your Honour, there are [inaudible] previous case that it was a Crown Court authority whereby this argument took place was apparently, I am told, by police authorities that an order was made to pay for the costs out of central funds but again, there does not seem to be any strict authority on that.

JUDGE HODSON: Well, if you are going to suggest that I know what you are talking about, the costs of the gentleman who has chosen to give up work in order to do that [crosstalk]

MR WILKINS: That is right [crosstalk] there is also first class and returns ...

JUDGE HODSON: I would have thought, I would have thought that did require you to establish that this a proper matter for the compensation order as opposed to recovery of the costs from

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the prosecution, otherwise you will have to pay for this figure. You asked, presumably, the prosecuting authority asked this gentleman to look after these eggs and to hatch them if he could?

MR WILKINS: Yes.

JUDGE HODSON: Which he duly did and so basically you will pay the costs it and then recover it from any order that is made, if an order is made.

MR WILKINS: Yes, Your Honour.

JUDGE HODSON: You will have to [inaudible] the authorities a proper method by way of compensation as opposed to [inaudible] in any event both those matters will await the outcome of the Proceeds of Crime Act. [Crosstalk]

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MR WILKINS: [Crosstalk]

JUDGE HODSON: What you can help me with though and I do regard this as important, is how endangered the Peregrine Falcons species is...

MR WILKINS: [Crosstalk]

JUDGE HODSON: ... if at all, how many, how many nesting birds are to be found, what is there population in Wales, all of this information I am sure is within these papers?

MR WILKINS: The, um, the birds come under the highest level of endangered species [inaudible] in the case of wild birds in the Wildlife and Countryside Act. The [inaudible] if I can confirm, [inaudible] ...there is a note here, that the estimated number of breeding pairs in the United Kingdom is one thousand, four hundred and a comment that once the numbers

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was much lower, they are beginning to breed but it was also said that the species is still persecuted by certain [inaudible] involving the rearing of game birds [inaudible] illegal falconry. So, one thousand, four hundred breeding pairs.

Can I assist with anything further?

JUDGE HODSON: Pardon?

MR WILKINS: Is there anything further?

JUDGE HODSON: [Inaudible].