

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN
[SQUARE BRACKETS]

**IN THE DISTRICT COURT
AT GREYMOUTH**

**I TE KŌTI-Ā-ROHE
KI MĀWHERA**

**CRI-2020-018-000324
[2023] NZDC 4021**

THE KING

v

DEL RITCHIE EDWIN

Hearing: 24 January 2023
Appearances: J Whitcombe for the Crown
G Fletcher for the Defendant
Judgment: 25 January 2023

ORAL JUDGMENT OF JUDGE M J CALLAGHAN

[1] The defendant's formal name is Del Ritchie Edwin and he faces three charges.

[2] The first charge is one of entering onto land used for agricultural purposes at [address A] without authority and with intent to commit an imprisonable offence in relation to beehives on that land.

[3] This charge is alleged to have occurred between 1 June 2019 and 12 August 2019.

[4] The second charge is a similar charge, entering onto land used for agricultural purposes at [address B] again without authority with intent to commit an imprisonable

offence in relation to beehives on that land. The dates of that offence is 1 November 2019 to 22 November 2019.

[5] The third charge is for the same address but the dates are between 2 December 2019 and 3 December 2019.

[6] The background to these offences is that the defendant lives at [address C]. The two complainants have beehives situated in two separate locations within a short distance of the defendant's address.

[7] Beehives are constructed of separate components made up of bottom boards, between two and five boxes for the collection of honey, a feeder box and a steel lid. There are also spreaders in the hives. Hives are valued at around \$2,000 each.

[8] The allegations are that on those particular occasions the defendant went and removed beehives from the premises. On each occasion he entered the property which was being used for agricultural purposes and he destroyed some of the bees and beehives and removed beehives from the property.

[9] On 1 May 2020 the police executed a search warrant at his address and recovered identifiable beehive components, those components being identified by the complainants. In total the police recovered 69 boxes, 18 bottom boards, 20 lids and other identifiable beehive components which belonged to the complainants.

[10] Before I begin my consideration of the evidence, it is important to set out my role in a judge-alone trial. Essentially I am required to decide whether the essential elements constituting the alleged offences have been proven beyond reasonable doubt. This is a criminal prosecution and the onus is on the Crown to prove the elements of each charge beyond reasonable doubt. There is no onus on the defendant to prove or disprove anything.

[11] Not all facts need to be proved beyond reasonable doubt, only those that make up the elements of the charge.

[12] I have considered all of the evidence that has been placed before me in this case, that includes the evidence on oath, the evidence read to the Court without objection and the exhibits, and I have also watched the defendant's DVD interview with the police when he was charged on 1 May 2020.

[13] Clearly the evidence that I have heard in this case with the conflicts that are incorporated in there cannot all be correct. The divergence in the evidence simply does not allow for that to occur. As I say, I look at all the evidence with the aim of being objective, careful, impartial and dispassionate in my assessment of the evidence.

[14] I have to consider the honesty, reliability and credibility of each witness. I do not have to accept everything that a witness says or reject everything that a witness says. I am entitled to accept parts of and reject parts of what witnesses say in their evidence.

[15] I have also considered the reasonableness, coherence and probability of the evidence of each witness. I have considered their evidence in terms of whether their evidence is consistent with or supported by other evidence. I have been particularly cautious when I have examined evidence which I have considered contradictory, inconsistent or unsupported.

[16] I have also taken into account matters when I have considered the witnesses, their appearance, demeanour and the manner in which the witness was observed at the time the incident took place, whether the witnesses were under the influence of any alcohol or drugs, the reliability of the witnesses and their powers of observation, the opportunity of the witnesses to perceive material facts and ability of the witnesses to articulate what they perceived, the memory of and judgment of the witnesses and any interest that a particular witness may have had in the outcome of this case. By this I mean whether a witness has a motive to lie, exaggerate, distort or minimise the actions of anyone involved. I have also considered whether there is any bias or prejudice for or against the defendant in their evidence that was given.

[17] I have also looked to see whether or not the witnesses have been independent and whether or not there was any relationship between the witnesses. In looking at

this aspect I have looked at independent sources to either support or refute any evidence that I considered might well have detracted from the witnesses' evidence.

[18] Lack of independent evidence however is not fatal. Many cases involve issues of credibility without independent evidence.

[19] I have also made myself aware that any inaccuracy about secondary, marginal or unimportant facts often arises in cases such as this because the witnesses are focussed on central facts. Witnesses do not see all the same things and they do not place the same weight on what they see. Witnesses also have different abilities to recall matters from their memories.

[20] I have also born in mind that these incidents are said to have occurred in 2019 and that the search of the property of the defendant took place in May 2020 and the hearing of the evidence of this case took place on 24 January 2023, some three years approximately since the incident occurred.

[21] I also want to emphasise that in reaching a decision in a judge-alone trial it is not necessary nor am I required to articulate findings about every item of evidence. My role is to determine whether the prosecution has proven the elements of the offences beyond reasonable doubt. In doing that, I may have to resolve some primary disputes over the facts although the facts were not in great contention here.

[22] In coming to my conclusions, I also want to emphasise that I am entitled to draw inferences. An inference is simply a logical deduction from two or more proven facts. The making of inferences occurs by judges on a daily basis in the deductive process of assessing evidence.

[23] I also comment that there is some circumstantial evidence involved here and circumstantial evidence is often compared to strands in a rope. One strand may not be very strong but a number of interwoven strands can make a case strong.

[24] The witnesses that I heard in this case were as follows. Firstly there was [complainant 1] who is the owner of [business name deleted]. He is a registered

beekeeper with New Zealand Apiculture and his registration number is K43. His evidence was that his registration number is marked on the face of bottom boards, boxes from beehives and from wooden frames in beehives. He said that beehives are constructed from a bottom board, from boxes, a feeder box, an inner cover, a queen excluder and a steel lid. Each box contains nine frames.

[25] [Complainant 1]'s business has between 600 and 700 beehives located in many different locations in the Grey District. He has them in the Arnold Valley area and has two sites at [address A].

[26] [Complainant 1]'s business constructs their own beehives and uses native timbers. In particular he said that he used kawaka cedar being a native timber. He also said that he has a router which he uses to make hand grips on the boxes that he makes. The router was made by him specifically for the task of making the hand grips and is distinctive on all of his boxes.

[27] He said that in order to construct the boxes, the boxes are soaked in paraffin wax and then painted and that seals them. They last a long time and on each box and other wooden items he puts his registration number of "K43" by using a branding iron.

[28] On 19 January 2019 he went to his hives located at [address A] in the Arnold Valley. He discovered that seven of the beehives had been tampered with and the contents had been scattered around. Some of the contents had been thrown into the bush and this resulted in complete destruction of those hives.

[29] On the afternoon of 12 August 2019 [complainant 1] checked his hives at [address A] in the Arnold Valley. This time he discovered that 20 of his beehives had been tampered with and the contents scattered around. Those beehives had been completely destroyed. He also noticed that seven of his hives had been stolen. Those hives had been behind a locked gate in the paddock.

[30] On Friday 1 May 2020 he went with police to [address C] where he identified and recovered 30 boxes, seven bottom boards, three lids, one feeder box, one queen excluder, three split boards and one propolis mat which belonged to him.

[31] The sites at [address A] are distinct. The first site is called the top site and that is where he went first on 19 January 2019. The second site was called the bottom site and that is where he went on the second occasion.

[32] He said that the hives that were stolen would need to have been transported away. He said they would be too heavy to lift for one person but they could be taken apart but if that happened the person would lose the bees. He said that they could be removed on a wheelbarrow or on a truck. He said that it would be a lot of work to pass them over a fence.

[33] He was also able to identify the boxes that he had located at [address C] by the distinctive nailing of the boxes and the construction of them, the type of wood used and the router handles. He also had the branding put on and there were placed on the boxes were the branding had been chiselled off. This was also on the wooden frames inside the boxes.

[34] He said he also used some plastic frames but he could not identify them when he was at [address C].

[35] He also said that it would be unwise and difficult for anyone to deal with beehives without being properly protected. He agreed in cross-examination that protective equipment would be needed and without any protective equipment there was a threat of being stung. He said you might get away with no protective equipment in cold weather and at night time but in warm weather it would be not wise to do so, but it might be all right to move at night time, but that was not a desirable time to do so.

[36] He said that a full beehive would be difficult to move without a sack barrow or a crane. He did not observe any tyre marks or crane marks at the sites where the boxes had been taken or destroyed. He also said that he had never given away any of his beehives and he had not disposed of them by any other means other than by burning them.

[37] The router that he used made distinctive patterns on it which made it easy for him to identify even though any identifying brand, that is the “K43” symbol, had been removed. He said that he had been a beekeeper for over 40 years.

[38] The second complainant was [complainant 2]. He is the owner of [business name deleted]. He is a registered beekeeper with the New Zealand Apiculture, registration number of K21. He also has been in the industry for over 40 years and said that he is a third generation beekeeper.

[39] He described that each hive is made up of between one and five boxes and are constructed on a bottom board with boxes or supers or a feeder box and a steel lid. The boxes each contain nine frames. He said that he builds most of the hives himself using techniques and materials and distinguish his hives from components of other hives.

[40] The way in which he constructs the bottom boards is that he makes them distinctive by placing four fence staples on them to secure the boxes to the board to make sure that they do not slide off in wet weather. He also said that the bottom boards are made by compiling two runners of treated timber and then they are secured to the top board and the staples are then placed in each corner.

[41] As to the lids on his beehives, he said that they were identifiable because he had a dimple put in them by using a hammer. He also said the feeder boxes became distinctive because he had holes drilled upwards into them for air circulation and a mesh put over to cover the holes.

[42] On 22 November 2019 the hives at [address B] were checked and eight of the beehives had been vandalised. The straps had been cut and thrown into the trees and the boxes had been thrown in a gully behind the site and some of the hive components were missing. He made a report to the police.

[43] On 3 December 2019 hives at [address B] were again found to have been damaged and destroyed. He noticed footprints around the site. He lost 18 beehives in

that incident. He said that the value of the honey lost amounted to \$13,000 approximately and the value of the kamahi honey was approximately \$1,800.

[44] On 1 May 2020 he went to [address C] with the police where he recovered 34 boxes, 11 bottom boards, 17 lids, four feeder boxes and two split boards, all which belonged to his business. Again he agreed in cross-examination that protective equipment would be necessary and he agreed it would be difficult to take a whole hive without assistance. He said that if it was removed in pieces the hive would die.

[45] He has never given any boxes away and any that are past their use by date he had burnt. He said that if any fell off the back of the truck that he would stop and pick them up and not leave them lying on the roadway.

[46] [Sergeant X] was a police sergeant. His evidence was read. He went to the defendant's address at [address C] at about 7 pm on 14 March 2020. He drove onto the property and parked his vehicle and walked over to the dwelling which was a small two bedroom hut. The door was open and the fire was lit.

[47] He called out to the owner of the property who was the defendant to see if anybody was there but there was no reply. He could see inside the dwelling but could not see anybody there. He took a step inside the dwelling, briefly just looked to see if there was someone in there because the door was open and the fire was on.

[48] He then walked around the property and he saw two box sections of a beehive. They were apart and on an angle as if they had been recently put down and there were a lot of bees in the air. He kept calling out but did not see anybody.

[49] He then took photographs of the beehives that he saw because they were similar to the ones that had been reported stolen from [address B].

[50] He then went up to the dwelling a second time calling out for the defendant. The defendant walked up to him to meet him. The defendant said that he had issues with the police in the past and he suffered PTSD as a result of police action.

[51] When they talked about the bees, the defendant's attitude became aggressive he said. He was angry and said other beekeepers could fuck off, they had no rights to have hives in his area taking pollen off his flowers. He then asked the sergeant to leave which he did.

[52] The photographs that the sergeant took were then showed to [complainant 2] and he confirmed the lids that were shown in the photographs belonged to [complainant 2].

[53] As a result, on 30 April 2020 [Sergeant X] obtained a search warrant for [address C] and at 9.05 am on 1 May 2020 he executed the search warrant at the defendant's address. With him were other police officers but also [complainant 1] and [complainant 2].

[54] In the presence of [Sergeant X], [complainant 1] and [complainant 2] identified particular portions of beehives that were theirs and they were able to clearly identify them.

[55] The search warrant was shown to the defendant and he made no comment. The sergeant arranged for photographs to be taken and he also arranged for the property that had been identified as belonging to the two complainants to be uplifted.

[56] [Witness Y] gave evidence. He is the operations manager for America Foulbrood Management Agency. This agency maintains a database of all beekeepers and their hives. His evidence was that anybody who owns a beehive must be registered.

[57] He said that on 4 May 2020 he received a phone call from Mr Edwin asking to become a registered beekeeper. The reason given by the defendant was that the police kept asking him for his beekeeper registration number. [Witness Y] then referred him on to the appropriate person to obtain one.

[58] He said that the defendant told him that the police had visited his property and had taken lots of his beehives that he had purchased from Farmlands and that he had misplaced any receipt.

[59] On 8 May 2020 he again talked to Mr Edwin. During that conversation Mr Edwin told [witness Y] that he had been naughty, that he had taken some hives from some beekeepers. Mr Edwin said that he was in trouble with the police. [Witness Y] described it as a casual conversation.

[60] He then said that Mr Edwin raised the fact that he was going to poison the bees because they were taking the nectar from his trees. [Witness Y] tried to dissuade him from doing that because that was illegal. He thought it was an overreaction by Mr Edwin. He did not recall any mention being made of the use of the Roundup for that purpose.

[61] [Witness Z] is a former police officer. His evidence was that he was responsible for taking the items that were identified by [complainant 1] and [complainant 2]. He said that he had marked each of the items with a number and also identified the particular items with a dab of green paint. He was present when [complainant 1] and [complainant 2] were identifying their property and they were in his view able to accurately identify property as theirs. He indicated that there was no dispute between the two owners as to the ownership of the various items that were being observed during that process.

[62] Lastly, [Constable ZA] gave evidence. His evidence was that he was at the address of [address C] and he took the defendant back to the Greymouth Police Station. This was after the search had been completed.

[63] He interviewed Mr Edwin and during the course of that interview Mr Edwin said that he had bought the beehives from Farmlands. He said that there were no numbers on any of the boxes because he was not registered yet.

[64] When it was put to him that there were identifying numbers on some of the boxes or at least one of them, he said there were no numbers of any of the boxes.

When it was put to him that there were numbers identifying the boxes previously but they had been scraped off and removed and painted over, he again said there were no numbers of any of the boxes.

[65] He said that he had not stolen any of the boxes and that he had used the boxes previously for growing cannabis plus he had purchased others from Farmlands. He said that the beehives he had purchased were his and the other ones were second hand ones which he had dug out of the ground and some he had found on the side of the road.

[66] When pressed about that, the defendant had said that he had found the ones on the side of the road at Stillwater about 10 years ago. He said that they were just lying along the side of the road.

[67] The defence elected to call no evidence, they were not required to do so.

[68] The three charges are laid under s 231A of the Crimes Act 1961. Under subs (4) of that section, agriculture purposes includes without limitation the farming of livestock or crops, horticulture including growing fruit, berries or vegetables, viticulture, beekeeping and forest cultivation.

[69] Land as described in that section does not include a building within the meaning giving under s 231 of the Crimes Act.

[70] In each of the charges, the first issue that I have to determine is whether or not the land was used for agricultural purposes, that is the land at [address A] and the land at [address B].

[71] Both [complainant 1] and [complainant 2] gave evidence that they put their beehives there. They are structures under the Act and under the section and the land was being used for agricultural purposes because beehives fit within the definition.

[72] [Complainant 1] also indicated that he had to put in an electric fence wire around some beehives to stop cattle damaging them, hence it is farmland. There is also picture being produced to me of the two sites and it is clear from that that the land

is agricultural land. Hence I find that ingredient of the charge proved beyond reasonable doubt.

[73] The second aspect of the charge that I have to be satisfied beyond reasonable doubt is whether or not Mr Edwin entered the land at either [address A] or [address B].

[74] The first issue is that the identifying marks on the beehives from [complainant 2] are distinctive. They are the dent in the tin or metal roofing, the cage drilling into the feeder box and the mesh placed over that hole, the construction of the bottom boards, the construction of the particular staples to prevent the beehives falling off indicate to me that those items are readily identified by the person who made them and I am satisfied that they were located at the defendant's property.

[75] I am also satisfied that [complainant 2]'s evidence that they were the items missing from his site at [address B].

[76] In respect of [complainant 1]'s boxes, the first and most distinctive part of the boxes are the power handles which have been produced by [complainant 1] in the construction of the boxes. [Complainant 1] has a router which he constructed himself and he used to make the handles on the cases. Those handles are distinctive and they are different from any bought boxes and they are also different from the boxes that were used by [complainant 2]. I am satisfied that that identifying feature is significant.

[77] Also [complainant 1]'s evidence was that he used nails to secure the boxes on the sides and bottom and it was clear that those that are purchased are normally held together by staples, and that was another distinctive feature.

[78] The other distinctive feature of [complainant 2]'s boxes was that he used screws as opposed to either staples or nails. Again, an identifying feature.

[79] I am satisfied that despite the fact that all but one of the boxes did not have any identifier either "K43" or "K21", I am satisfied that that had been erased from the boxes to hide the true owner's identity. The one box which has the "K21" marking on

the rear of it indicates to me that that belonged clearly to [complainant 2]'s business and that Mr Edwin had no authority to have it in his possession.

[80] The boxes that were found at Mr Edwin's property I am satisfied they having been identified by the owners as being their property were removed from either [address A] or [address B]. The only way they could have been moved would be by a person taking them from that address.

[81] Mr Edwin lives 1 kilometre as the crow flies to [address B] or a short distance by motor vehicle to that address and about 750 metres from [address A]. He had in his possession a sack barrow which would have been capable of moving the beehives from their locations.

[82] Those items being found at his property and the evidence that I have heard leaves me to the inescapable conclusion that he was the person who went onto the property to remove those beehives and those boxes and other items.

[83] The only way that anyone could remove them from the land would be to go onto the land to do so. He had no authority to go on the land from any of the owners nor from the owners of the beehives.

[84] Therefore, I reject his explanation that he had purchased the boxes and also that he had found some of the boxes, the evidence being clear that none of the boxes had been discarded by the owners.

[85] The only conclusion I can draw from all of those facts is that he entered the land to remove the beehives and the boxes and the other items which were subsequently found at his property.

[86] When I put all that information together I am left in a situation where I can conclude without doubt that he removed them from where they were secured and put them onto his own property.

[87] The next issue that I have to be satisfied of is whether or not he intended to commit an imprisonable offence in relation to these beehives.

[88] In relation to each of the charges the beehives at those sites were damaged, he going onto the property and desecrating the beehives as he did would be an offence of intentional damage. I am satisfied that when he entered onto the property he did intend to commit a criminal offence.

[89] That is also evidenced by the fact that he removed some of the beehives or portions of them and that is theft and theft is an offence which carries an imprisonable sentence. I am satisfied that at the time Mr Edwin entered onto the agricultural land he did intend to commit an imprisonable offence in relation to the beehives either to take them or to destroy them.

[90] His explanation that the bees were stealing his nectar in my view does show some intent to do something to the hives that was illegal and therefore an imprisonable offence.

[91] I reject his assertion that he had purchased all of this boxes from Farmlands or that he had dug up second hand ones or that he had found some on the side of the road.

[92] The reason I reject that explanation is because the complainants have clearly indicated that they did not discard any of their boxes even when they were past their used by date because they were burned, and that if any had fallen off the back of a truck as it was put to each of them, they would have recovered the ones that had fallen off the truck.

[93] That being the case I am satisfied beyond reasonable doubt that Mr Edwin did go on to agricultural land at [address A], that land being used for agricultural purposes. I am also satisfied that he had no authority to enter the land. I am also satisfied beyond reasonable doubt that he intended to commit an imprisonable offence of either intentional damage or theft in relation to the beehives.

[94] In respect charge 2, I am satisfied that the land at [address B] was used for agricultural purposes. I am also satisfied that Mr Edwin entered onto the land between the dates specified in the charge. I am also satisfied that he did not have authority to enter the land. I am also satisfied beyond reasonable doubt that he intended to commit

an imprisonable offence of either intentional damage or theft to the beehives when he entered the land.

[95] The same applies to charge 3 on the relevant dates, I being satisfied beyond reasonable doubt.

[96] Accordingly, Mr Del Ritchie Edwin will be found guilty on charges 2, 3 and 4 in the Crown charge list I having already dismissed charge 1.

M J Callaghan
District Court Judge