Reasons

12 June 2011
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POLICE V GLENN BROWN

CHESTERFIELD MAGISTRATES' COURT - 13th JUNE 2011.

DECISION.

The defendant, Glenn Brown faces seven charges, three contrary to the Wildlife and Countryside Act 1981 and four contrary to the Animal Welfare Act 2006. The charges in relation to the Wildlife and Countryside Act relate to the alleged unlawful use of a cage trap; the intentional taking of a wild bird – namely a sparrowhawk – and the possession of items – namely a pigeon loft and pigeons – which were capable of being used for committing the offence. The charges under the Animal Welfare Act allege one charge of causing unnecessary suffering to a pheasant and three charges of failing to ensure the needs of animals, for which he was responsible, were met to the extent required by good practice. All parties in court are aware of the full particulars of these offences. The charges relate to dates between the 14th April and 23rd May last year and arise from what the prosecution alleges is the unlawful use of a cage trap on the Howden moor.

It is not for Mr. Brown to come to court to prove his innocence to me but for the prosecution to prove beyond a reasonable doubt that he is guilty. Mr. Brown is not only a man of previous good character but his references – which were not challenged – show him to be a man of exemplary good character. He is entitled to expect me to take that into account when reaching my decision in respect of each and every charge and I confirm that I have done so.

The use of a crow trap is lawful provided that it is operated within the terms and conditions of a general licence issued on behalf of Natural England under the Wildlife and Countryside Act 1981. It is not in dispute that such a licence was in existence at all relevant times and that Mr. Brown was permitted, under the terms of the licence, to carry out a range of otherwise prohibited activities against the species of wild birds listed on the licence. The licence sets out the conditions to be complied with For the purposes of this case, the licence lists those birds which may be used as decoys and it is clear that it is those species and those species alone which may be used in that way.

THE LICENCE TERMS. THAT DOES NOT, OF COURSE, RELATE TO THE PHEASANT FOR WHICH NO PROPER PROVISION WAS MADE.

I FIND AS A FACT THAT A WHITE PIGEON WAS FOUND IN THE CAGE TRAP ON 18th MAY. THIS IS A NON-TARGET BIRD. I AM SATISFIED SO THAT I AM SURE THAT THE PRESENCE OF A PIGEON IN THE TRAP CHANGES ITS USE FROM A CROW TRAP TO A HAWK TRAP.

IT IS NOT IN DSIPUTE THAT THE RSPB SET UP REMOTE CAMERA SURVEILLANCE OF THE TRAP NOR THAT THEY WERE ENTITLED TO DO SO. THE CAMERA OPERATED DURING DAYLIGHT HOURS AND ON ONE OCCASION STOPPED FILMING WHEN THE BATTERY EXPIRED. THE ONLY PERSONS SEEN ON THAT VIDEO FOOTAGE WERE MEMBERS OF THE RSPB, MR. BROWN ON 20TH MAY AND THE PERSON WHO RELEASED THE WHITE PIGEON ON 22nd MAY.

I FIND AS A FACT THAT WHEN JASON LEONARD VISITED THE CAGE TRAP ON 18th MAY, THERE WERE NO OBVIOUS SIGNS OF FOOD AND WATER BEING PROVIDED. I HAVE, OF COURSE, HAD THE OPPORTUNITY TO VIEW THE VIDEO EVIDENCE IN THIS CASE AND TO HAVE SEEN A NUMBER OF PHOTOGRAPHS OF THE CAGE TRAP. I HAVE ALSO BEEN ABLE TO VIEW THE LOCATION OF THE CAGE TRAP FOR MYSELF.

I AM CERTAIN SO THAT I AM SURE THAT MR. LEONARD MARKED THE WHITE PIGEON FOUND IN THE TRAP WITH UNIQUE MARKINGS.

I AM SURE THAT THERE WAS A SIGNIFICANT AMOUNT OF WHITE FEATHERS ON THE TRAP FLOOR AND ADJACENT EDGES. I FIND THAT TO BE AN INDICATION THAT SUCH A BIRD HAD BEEN PREDATED BY A BIRD OF PREY.

I ACCEPT MR. LEONARD'S EVIDENCE THAT BIRDS OF PREY WERE BEING ATTRACTED TO THE CAGE TRAP AND THAT HE DELIBERATELY DISTURBED A SPARROWHAWK AND A BUZZARD FROM THAT PRECISE LOCATION.

MR. BROWN VISITED THE TRAP ON 20TH MAY. HE DID NOT LEAVE THE TRAP DOOR OPEN. I AM SATSIFED THAT THE SAME WHITE PIGEON WAS STILL IN THE TRAP ON 21ST MAY BECAUSE OF ITS UNIQUE MARKINGS. IT FOLLOWS THAT IT MUST HAVE BEEN IN THE TRAP ON THE 20th MAY.

I FOUND MR. LEONARD TO BE TELLING THE TRUTH AS TO HIS DISCOVERY OF THE DEAD SPARROWHAWK IN THE VICINITY OF THE CAGE TRAP. I AM SATISFIED THAT THAT BIRD HAD FAECAL STAINING AND ABRASIVE DAMAGE TO ITS TAIL FEATHERS. IT WAS FOUND CLOSE TO THE ILLEGAL TRAP WITH INDICATORS THAT IT HAD BEEN IN CAPTIVITY. I AM SATISFIED THAT THE EVIDENCE RELATING TO THE REMAINS FOUND IN WHAT HAS BEEN TERMED THE "HIDEY-HOLE" IS RELIABLE. I DO NOT FIND AS A FACT THAT THE RSPB OFFICIALS HAVE – AS HAS BEEN SUGGESTED – PLANTED EVIDENCE I FIND THOSE DEROGATORY ASSERTIONS TO BE AN AGGRAVATING FEATURE IN THIS CASE.

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THERE ARE AGREED FACTS IN THIS CASE:-

THE DEFENDANT, GLENN BROWN, WAS AT ALL RELEVANT TIMES EMPLOYED AS THE ONLY FULL-TIME GAMEKEEPER ON THE HOWDEN MOOR WHERE THE CAGE TRAP, THE SUBJECT OF THESE PROCEEDINGS, WAS SITUATED.

MR. BROWN IS AND WAS EMPLOYED BY GEOFFREY EYRE WHO IS THE NATIONAL TRUST TENANT OF THE MOOR ENJOYING THE SPORTING RIGHTS.

MR. BROWN ACCEPTS THAT IT WAS HE SHOWN IN THE VIDEO VISITING THE CAGE TRAP ON 20th MAY, 2010.

DEALING WITH THE EVIDENCE, ON 15th APRIL, 2010, JOHN McMAHON, AN INEXPERIENCED INVESTIGATOR FOR THE RSPB, CHANCED ACROSS THE CROW TRAP WHICH IS THE SUBJECT OF THESE PROCEEDINGS. ITS PRESENCE IN WOODED AREA WAS NOT PREVIOUSLY KNOWN TO THE RSPB. MR. McMAHON WAS MONITORING FOR THE PERSECUTION OF RAPTORS. THE TRAP WAS IN USE WITH A CARRION CROW AND PRESENTED NO CONCERNS. HE CONTINUED TO MONITOR THE USE OF THE TRAP WITHOUT CONCERNS UNTIL 4th MAY WHEN HE DISCOVERED A PHEASANT WITH HEAD INJURIES IN THE TRAP WITH THE CARRION CROW. THE PHEASANT IS A NON-DECOY BIRD AND SHOULD HAVE BEEN IMMEDIATELY RELEASED WHEN DISCOVERED BY THE TRAP OPERATOR. UNDER THE TERMS OF THE GENERAL LICENCE, THE TRAP SHOULD HAVE BEEN INSPECTED AT LEAST EVERY TWENTY FOUR HOURS. I AM SATISFIED ON THE EVIDENCE OF MR. McMAHON THAT THE SAME BIRD WAS IN THE TRAP UNTIL 7th MAY WHEN IT WAS REMOVED BY THE RSPB, TAKEN TO A VET AND EUTHANASED. I CANNOT BE SATISFIED THAT THE PHEASANT WAS ORIGINALLY DELIBERATELY PLACED IN THE TRAP BUT THE FAILURE TO REMOVE IT WITHIN TWENTY-FOUR HOURS PLACED THE TRAP OPERATOR OUTSIDE THE TERMS OF THE GENERAL LICENCE AND THEREFORE THE TRAP WAS BEING RUN UNLAWFULLY. THE EVIDENCE OF THE VET, KATHRYN REED, WAS NOT CHALLENGED. WHETHER OR NOT THE INJURY TO THE PHEASANT WAS CAUSED BY IT COLLIDING WITH THE WIRE MESH OF THE CAGE OR BY PECKING BY THE CARRION CROW, OR A COMBINATION OF THE TWO, IS IN MY VIEW IRRELEVANT. THE BIRD HAD SUFFERED INJURY TO SUCH AN EXTENT THAT IT HAD TO BE EUTHANASED. THERE CAN BE NO DOUBT THAT BY KEEPING THE PHEASANT IN THE CAGE TRAP FOR THE TIME OBSERVED – WITHOUT RELEASE – CAUSED IT UNNECESSARY SUFFERING

I AM SATSIFIED ON THE EVIDENCE OF JOHN McMAHON THAT THERE WAS NO CLEAN WATER PROVIDED IN THE CAGE TRAP AND THAT FAILURE TOO WAS IN BREACH OF THE GENERAL LICENCE, RENDERING THE TRAP UNLAWFUL.

JOHN McMAHON NOTED THAT THE DECOY BIRD HAD BEEN PROVIDED WITH DOG BISCUITS AS FOOD. HAVING HEARD ALL THE EVIDENCE IN THIS CASE, I CONCLUDE THAT DOG BISCUITS AND COMPLETE DOG FOOD CAN BE CLASSED AS SUITABLE FOOD FOR A DECOY BIRD AND I DO NOT FIND THE PROVISION OF SUCH FOOD TO BE IN CONTRAVENTION OF

The licence provides that all animal welfare legislation must be complied with at all times and this includes providing the decoy birds with adequate food and water, appropriate shelter and a suitable perch.

The licence states that where any live animal, other than a decoy bird, has become confined in a cage trap, if fit to be released, it must be released immediately upon discovery. When in use, every cage trap used in accordance with the licence must be physically inspected at least once every day and of intervals not more than twenty-four hours – except where this is not possible because of severe weather conditions. That exception is not relevant to these proceedings.

Where a cage trap is not in use, it must be rendered incapable of holding or catching birds or other animals and any bait, food, water or decoy birds must be removed.

The licence goes on to give explanatory notes with regard to the law; the limits of the licence; non-native species; general welfare considerations and the use of traps. Adequate food for decoy birds is defined as sufficient, palatable food of a type suitable for the decoy species and water at all times refers to drinkable water, free from chemical additives and changed regularly to ensure that it is clean. In my view, there can be no doubt as to how a cage trap should be operated to satisfy the conditions of the General Licence and to operate a cage trap otherwise than in accordance with those conditions, would render its use unlawful.

The second area of law in this case relates to the causing of unnecessary suffering. Barnard v Evans (1925) 2 KB 794 decided that causing unnecessary suffering means doing something which it is not reasonably necessary to do and which is unjustified. The case of R v Shinton (2003) EWHC found that even if a trap is operated lawfully, it does not prevent the offence of causing unnecessary suffering being made out to the decoy bird.

I CANNOT BE CERTAIN SO THAT I AM SURE OF THE IDENTITY OF THE PERSON WHO RELEASED THE WHITE PIGEON FROM THE TRAP ON 22nd MAY. HOWEVER, THE DESCRIPTION GIVEN BY MR. BROWN, MR. EYRE AND JOHN MAINE OF RORY O'CONNELL DID NOT IN MY VIEW CO-INCIDE WITH THE MAN I COULD SEE ON THE VIDEO. I HAVE NOT, OF COURSE, HAD THE OPPORTUNITY OF SEEING MR. O'CONNELL FOR MYSELF. THE BALACLAVA WORN BY THE PIGEON RELEASER COULD BE THAT RECOVERED FROM MR. BROWN'S HOUSE AS THE PEAK ON THAT ITEM CLEARLY FOLDS UNDER – AND ON CLOSER INSPECTION EASILY DOES – BUT THERE IS NOTHING REALLY TO DISTINGUISH IT FROM ANY OTHER BALACLAVA.

I AM SATISFIED THAT THE PIGEON FOUND IN THE SHED AT ST. HENRY'S ON THE SEARCH WAS THE SAME BIRD AS HAD BEEN IN THE TRAP BECAUSE OF ITS DOCUMENTED UNIQUE MARKINGS. I AM SATISFIED THAT PC KNOWLES WAS PRESENT AT THE TIME THE BIRD WAS CAPTURED. I DO NOT FIND THAT THE BIRD WAS TAKEN INTO THE SHED BY ANY MEMBER OF THE RSPB TEAM.

I AM SATISFIED ON THE EVIDENCE OF GUY SHORROCK THAT HE DISCOVERED THE DEAD CARRION CROW NEAR TO THE TRAP SITE AND THAT HE CONFIRMED THE FINDING OF THE DEAD SPARROWHAWK BY JASON LEONARD – THAT BIRD HAVING ABRASIONS TO ITS TAIL FEATHERS AND FAECAL STAINING. I AM SURE THAT THE WHITE PIGEON FILMED BY MR. SHORROCK ON THE SEARCH WAS THE ONE WITH THE UNIQUE MARKINGS AND THAT IT WAS FOUND IN THE SHED. I DO NOT FIND THAT MR. SHORROCK HAS ACTED IMPROPERLY IN ANY WAY DURING THE COURSE OF THE INVESTIGATION.

I DO NOT FIND THAT MARK THOMAS ACTED IMPROPERLY DURING THE COURSE OF THESE PROCEEDINGS. HE CONFIRMED THE PRESENCE OF THE WHITE PIGEON IN THE TRAP. I AM SATISFIED THAT HE PROPERLY RECOVERED THAT BIRD FROM THE SHED AT ST. HENRYS. IT IS CONCEDED BY THE DEFENCE THAT MR. BROWN WAS IN POSSESSION OF THAT SHED. I AM SATISFIED THAT MR. THOMAS SAW NO CLEAN WATER IN THE TRAP BUT RATHER WHAT HE DESCRIBED AS "GREEN, SLUDGY SLIME."

I AM SURE ON THE EVIDENCE OF ALISDAIR WOOD – AN EXPERT AVIAN PATHOLOGIST – THAT THE SPARROWHAWK SEIZED BY JASON LEONARD WAS NOT DELIBERATELY KILLED BY NECKING. I HAVE BEEN ABLE TO DISCOUNT THE EVIDENCE OF GUDA VAN DER BURGHT WITH ALL RESPECT TO HER SHE IS NOT A SPECIALIST IN AVIAN PATHOLOGY AND STARTED FROM A FALSE PREMISE WITH REGARD TO THE PARTICULARS OF THE BIRD.

THERE IS NO EVIDENCE BEFORE ME THAT THE SPARROWHAWK WAS UNLAWFULLY KILLED BUT IN ANY EVENT, MR. BROWN DOES NOT FACE SUCH A CHARGE.

I FOUND THE EVIDENCE OF DR. MARQUIS TO BE COMPELLING. FIVE OF THE FEATHERS HE EXAMINED WERE CREASED WITH NO OTHER PLAUSIBLE EXPLANATION OTHER THAN THEY HAD BEEN PLUCKED BY A BIRD OF PREY. HE PRODUCED THE SPECIMEN OF A STERNUM

WITH NOTCHING TYPICAL OF A BIRD OF PREY AND REFERRED ME TO THE TEXT BOOK SHOWING IDENTICAL MARKINGS. THE EARLIEST REFERENCE TO THAT WAS FROM 1972.

PROFESSOR NEWTON WAS ACKNOWLEDGED TO BE A WORLD EXPERT ON THE IDENTIFICATION OF BIRDS. PROFESSOR COOPER DEFERRED TO HIS OPINION. I AM SATISFIED SO THAT I AM SURE ON THE EVIDENCE OF PROFESSOR NEWTON THAT THE SPARROWHAWK RECOVERED BY THE RSPB INVESTIGATORS AND SUBSEQUENTLY EXAMINED BY ALL THE EXPERTS IN THIS CASE WAS ONE AND THE SAME BIRD. I AM SATISFIED THAT THAT BIRD HAD HEAVY FAECAL STAINING ON THE UNDERNEATH OF ITS TAIL FEATHERS. I ACCEPT HIS EVIDENCE THAT THE PIGEON FEATHERS HAD ALMOST CERTAINLY BEEN PLUCKED BY A BIRD OF PREY. PROFESSOR NEWTON ACCEPTED DR. MARQUIS'S EVIDENCE AS TO THE PHEASANT STERNUM. I TAKE ACCOUNT OF THE FACT THAT PROFESSOR NEWTON HAS SEEN THE SIMILAR FRAYED NATURE OF TAIL FEATHERS ON SPARROWHAWKS IN TRAPS AND THAT A TRAP IN THE LOCATION OF THE ONE SUBJECT TO PROCEEDINGS IS MORE LIKELY TO CATCH BIRDS OF PREY THAN CROWS.

IN THE LIGHT OF THE WEIGHT OF OTHER EVIDENCE TO THE CONTRARY, I DO NOT ACCEPT STEWART SCULL'S VIEW THAT DOG BISCUITS CANNOT BE A SUITABLE FOOD FOR CORVIDS. I ACCEPT CORVIDS WILL EAT GRAIN IF PROVIDED FOR THEM.

I DO ACCEPT MR. SCULL'S EVIDENCE THAT WIDER RUNGS ON A CAGE TRAP WILL ALLOW LARGER BIRDS TO ENTER THE TRAP. MR. SCULL DID NOT VISIT THE SITE BUT MEASUREMENTS OF THE RUNGS WERE TAKEN BY MARK THOMAS AND GEOFFREY EYRE. THEY COULD NOT AGREE AS TO THE DIMENSIONS. IN ANY EVENT THERE ARE NO LEGAL SPECIFICATIONS AS TO THE SETTING OF THE RUNGS AND I DO NOT DRAW ANY CONCLUSIONS AS TO THE WIDTH OF THE RUNGS IN THIS CASE.

PC HUNT, THE DESIGNATED OFFICER IN THE CASE, ACCEPTED THAT A LACK OF PROPER DISCLOSURE BEFORE THE FIRST INTERVIEW WITH MR. BROWN WOULD INEVITABLY LEAD TO NO QUESTIONS BEING ANSWERED. THERE WAS CLEARLY NO CHANCE OF A SOLICITOR BEING PRESENT FOR THAT INTERVIEW BUT ADVICE WAS GIVEN OVER THE TELEPHONE. AT THE SECOND INTERVIEW, DISCLOSURE REMAINED AS BEFORE BUT THE SOLICITOR WAS PRESENT. IN THOSE CIRCUMSTANCES, I DRAW NO INFERENCE FROM THE FACT THAT MR. BROWN ANSWERED NONE OF THE QUESTIONS PUT TO HIM UNDER CAUTION. I DO NOT FIND ANYTHING SINISTER IN THE FACT THAT MARK THOMAS DREW UP THE LIST OF QUESTIONS AND CONDUCTED THE FIRST INTERVIEW.

MR. BROWN GAVE EVIDENCE THAT WHEN HE TOOK UP THE POST OF GAMEKEEPER, THERE WERE THREE CROW TRAPS ON THE ESTATE AND THAT BY 2010, SOME FOUR YEARS LATER, THAT NUMBER HAD NEARLY QUADRUPLED TO ELEVEN. I ACCEPT NOT ALL TRAPS WERE RUN AT THE SAME TIME AND THAT THE ESTATE HE HAD TO COVER WAS VAST. I FIND THAT

HE HAD THE USE OF A QUAD BIKE TO GET ROUND THE ESTATE BUT I CANNOT BE SURE HE WAS THE SOLE USER OF THAT BIKE.

MR. BROWN IS CLEARLY AWARE OF THE TERMS OF THE GENERAL LICENCE WITH REGARD TO THE OPERATION OF CAGE TRAPS. HE IS THE SOLE GAMEKEEPER WITH SOME HELP FROM OTHERS – IN PARTICULARLY RORY O'CONNELL WHO HAS NOT GIVEN EVIDENCE TO THIS COURT. MR. BROWN GAVE EVIDENCE THAT HE KEPT NO RECORDS OF HIS GAMEKEEPING ACTIVITIES. I FIND THAT THE NOTEBOOK RECOVERED FROM MR. BROWN'S ADDRESS IS NOT LIKELY TO BE HIS, BUT RATHER TO BELONG TO RORY O'CONNELL.

IT IS ACCEPTED ON BEHALF OF MR. BROWN THAT, ALTHOUGH THE PIGEONS IN THE SHED AT ST. HENRY'S BELONGED TO HIS FATHER, HE, THE DEFENDANT, HAD BOTH IN HIS POSSESSION.

ON THE EVIDENCE I HAVE HEARD, I CANNOT BE SATISFIED SO THAT I AM SURE THAT MR. BROWN EXPRESSED HOSTILITY TO RAPTORS AT THE MEETING OF WILDLIFE OFFICERS IN 2006. HOWEVER, I FIND IT FANCIFUL TO SUGGEST EVEN IF THAT WERE TRUE, IT PROVIDED A MOTIVE IN THIS CASE, FOUR YEARS LATER, FOR THE RSPB OFFICIALS TO FABRICATE EVIDENCE AGAINST HIM. I DO NOT ACCEPT THAT AT ALL.

MR. BROWN WAS CONTENT TO SAY THAT IF THE TRAP WAS BEING RUN LAWFULLY, THEN HE WAS RESPONSIBLE FOR ITS OPERATION. HE ACCEPTED THAT NON-TARGET BIRDS CAN BE ATTRACTED TO TRAPS. HE COULD NOT ACCOUNT FOR THE CROW BEING PRESENT WITH THE PHEASANT AND THERE WAS NO EXPLANATION GIVEN FOR THE LENGTH OF TIME THE PHEASANT REMAINED IN THE TRAP WITH THE CROW BEFORE ITS EVENTUAL REMOVAL BY THE RSPB. THE TRAP SHOULD HAVE BEEN REGULARLY INSPECTED – IT WAS NOT.

WHILST HE ACCEPTS VISTING THE TRAP ON 20TH MAY, MR. BROWN SAYS NO WHITE PIGEON WAS WITHIN IT. IF THAT WERE THE CASE, THEN UNDER THE TERMS OF THE GENERAL LICENCE, MR. BROWN SHOULD HAVE DISABLED THE TRAP. HE COULD GIVE NO EXPLANATION AS TO WHY HE LEFT THE TRAP DOOR CLOSED. THERE WAS NO PROPER INSPECTION OF THE TRAP ON 19TH MAY NOR ON THE 20TH MAY. I FIND AS A FACT THAT THE REASON MR. BROWN DID NOT OPEN THE TRAP DOOR ON 20TH MAY WAS BECAUSE THERE WAS A WHITE PIGEON INTENTIONALLY PLACED WITHIN IT.

MR. BROWN GAVE EVIDENCE THAT HE THOUGHT SOMEONE WAS TAMPERING WITH THE TRAP. I FIND AS A FACT THAT MR. BROWN BEING FULLY AWARE OF THE TERMS OF THE GENERAL LICENCE, DID NOT NEED TO REFER THE MATTER TO MR. EYRE FOR ADVICE BEFORE COMPLYING WITH THE LICENCE REQUIREMENTS. HE KNEW VERY WELL WHAT HIS RESPONSIBILITIES WERE. IN ANY EVENT, HIS EVIDENCE IN THAT REGARD WAS NOT SUPPORTED BY MR. EYRE WHO, UNDERSTANDABLY, EXPECTED HIS GAMEKEEPER TO USE HIS OWN INITIATIVE.

PROFESSOR COOPER HAS OVER THIRTY YEARS EXPERIENCE WITH ANIMALS AND THE IMPORTANCE OF CRIME SCENES. AS I HAVE SAID, HE ACKNOWLDEGED PROFESSOR NEWTON'S EXPERTISE ON THE IDENTIFICATION OF BIRDS. PROFESSOR COOPER MADE A MISTAKE IN HIS EVIDENCE OVER ONE OF THE FEATHER EXHIBITS AND HE SAID THAT THERE WAS NO DOCUMENTARY RECORD OF NOTCHING BY SPARROWHAWKS – WHEN THERE CLEARLY WAS. I PREFER THE EVIDENCE OF DR. MARQUIS AS TO THE CAUSE OF NOTCHING ON THE STERNUM RECOVERED

PROFESSOR COOPER SAW THE DAMAGE TO THE SPARROWHAWK'S TAIL FEATHERS AND AGREED WITH PROFESSOR NEWTON THAT THERE WERE FAR MORE URATE DROPPINGS ON THE TAIL FEATHERS THAN HE WOULD EXPECT. HE CONCEDED THE PROBABILITY OF CONFINEMENT. THAT EVIDENCE, OF COURSE, DOES NOT STAND ALONE.

IN REACHING MY DECISIONS, I HAVE, OF COURSE, TO CONSIDER THE EVIDENCE I HAVE HEARD – NOT THE POTENTIAL FOR OTHER EVIDENCE THAT WAS NOT PURSUED, SUCH AS THE RETENTION OF THE ACCUMULATION OF FEATHERS FROM AROUND THE TRAP; THE SWEEPING OF THE TRAP FLOOR, THE PRECISE DETAILS OF WHERE EXHIBITS WERE RECOVERED FROM AND THE ABSENCE OF VIDEO EVIDENCE IMMEDIATELY THE RSPB OFFICERS ENTERED THE PIGEON SHED.

GEOFFREY EYRE GAVE EVIDENCE AS TO HIS POSITION AS SPORTING TENANT OF THE HOWDEN MOOR. I NOTE HIS ACHIEVEMENTS AS TO THE REGENERATION OF NEW HEATH AND HOW THOSE ACHIEVEMENTS HAVE BEEN RECOGNISED. HIS SHOOTING INTERESTS ARE LIMITED TO GROUSE AND HE TOLD ME THAT LAST YEAR EACH MOOR WAS SHOT FOUR TIMES. HE SAID THIS IS NOT COMMERCIAL SHOOTING. HE IS AWARE THAT IT IS LAWFUL TO CONTROL CERTAIN PREDATORS BUT ACCEPTS THAT THIS DOES NOT INCLUDE BIRDS OF PREY. I ACCEPT THAT HE RELIES ON HIS GAMEKEEPER AND EXPECTS HIM TO USE HIS OWN INITIATIVE. HE CONFIRMED THAT THE NUMBER OF GROUSE IS AN INDICATOR OF SUCCESS.

I FOUND MR EYRE ON OCCASION TO BE EVASIVE IN HIS EVIDENCE. HE SEEMED RELUCTANT TO GIVE A DIRECT ANSWER TO QUESTIONS. HE IS A MAN WHO CLEARLY DISTRUSTS RSPB OFFICIALS AND SINGLED OUT MARK THOMAS IN PARTICULAR. HE CITES THE ISSUE OF THE DEAD FALCON IN 2006 AS THE BASIS FOR THAT TOGETHER WITH A VAGUE ASSERTION OF MISLEADING PRESS RELEASES. HE TOLD ME THAT THE RESULTS OF THE POST MORTEM OF THE DEAD FALCON IN 2006 HAD NEVER BEEN RELEASED TO HIM ALTHOUGH HE HAD PAID FOR THE INVESTIGATION AND THEN HAD TO CONCEDE THAT HE HAD NOT, IN FACT, DONE SO.

WHATEVER THE RIGHTS AND WRONGS OF THE 2006 INVESTIGATION INTO THE DEATH OF A PEREGRINE FALCON, I FIND IT HAS NO BEARING ON THIS CASE AND I WILL DECIDE THE CHARGES ON THE EVIDENCE ALONE, RATHER THAN CONSPIRACY THEORIES.

I FIND AS A FACT THAT MR. BROWN WAS OPERATING AN ILLEGAL CAGE TRAP. IT WAS CONCEDED ON HIS BEHALF WHAT WAS ALLEGED TO BE TECHNICAL BREACHES OF THE GENERAL LICENCE SO AS TO RENDER THE TRAP UNLAWFUL. I FIND IT TO BE MORE THAN THAT. I FIND THAT THE REASON MR. BROWN DID NOT OPEN THE TRAP DOOR ON 20TH MAY WAS BECAUSE HE WAS AWARE OF THE WHITE PIGEON BEING INSIDE IT. I FIND HE WAS OPERATING THAT TRAP AS A HAWKTRAP. I TAKE INTO ACCOUNT THE FINDING OF THE SPARROWHAWK CLOSE TO THE TRAP; THE ACCUMULATION OF WHITE FEATHERS ON THE GROUND SUGGESTING PREDATION BY A BIRD OF PREY; THE DISCOVERY OF THE REMAINS OF FOUR BIRDS IN THE HIDEY-HOLE AND THE TELL TALE NOTCHINGS IN THE KEEL OF THE STERNUM RECOVERED. I FIND THE USE OF A TRAP FOR KILLING OR TAKING WILD BIRDS PROVED.

I AM SATSIFIED SO THAT I AM SURE THAT THE SPARROWHAWK RECOVERED FROM THE LOCATION OF THE CAGE TRAP SHOWED SIGNS OF HAVING BEEN IN CAPTIVITY BEING THE FAECAL STAINING AND ABRASIONS TO THE FEATHERS NOTED BY PROFESSOR NEWTON. THAT EVIDENCE, TAKEN WITH THE FACTORS I HAVE MENTIONED ABOVE, LEADS ME TO BE SURE THAT BETWEEN 10TH AND 20TH MAY, LAST YEAR MR. BROWN DID INTENTIONALLY TAKE THE SPARROWHAWK. I FIND HIM GUILTY OF THAT CHARGE.

IT IS CONCEDED THAT THE PIGEON LOFT AND PIGEONS AT ST. HENRY'S WERE IN MR. BROWN'S POSSESSION. I AM SATISFIED SO THAT I AM SURE THAT THESE WERE CAPABLE OF BEING USED TO COMMIT AN OFFENCE UNDER S.5 OF THE WILDLIFE AND COUNTRYSIDE ACT. I HAVE FOUND AS A FACT THAT THE PIGEON IN THE TRAP WAS THE SAME ONE RECOVERED FROM THE PIGEON SHED ON THE SEARCH. I FIND THAT IT WAS BEING USED TO RUN A HAWKTRAP FOR THE REASONS I HAVE ALREADY GIVEN.

HAVING FOUND THAT MR. BROWN WAS RESPONSIBLE FOR OPERATING THE CAGE TRAP AND THAT THERE WAS NO PROPER INSPECTION OF THE TRAP WHILST THE PHEASANT WAS TRAPPED WITHIN WITH THE CARRION CROW, I AM SATISFIED SO THAT I AM SURE THAT MR. BROWN IS GUILTY OF CAUSING THAT BIRD UNNECESSARY SUFFERING. THE PHEASANT SHOULD HAVE BEEN RELEASED AT THE MAXIMUM WITHIN TWENTY FOUR HOURS OF IT BEING IN THE TRAP. THE EVIDENCE OF KATHRYN REED AS TO ITS INJURIES AND OBVIOUS SUFFERING IS BEYOND A REASONABLE DOUBT AND I FIND THAT CASE PROVED.

THE LAST THREE CHARGES RELATE TO THE FAILURE BETWEEN DIVERSE DATES TO PROVIDE ADEQUATE FOOD AND DRINKING WATER FOR THREE SEPARATE BIRDS. I HAVE FOUND AS A FACT ON THE EVIDENCE I HAVE HEARD THAT THE PROVISION OF DOG BISCUITS OR COMPLETE DOG FOOD FOR A CARRION CROW IS SUITABLE FOOD, AS IS PROVIDING IT WITH GRAIN. HOWEVER, ON THE EVIDENCE I HAVE HEARD I FIND THAT THE CROW WAS NOT PROVIDED WITH CLEAN DRINKING WATER. I FIND THAT CASE PROVED ON THAT BASIS WHICH, OF COURSE, IS ANOTHER BREACH OF THE GENERAL LICENCE.

IN RELATION TO THE PHEASANT, I FIND THAT NEITHER ADEQUATE FOOD NOR WATER WAS PROVIDED AND I FIND THAT CASE PROVED.

IN RELATION TO THE PIGEON, I FIND THAT ADEQUATE WATER WAS NOT PROVIDED FOR THE BIRD BY MR. BROWN WHO WAS OPERATING THE TRAP AND I FIND THAT CASE PROVED.

IN SHORT, I FIND THAT THE DEFENDANT IS GUILTY OF ALL CHARGES LAID AGAINST HIM IN THIS CASE.