R v ADAMS, appeal against conviction. Unreported, Cambridge Crown Court, 9 May 2019.

Hunting Act 2004; exempt hunting under Schedule 1; exemption under "flushing from cover for the purposes of falconry"

Fox hunting has continued despite the Hunting Act 2004. There is a fairly small section of the population passionately in favour of hunting, with comparable section fiercely opposed to it, leaving a majority with a spectrum of views, perhaps tilting towards those who think it a distasteful activity, not worth reviving. Noticeably, Jeremy Hunt as a candidate for Conservative leadership this July, briefly favoured promising a further vote in Parliament, but soon backed off as he realised that it could cost him support within the Conservative party membership. Theresa May went into the 2017 election promising a further vote in the new parliament on whether to repeal the Hunting Act but in the event, so certain was its defeat, there was no attempt to introduce such a bill.

Fox hunts have none the less continued to meet despite the restrictions of the Hunting Act 2004. They have had make adaptions. Some have organised "drag hunts" – that is following a scent laid by pulling a bag over the ground for the hounds to follow. Other fox hunts spotted an exemption in the Hunting Act. Under the Act hunting a wild mammal with dogs is unlawful unless it is one of the exempt activities set out in Schedule 1. **Para 6 of Schedule 1** provides:

> Flushing a wild mammal from cover is exempt hunting if undertaken–
>
> (a) For the purpose of enabling a bird of prey to hunt the wild mammal, and
>
> (b) *(Is on land the hunter owns or where he has permission to hunt)*

Fox hunts have therefore gone out with a golden eagle or similar bird of prey ready for release, and claimed that what was actually going on was a form of falconry.

A recent judgement at Cambridge Crown Court will cause problems for those hunts should other courts follow the approach of the Judge.

George Adams was the professional Huntsman of the Fitzwilliam fox hunt who was convicted of unlawful hunting by the magistrates and has now lost on appeal against conviction to the Crown Court. His pack of foxhounds found and chased a fox out of a wood, through a mix of hedgerows, field, coverts and

ditches. Video taken by a member of the hunt showed some hounds at one stage in close pursuit of the fox across part of an open field, and at other time it seems the hounds followed by scent. The fox was turned back into the hounds and killed by them.

The prosecution case was that what occurred was exactly what was expected in a traditional unregulated hunt prior to 2004, namely hounds chasing down and killing a fox, having pursued it around hedgerows and across an open field, unchecked by the huntsman in charge of the dogs. The defence was that this was at all times "exempt" hunting, since the huntsman had deployed his hounds to flush the fox out from cover with a view to it being hunted by a golden eagle carried on a quad bike with a handler, who was part of the hunt, ready to let it loose to fly and catch a fox.

Giving evidence Mr Adams described how he encouraged the fox hounds into a wood, at the far end of which the eagle handler was waiting with the eagle on a quad bike. The fox however had gone behind the eagle and run up along hedgerows and around fields until it had been turned back, he thought by hunt saboteurs, and so found and killed by the following hounds. He had had only very limited sight of the fox. Cross examined he described controlling the pack of some 36 hounds, using horn and voice with two assistants. His hounds had pedigrees going back over decades and were unaltered in breeding and training since the passing of the Hunting Act. He had not considered using other breeds of dog for flushing the fox. He had not considered using fewer hounds. There had been no alteration in training or methods of control of the hounds since the passing of the Act.

The eagle handler produced video images of his bird catching foxes, which he then killed. These videos however showed no sign of the presence of foxhounds in pursuit of those foxes. He had also been videoing the hunt that concerned the court. His video showed the fox cutting across the open field with some hounds close enough to be chasing by sight. He said that he had considered releasing the eagle to try to catch the fox.

In a considered judgement the court considered the falconry exemption and attempted to provide some definition of terms in the Act used.

It is a potentially useful addition to **DPP v Wright 2010 QB** 224, which is the only Divisional Court case to consider any part of the Hunting Act. In Wright the court ruled that "hunting" occurs only when a person participates in the

actual pursuit by dogs of an identified wild mammal; it is therefore not "hunting" under the Act for example to go out with dogs to look for a mammal to pursue. Further the hunting has to be intentional rather than merely accident, so those walking their dogs have nothing to fear should a dog happen upon and start to chase a hare. But, if there is intentional hunting of an identified individual wild mammal with dogs, the hunting is unlawful unless it falls within one of the exemptions in Schedule 1 of the Act, and the burden is in the prosecution to prove the hunting was not exempt.

With that starting point in R v Adams the Cambridge court dealt with an aspect of "intentional"; holding that there is no requirement for the Crown to prove that the appellant was intending to hunt unlawfully; rather the statutory requirement is for the prosecution to prove that the activity was hunting – that is, intentional pursuit – that was in fact unlawful.

The Judgement considers in detail the "Falconry exemption". Considering what "Flushing from cover" means, the court pointed out that "Flushing" may overlap with "Hunting", in that the mammal may be flushed before the dogs or hunter are aware of it and so "Hunting" it. But equally the mammal can be "Hunted" within the cover during the process of "Flushing"; prolonged pursuit around hedgerows might fall into "Hunting". The court considered that "Cover" is an ordinary English word, and means places where a fox could remain unseen or habitually out of sight, that would include behind a hedge or in a ditch.

Getting towards the heart of the exemption, the Court held that when considered as an aspect of falconry, "Flushing from cover" must contemplate moving the mammal to a location where the hunting by a bird of prey could in principle be effective. It said, "For an activity to be described as flushing from cover for the purpose of hunting with a bird of prey, it must therefore demonstrate a degree of purpose and system focused on the single permitted statutory activity of hunting with a bird of prey".

The judgement gives examples of how the terrain that could affect the decision on whether the hunting was exempt. First, a small area of cover surrounded by open ground; where, if a fox was flushed into the open, the statutory exemption would not permit hunting with dogs over the open ground, and the dogs would need to be restrained. Second, a forest with a single small clearing, where, unless by chance the fox ran through the clearing, deploying the bird of prey would be impracticable; that would be a relevant matter in deciding if the

hunting could ever be exempt. Third, a mixed area of fields, hedges and copses, where the court held the exemption presupposes that the terrain is such that the bird of prey could be deployed, otherwise what will be occurring at least at some points is hunting of the fox by dogs and not falconry.

With this in mind the Court described its approach "We have to consider the whole of the circumstances in making our assessment of what happened and why, and that includes the extent to which particular hounds were deployed and in what numbers and with what degree of control. The decision by the hunt master, the person responsible for the hounds, to take a certain number of dogs, the decision to control them or not to control them may be a strong indicator of his intention to comply with the statutory restrictions that the hunting is intended to be undertaken by the bird of prey and not simply the hounds themselves." The Court continued "The huntsman also has choices to make about whether to have horses and riders in a field to participate in the flush or in the pursuit. All of those decisions may impact on the lawfulness of what follows and may be relevant to whether the intention is to undertake at all stages exempt hunting with a bird of prey or illegal hunting or intermittently illegal hunting with dogs".

What therefore emerges as the heart of the decision is that the court decided that it was not sufficient for the activity of the hunt merely to make falconry possible, instead the court held that the exemption requires the activity of the hunt to be wholly focused on falconry.

With this understanding of the exemption it is perhaps not surprising that on the facts the conviction was upheld.

Upholding the conviction gives support to the opponents of hunting who have long argued that the presence of large birds of prey at some fox hunts has been nothing more than a sham designed to allow traditional fox hunting to continue.

The ruling has not been the subject of any appeal.

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