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Ref. No. A20180054

IN THE CROWN COURT AT CAMBRIDGE

East Road
Cambridge

Before HIS HONOUR JUDGE COOPER
(sitting with JUSTICES OF THE PEACE)

IN THE APPEAL OF:

GEORGE ADAMS

MR ~~P HEATH GLENSER~~ Peter Glenser QC appeared on behalf of the Appellant

~~Representation~~ Mr David Matthew appeared on behalf of the Respondents ~~not given~~

PROCEEDINGS
9th MAY 2019 15.19 – 16.09

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JUDGE COOPER: Mr Adams, do sit down. Thank you very much indeed. I'm going to give a judgment now in relation to this, your appeal against conviction.

You were charged with a single count contrary to section 1 of the Hunting Act 2004 and I start by reminding you, as we reminded ourselves, that the burden of proof in such an appeal is on the prosecution, the respondents to the appeal, and the standard of proof is a high one. We should reject this appeal only if we ourselves, as a panel, are sure of guilt.

The conviction that was recorded in the Magistrates' Court is not in itself evidence; it's not a starting point. So if the respondents to this appeal are to be successful they must prove the case and start from square one. You don't have to establish your innocence, you don't have to prove anything at all. So we have – we heard this case and we come to our own completely fresh determination about it.

I'm going to set out the background. The case concerns events at the New Year Meet of the Fitzwilliam Hunt in 2016, at which a fox was killed by a pack of hounds. The key events, in the preceding few minutes, were videoed by one witness called for each side; for the prosecution, Stephen Milton, a hunt saboteur, and for the appellant, John ~~Neese~~ Mease, the handler of a bird of prey and a member of the hunt. His evidence was called to support the evidence of the appellant, from whom we also heard. We've reviewed that video extensively. We also heard from a second prosecution witness, Ruth ~~Knowles~~ Nichols, and one expert called on each side as to the analysis of the nature of the activity that was depicted and variously described by the witnesses. Although we decided to hear expert evidence, we ultimately came to our own conclusions about the proper characterisation of the behaviours in question. These are questions of fact and this judgment will not recite the evidence we heard but we will set out the Rydal cases in outline, the legal background and set out our actual findings and our conclusions.

Well, the Crown argue that, whatever might have been the intentions of the organisers of the meet on the 1st January 2016, it degenerated as a matter of fact into simple hunting with dogs, a practice banned in 2004 by the Hunting Act. The Crown submits that the conduct visible in the videos taken on the 1st January 2016 was exactly what would have been expected with 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. For the appellant it was asserted that this was at all times exempt hunting and, whilst the death of the fox was regrettable and not the intention of the meeting, or at least not in that way, the huntsman had only ever deployed his hounds to flush the fox out from cover with a view to it being hunted by Mr ~~Neese~~ Mease's bird of prey,

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which was present at the scene and was ready to hunt the fox if the opportunity arose. If you, Mr Adams, are wrong in that primary assertion, you nevertheless rely on what is said to be a reasonable belief that the hunting was at all times exempt.

So, dealing with the legal background, we directed ourselves that a person is guilty of an offence against section 1 of the Hunting Act 2004 if five elements are present; firstly he hunts, secondly a wild animal, thirdly with a dog, fourthly unless the hunting is exempt, fifthly without reasonably believing the hunting is exempt.

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As to those elements, we're guided by, in terms of interpretation, by section 11(2) of the 2004 Act which assists with interpretation and also with case law as well, but not all of the relevant terms are defined. Section 11(2) of the 2004 Act provides: "For the purposes of this Act, a reference to a person hunting a wild mammal with a dog includes, in particular, any case where a person engages or participates in the pursuit of a wild mammal" and (b) "one or more dogs are employed in that pursuit, whether or not by him and whether or not under his control or direction."

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Now, we were referred to the authority of *Director of Public Prosecution v Wright* [2010] in the Queen's Bench reports of that year, at page 224, in which the High Court considered the scope of the section 1 offence and concluded, with some dicta, some observations, in relation to some definitions. It was said in that case that hunting does not, as a layman might think, extend to searching for whatever you're hunting. So, as the judgment indicated:

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> "A person who leaves home on horseback or on foot intending to search for a fox may in a sense be going hunting but he or she is not at that moment hunting any wild mammal because no wild mammal has yet been found."

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The judgment continued that hunting occurs only when a person participates in the actual pursuit of an identified quarry and hunting of such quarry – in this case a fox – is therefore, by definition, intentional rather than merely accidental.

Now, to that we add the clarification that from time to time the word "hunting", in the case before us, was used in a different sense. Hunting a fox means pursuing an identifiable fox. But we also heard the expression "hunting" used in this way; hunting with dogs was used in the sense of the active direction of dogs by means of commands. Now that's not and has never been a necessary element for the Crown to prove as against any defendant, let alone

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this defendant. As the Act makes clear, merely participating or engaging in the pursuit will be sufficient.

It follows that in this case it's necessary for the prosecution to prove that the defendant in question was hunting within the meaning of section 1 of the 2004 Act. That requires proof that he engaged or participated to some extent in the intentional pursuit of an identified quarry and that one or more dogs were employed in that pursuit, whether or not by him or under his direction.

I'm going to turn now to the expression "exempt hunting" which is set out and further particularised in section 6 of schedule 1 of the Act: "Hunting is exempt if it's within a trial specified in schedule 1...." and we see the heading "Falconry" under section 6 of the schedule. We read that "....flushing a wild mammal from cover is exempt hunting if undertaken (a) for the purpose of enabling a bird of prey to hunt a wild mammal...." and it goes on at (b) to refer to permission and ownership of land.

Now, "flushing from cover" is not defined and we have to consider very carefully what we take to mean by that – what we take that phrase to mean. Now, I set out in the next section some observations that we make about the word "flushing", about the word "cover", about the use of a bird of prey and the interaction between those three separate concepts.

Firstly, "flushing". Well, the first observation to make, following the case of *DPP v Wright* is that of course the early stage of flushing from cover at which time the presence of the fox may be suspected but is not known, is plainly speculative. Now, applying the test set out in *Wright*, the early flushing from cover is a precursor to hunting and is not the same as hunting. We add, secondly, that from the evidence we heard "flushing from cover" may not in fact involve any active pursuit of the fox by dogs, because we heard that a fox that hears hounds speaking – that is yapping to each other, effectively that they sense that a fox is nearby – may be flushed from cover without ever having been seen by or actively pursued by the hounds. So even where the presence of a fox is actually known, the question whether it's actually hunted with dogs, that's intentionally pursued with dogs as opposed to being flushed from cover by their presence elsewhere in cover, will depend entirely on the facts.

So it follows from that, that flushing – we acknowledge that flushing is not the same as hunting but the two notions may overlap. The fox may be flushed from cover without actually being hunted. Equally, it may of course be hunted without being flushed. The two concepts will overlap when a fox is directly and intentionally chased from cover, that is when it's being flushed from cover and also being hunted.

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Now, we note that simply flushing from cover in itself is not outlawed by the Act *per se*, unless it also amounts to hunting with dogs. Flushing which does amount to hunting with dogs is unlawful unless it's exempt and it will be exempt if and only if it is for a single defined purpose and that, in this case, is for hunting by the bird of prey.

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Now, the phrase in the Act is "flushed from cover" and the point of it is to flush into the open, not repeatedly around hedgerows or within and around cover. Now, it might be expected then that flushing from cover will need, in practice, to be systematic, generally from one direction towards ground sufficiently open to afford a genuine opportunity for the permitted hunting to occur. Now, given the dangers to any potential quarry of using hounds

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to flush from cover, it will therefore be important to flush systematically and purposefully to prevent the quarry being surrounded and to prevent it from being attacked and killed whilst in cover. We note that flushing and hunting by dogs for its own sake will not be exempt hunting.

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Turning now to the word "cover". We take this to be a word of the – a simple word in the English language and we use that term in this judgment to mean a place where the fox could remain unseen, that is habitually out of sight. It could mean an area behind vertical vegetation, as was at one stage suggested helpfully to us, but it could also mean a ditch; a fox in cover from one position may be exposed to a viewer from another position.

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I turn now to hunting by bird of prey. We were told in this case that birds of prey are raptors. They will chase a mammal, land on it and then cling on to their prey with their talons, immobilising it before killing it or enabling it to be killed by others. Now, in order for flushing from cover to be for the purpose of hunting with a bird of prey, the exercise must contemplate being able to do so effectively, that is flushing to a location at which the hunting

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by bird of prey could in principle be effective. Flushing from cover to an open location where that could not occur or from one bit of cover to another bit of cover, or flushing with another purpose in mind or no purpose at all, would not in any case be exempt. 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

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statutory activity of hunting with a bird of prey.

Finally, in this section, when dealing with the way in which those notions arise in this case, we have envisaged three different factual scenarios to illustrate the ways in which those notions interact.

We considered, firstly, a situation in which there was a small isolated area of cover,

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surrounded by a large area of open land. Once the fox has been flushed out of that small area

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of cover the statutory exemption would not permit the hunting with dogs through the open land. Insofar as dogs are deployed which have a bred instinct and a training to hunt and kill, there would clearly need to be a mechanism to restrain the dogs from chasing the fox down over open ground and killing it.

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We considered the opposite situation; a large area of cover, like a forest, with a single small clearing within it. The statutory exemption would not permit hunting a fox with dogs through that cover. The fact that deployment of a bird of prey would be completely impracticable, unless the fox might happen by chance to run through the clearing, would be a relevant matter in deciding whether or not this could ever be conduct which could be – which

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could escape the prohibition in the Act. So the deployment of dogs in those circumstances could not then be described as "flushing from cover with a view to hunting with a bird of prey". The pursuit of the fox by the dogs through and around cover would, as a matter of fact, be merely hunting with dogs.

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The third scenario we considered was a mixed area, as in the area with which we are concerned in this appeal. This is an area of fields and some areas of cover, including hedgerows, areas of copse and a number of other geographical features. Now, the exemption must presuppose that the terrain is such that in principle a bird of prey could be deployed, otherwise the purpose of the flushing cannot be said to be the hunt of the fox by a bird of prey, as opposed to hunting of a fox by dogs. Now, the mere fact that a bird of prey could at

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some point be deployed, in addition to or instead of the dogs, will not excuse what would otherwise be the hunting of the fox by dogs, if that is what the dogs are doing in fact.

Now, in this case, as I've indicated, the terrain was mixed, there were some opportunities to deploy the bird of prey in principle, or it could be anticipated that there would be, but we heard that they would be limited because of a number of obstacles,

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including a nearby aerodrome and many connected hedgerows linking other areas of cover, one to another. Now, as we know, in this case the fox was surrounded and killed by one or more of the pack of hounds. The question for us is not simply whether this was an inefficient flush – that's a flush gone wrong – but was in fact not properly described as "flushing from

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cover for hunting by a bird of prey" but was actually, at least at some points, simply a hunt with hounds.

Now, before leaving the law relating to exemption, we note that the specific exemption is somewhat different from others that are listed in the Act, in the sense that for section 6 there's no statutory limit on the number or type of dogs to be deployed, nor any

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statutory requirement of control. However, we have to consider the whole of the

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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

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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.

We pause then to look closely at one way in which the conceptive intention has been deployed in this case. It seemed to be submitted to us at some stage that there is a requirement for the Crown to prove that the appellant was intending to hunt unlawfully. If

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that was indeed the contention we are not persuaded that it can be right. The statutory requirement is for the prosecution to prove that the activity was hunting – that is, intentional pursuit – that was in fact unlawful.

We turn now to the statutory defence, because the mental element is, however, further addressed by a specific defence available, if the defendant did not reasonably believe that it

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was exempt hunting, the burden being on the Crown to establish otherwise to the required level of certainty. Section 4 of the Hunting Act provides that it's a defence for a person charged with an offence under section 1 in respect of hunting to show that he reasonably believed that the hunting was exempt.

Now, case law, including the case of *DPP v Wright*, to which we have earlier referred,

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establishes that the burden of proof is on the Crown to prove that the contrary, to the criminal standard, namely that the appellant did not believe or did not believe reasonably that the hunting was exempt. So that leads us to three questions that we addressed in this case and they are as follows:

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Firstly, did Mr Adams engage or participate in the intentional pursuit of a fox and were one or more dogs employed in that pursuit?

Secondly, if so, was the hunting at all stages exempt hunting, in the sense that it was no more than was necessary in fact to flush the fox from cover, with the purpose of enabling a bird of prey to hunt the mammal? And we considered, in particular, the following events

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and moments in the narrative that we have been referred to; firstly, within the copse; secondly, the route of the fox up the riverbank; thirdly, the route of the fox cutting across what was known as Field D on the plan available to us; fourthly, the route of the fox through the hedgerows; fifthly, the point where the fox did not continue beyond what's been described as a "bridge", the entrance to Field D, where it apparently turned back; and, sixthly,

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the location where it was killed.

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The third question we asked ourselves, which is necessary to ask if there are adverse answers for the appellant to the first two questions, is this; further, are we sure that the defendant did not believe that the relevant element of the hunting was exempt or, if he did, that it was not reasonable to do so? And we considered that same question put another way; might the appellant have believed that every element of the hunting was exempt and, if he might have done, would that belief have been reasonable?

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So, having set out at some length the legal background against which all factual decisions come to be measured, we set out the circumstances of this incident. We don't propose to recite the evidence but we'll set out our principal findings.

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Firstly, as far as the circumstances of the hunt that day are concerned, we heard that the meet was in the overall charge of the hunt master responsible for the overall design of the event. The hunt master gave a briefing for hunt staff prior to the event and was the person responsible for addressing the field at the meet, a gathering of around 50 mounted riders at the outset of the meet. The hunt master was not in fact identified to us and did not give evidence in this case. The hounds, between 35 and 39 of them, were under the direction of George Adams, the appellant, in his capacity of huntsman to the Fitzwilliam Hunt. He is visible on the video as a rider in distinctive red jacket. He was the only member of the hunt to have a horn and that horn was used by him to communicate to the dogs and, to an extent, others. He also uses vocal commands towards the dogs. We were told that active direction of the dogs was called "hunting the dogs". For reasons that I've indicated already, that is distinct from a concept that we have to deal with, namely the hunting of the fox.

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Now, the huntsman, the appellant, works with "whippers in" two riders who are there to assist the huntsman by marshalling the hounds. They all work together with a bird of prey handler, a skilled falconer called John ~~Neese~~ Mease. He was equipped with a quad bike which he drives predominantly one-handed, because on his left arm he holds a golden eagle which has been given the name Irlam. Irlam wears a helmet which prevents him from seeing and, when it is slipped or removed by Mr ~~Neese~~ Mease, the eagle would take off after fleeing prey. We heard that it's landed on foxes before at a rate of around eight or so per annum since 2004. The method which has been adopted is that as the eagle uses its claws to hold down the fox, the bird of prey handler, John ~~Neese~~ Mease, will aim to arrive on his quad bike within seconds and kill the fox with a knife. He habitually wears a crash helmet with a GoPro video recording camera and was doing so on this day. All of the individuals I've identified so far were connected by radios on the day.

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For the first time in its history, we were told, the Fitzwilliam Meet encountered the presence of at least 9 anti hunt protestors on foot. They were trespassers and were apparently intent on disrupting the smooth running of the hunt. They were distinctively dressed in black, certain of whom were carrying spray bottles, like domestic cleaning spray bottles, with

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unknown contents and at least one of whom had and used a hunting horn. They also variously used vocal instructions to the dogs to distract them. One of the saboteurs, Mr Mussan, had either one or two video cameras.

Turning then to the events of the day, we find the following facts. We find that the hunt first made contact with a fox in a copse bordering an airfield. The bird of prey could not

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have been deployed at that point because the eagle is not permitted to fly within a set distance of an airfield. That fox made its escape. The hunt master – forgive me, the huntsman, Mr Adams, then directed the hounds to flush out a copse at the south side of Field D, on the plan that we've been using. The flush was broadly in a northerly direction, apparently with a view to any fox found to break into a field, that is Field D, where the bird of prey was

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deployed in the south-western corner of the field, close to the copse. In practice that meant that Mr ~~Neese~~ Mease was sitting on his quad bike in the south-western corner of Field D, anticipating the fox breaking into the open field.

As that process was being completed, nine saboteurs came into Field D on foot,

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approaching from the entrance which is two thirds of the way northwards on the eastern edge of the field. In the event, the fox broke from cover northwards up a riverbank, along the western edge of Field D where it could be seen running beyond an intermittent line of vege – where it could be seen from Field D, running beyond an intermittent line of vegetation, separating the field from the riverbank. As it broke it was seen and filmed by Mr Milton and

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also by the bird of prey handler, John ~~Neese~~ Mease. At the time it broke there was shouting from Mr Milton and others and the sound of horn calls which Mr Adams said were not his. The fox was chased up the riverbank by dogs running on both sides of the vegetation.

The riverbank was said to be some 300 yards in length. During the chase by dogs, the lead dogs at least were chasing it by sight. The fox was chased up the riverbank also by Mr

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~~Neese~~ Mease on the quad bike. He was watching it through the vegetation and checking the position of dogs and huntsman, as his head movements and the video demonstrate. The quad bike, perhaps inadvertently, overtook the fox and went directly to the north-western corner of Field D. Perhaps as a result, the fox broke across the open field from behind it, running around 120 yards diagonally across the north-west corner of Field D. As it did so the fox

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continued to be in full view of the lead dogs which were no more than several seconds behind

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and was in view of a significant element of the chasing pack, including those dogs that had been chasing along the vegetation line in the open field and had not been on the riverbank.

The fox apparently ran into a hedgerow and was chased by hounds along the hedgerow around the perimeter of the field until it was on the eastern side of the field heading

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south and back in the direction of the copse, where it appears to have been checked just before the entrance to the field, where a small bridge gives access from a bridleway to the field and where a whipper-in on his horse and two pedestrians were standing. The fox apparently turned back north, having been overtaken by the lead dogs. Now whether its progress was checked by three hunt saboteurs within Field D, who were near to the hedgerow

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or by the whipper-in and the two pedestrians at the side entrance I've mentioned, is unclear. The fox was in fact overtaken by dogs running north in the hedgerow. In the north-east corner of Field D they attacked and killed it, close to the hedgerow in the corner of Field D. That's the north-eastern corner of Field D.

Now, turning to the central facts in issue in this case and the contentions of the parties

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and the evidence we heard. The Crown accept that the defendant had permission to be on the relevant land. They invite us to say that the evidence demonstrates that the activity of the hounds went beyond flushing the fox from cover for the bird of prey to hunt and that the fox was hunted out of cover, the hounds to hunt it in the open, and that the presence of the bird of

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prey was a sham. Alternatively, that the fox was hunted by hounds to death in cover and the phrase "flushing out" does not properly describe the activity on this day.

The appellant states that the evidence establishes that the events complained of in this case amount in law only to exempt hunting. It's asserted that the fox never left cover, save for a few seconds when it appears to have run behind John ~~Neese~~ Mease in the corner of the

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field. The appellant does not accept that he was aware that it had done so and asserts that he did not participate or engage in any intentional hunting of the fox with dogs outwith the provisions of Schedule 1 of the Act. It's said that Mr Adams reasonably believed that the hunting was exempt.

So we turn now to our findings on the facts which are centrally in issue and make

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certain observations as we do. The Act prevents simple hunting with dogs and, if that's the activity that we find, then it is illegal. Participants who are intentionally engaged in the pursuit, appreciating that it is in reality hunting with dogs, will be at risk of committing a criminal offence. The huntsman has choices to make as to whether to use a dog or more than one dog, whether to use one breed or another, whether to train any dogs he does use to chase

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but not to attack the quarry. We heard that "soft terriers", in inverted commas, may be used

in this way. 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.

Now, we heard some evidence about the history of the Fitzwilliam Hunt and the court understands that the huntsman in this case would want to use the existing pre 2004 infrastructure where possible. However, the Act was designed to change behaviours. Protecting and maintaining the infrastructure for posterity, no matter how laudable, cannot be a legitimate reason to use behaviours which do in fact break the law or do intermittently break the law.

Now, the principle that the infrastructure appropriate to pre 2004 hunting may be appropriate for exempt hunting is problematic. The characteristics of unregulated hunting before 2004 included hounds being used to flush prey from cover, to chase it, to continue to chase it and to kill it. Now, the characteristics in this case involve hunting being done with hounds which were bred and trained specifically to hunt, to chase and to kill foxes and in this case did so. Now, it's said on behalf of the appellant that this was an inadvertent result and that in the recent past other events had turned out as planned, with an eagle being deployed and a manual kill of a fox. We were told that there were on average 54 events, hunt events, per annum and that on average there had been 8 or so fox kills on average per year with the eagle deployed in this way.

We did not hear clear evidence about the management or control of this event, as to briefings to staff at the outset or a clear plan or structure of the day. We note that the evidence was that the meet was not in fact advertised as a hunt specifically by a bird of prey. We did not hear clear evidence about how – what consideration had been given for the safety of riders, pedestrian followers, members of the public and those on the various roads within the hunt area, nor did we hear any specific evidence about how the day was going to be planned to ensure that it was at all times lawful.

Now, it became apparent to those responsible for the meet, only during the event itself, that there were anti hunt protesters which, for the purposes of this judgment, I refer to as saboteurs or sabs, a group of somewhere between nine and a dozen males and females. No relevant radio contact was referred to about the presence of the saboteurs. The hunt apparently continued in their presence with no concessions to their presence and no reassessment of the risks from and to those individuals and others, or reconsideration of the

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complications such as, for example, in communicating and control – communicating to and controlling the dogs that would now be likely as a result of the presence of the saboteurs.

At the point that flushing out was started by Mr Adams the aim was apparently to flush northwards into Field D, as opposed to eastwards into more open fields. George Adams

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was, at the point that the fox emerged from the copse at the south side of Field D, positioned himself towards the middle of the south side of the field at the perimeter of the field. Systematic flushing out for the purpose of hunting by a bird of prey in field D would have covered the likely escape routes for the fox, including the riverbank to the west of Field D where deployment of the bird would have been, as we heard, problematic. The nearby terrain

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involved fields surrounded by hedgerows with little clear space for deployment of the bird and large amounts of continuous or intermittent cover for the fox to be chased around. In this case the word "cover" undoubtedly includes the copse which is known as "the poplars" but we also consider it includes at least some of the hedgerows and ditches around the relevant field. It may not include the riverbank to the west of the field where the fox's progress could

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be tracked through gaps in vegetation as it bolted north and where the fox was in fact visible to chasing dogs on the river side of the vegetation, and also on the field side of the vegetation.

Turning to evidence given about cover, we heard evidence from a number of witnesses about this. Stephen Milton, very fairly said that in his view the fox appeared to him always to have been in cover in the hedgerow. It turns out that he was wrong about that

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because close viewing of the John ~~Neese~~ Mease video demonstrates that the fox traversed at least 120 yards up the field, an event that was seen by Ruth ~~Lockwood~~ Nichols and was witnessed by the ~~Neese~~ Mease video, and at that stage the fox was pursued closely by the lead dogs. The open field, where the fox made a break to the northern hedgerow, cannot be described as cover. From the time it first broke from the copse the fox was hunted. In this

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case it was chased by sight, by both the bird of prey handler, Mr ~~Neese~~ Mease, and by dogs, including in its passage across the open field, up until the time it reached the hedgerow on the northern side of the field.

Now, whether or not some of that journey from the copse to the northern hedgerow, where the fox met its end, was in cover, we do find as a fact that it was not at all times in

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cover and it could not be described at all times as being flushed from cover with a view to it being hunted by a bird of prey, as opposed to it being hunted by the dogs themselves. We note that the dogs were not called off the chase of the fox at any relevant point, with none of the three controlling riders, including George Adams, even closely present, nor was there any

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communication between the three of them, nor were any of the three capable of intervening at

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the moment when the fox met its end, where George Adams indicated in his evidence, very fairly, that nothing at that stage could be done to control the hounds as the fox was caught and mauled by them.

Now, as the death of the fox demonstrates, we find that as a fact the hounds were not

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under meaningful control. We note our observation that since 2004 they had not been trained in fact to desist the chase, nor trained to desist from touching the prey if they caught up with it. From the point at which the fox broke away from the copse, to the time the dogs killed the fox, Mr Adams exerted no effective control of the dogs involved in the chase, nor direct others to do so.

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Now, from the moment the fox – the hounds left the copse in visual pursuit of the fox, they acted in accordance with their breed instinct, as we have been told. They were unchecked and that instinct was to hunt and ultimately kill the fox. So the result was what, prior to 2004, would have been recognisably hunting of the fox with hounds. It was not exempt hunting. We acknowledge that there might conceivably have been an opportunity

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earlier to deploy the bird as the fox broke diagonally across the field, but it was the very presence of the dogs, uncontrolled and chasing the fox up the riverbank and across the field that would in practice have prevented John ~~Neese~~ Mease deploying the bird of prey. To the extent that John ~~Neese~~ Mease blames the presence of saboteurs for not doing so, we reject

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that evidence as a complete account of his failure to slip the bird and, in conclusion, the presence of a bird of prey, close by and ready to join the hunt if the fox did go into open ground, makes no difference to the essential nature of what occurred during those particular five minutes and, in particular, the moment when dogs ran across open ground behind George Adams in pursuit of a visible fox in the open, unchecked by him. So we conclude that this

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was not exempt hunting, it was hunting by dogs.

We turn then to the third of the three questions we're required to ask ourselves, namely are we sure that the defendant did not believe that the relevant element of the hunting was exempt or, if he did, that it was not reasonable to do so? Well, there are two questions here, the first is whether he believed or may have believed that the hunting was exempt? The

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second question is whether, if he did do so, whether such a belief was reasonable? Now, in approaching every aspect of the appellant's evidence we've considered his good character, which is relevant in two important respects. The defendant has no convictions, cautions, warnings or reprimands recorded against him, he's a retired man. Of course, having a good character is not a defence to a criminal charge but it's an important matter which we take into

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account in his favour in two quite distinct ways. Firstly, he's given evidence and his good

character supports his credibility as a witness. Secondly, the fact he is a man of good character is some evidence making it less likely that he would commit and did commit a criminal offence. He has indicated that since 2005 he's conducted hunts once or twice a week for four months of every season.

Turning to his beliefs. We have concluded that he will have realised that fox hunting is potentially lawful, within the limits of exempt hunting. At the point at which he did not flush in a systematic way and had no control of the hounds, i.e. once the fox emerged to the riverbank, he must have appreciated that he was well outside the limits of exempt hunting, since he could see for himself, given his vantage point on his mount, that the dogs were running unchecked over open ground. He has indicated in his evidence that he never saw the fox at any stage but we find, with respect to him, that very difficult to believe, given his elevated position and his acute interest in whatever was interesting his lead dogs.

Now, the pursuit of a fox by uncontrolled dogs over open ground is behaviour which in itself constitutes the offence. The presence of the bird provides no defence at all. It was in no position to be deployed and it was, at the relevant time, being driven to a different position on the quad bike by its handler, as the dogs hunted down and ultimately killed their quarry. We are sure that Mr Adams will have appreciated and did appreciate that the behaviour we've seen on Mr ~~Neese~~ Mease's video was not exempt hunting. He continued to participate in it without exercising restraint or control over it.

Even if we were wrong about that, over whether he had the belief that this was exempt hunting, we consider whether any such belief could have been reasonable and we've concluded that such a belief, by an experienced huntsman, could not have been reasonable. He was bound to know full well the limits of lawful hunting. He was engaged in an operation in which the flushing exercise was haphazard, with dogs left to their own devices rather than being controlled by either himself or his assistants. It was not systematic in a particular and unified direction and with escape routes reasonably stewarded. The dogs were not in fact controlled as they came out of the copse and the quarry was ultimately encircled and killed by the chasers without intervention.

We conclude that Mr Adams will have known full well that as he lost control of his hounds and as he participated in their pursuit of the fox across open ground, he will have been committing a criminal offence and took no steps to control the dogs, to regroup them and to start again with a systematic draw of cover. So these were dogs that were not merely flushing out but were actively involved in a hunt on their own behalf, regardless of the presence of the bird of prey. Mr Adams was an active and intentional participant in that hunt.

That's precisely the activity outlawed by the 2004 Act. We are sure that he did not believe that his actions were lawful, nor that he could ever reasonably have done so and it's for those reasons that we reject the appeal against conviction.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.